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Rules and Regulations

Federal Register

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Friday, December 19, 2014

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 30, 31, 32, 34, 35, 37, 40, 51, 61, 62, 70, 71, 72, 73, 74, 75, 140, and 150

[NRC–2014–0220]

RIN 3150–AJ46

Organizational Changes and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to reflect internal organizational changes and conforming amendments. These changes include adding the address for a new NRC building at headquarters, removing references to several committees that no longer exist, adding the Computer Security Office, removing all references to the Office of Federal and State Materials and Environmental Management Programs because that office has merged with the Office of Nuclear Material Safety and Safeguards, and making conforming amendments throughout the regulations to reflect this office merger.

DATES: This final rule is effective on December 19, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0220 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0220. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jill Shepherd-Vladimir, Office of Administration, telephone: 301–287–0950; email: *Jill.Shepherd@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 1, 2, 30, 31, 32, 34, 35, 37, 40, 51, 61, 62, 70, 71, 72, 73, 74, 75, 140, and 150 of Title 10 of the *Code of Federal Regulations* (10 CFR) to make administrative changes. These changes include adding the address for a new NRC building at headquarters, removing references to several committees that no longer exist, adding the Computer Security Office, removing all references to the Office of Federal and State Materials and Environmental Management Programs because that office has merged with the Office of Nuclear Material Safety and Safeguards, and making conforming amendments throughout the regulations to reflect this office merger.

II. Summary of Changes

10 CFR Part 1 Changes

1. Reference to the NRC Functional Organization Charts, NUREG–0325, in § 1.3 is removed, because it is no longer published or updated.

2. The locations of principal NRC offices are updated to include the address of the Three White Flint North Building and to remove the addresses for two locations (Executive Boulevard and Gateway buildings) that are no longer occupied by the NRC.

3. The Panels, Boards, and Committees section is updated to remove the reference to the Advisory Committee on Nuclear Waste, the Advisory Committee for the Decontamination of Three Mile Island, Unit 2, and The Nuclear Safety Research Review Committee, that no longer exist.

4. The Office of Federal and State Materials and Environmental Management Programs is removed from § 1.32.

5. The Computer Security Office is added to the list of NRC offices.

6. The office description in § 1.41, Office of Federal and State Materials and Environmental Management Programs is removed, and the office description in § 1.42, Office of Nuclear Material Safety and Safeguards is revised to reflect new office responsibilities resulting from the merger with the Office of Federal and State Materials and Environmental Management Programs.

10 CFR Parts 2, 30, 31, 32, 34, 35, 37, 40, 51, 61, 62, 70, 71, 72, 73, 140, and 150

All references to the Office of Federal and State Materials and Environmental Management Programs are removed or removed and replaced by the Office of Nuclear Material Safety and Safeguards. Additional editorial changes, where necessary, have been made as the result of removing the references.

10 CFR Parts 37, 71, and 73

All references to the Division of Intergovernmental Liaison and Rulemaking are removed and replaced with the Division of Material Safety, State, Tribal, and Rulemaking Programs.

10 CFR Parts 40, 72, 73, 74, 75, and 150

All references to the Division of Fuel Cycle Safety and Safeguards are removed and replaced with the Division of Fuel Cycle Safety, Safeguards, and Environmental Review.

10 CFR Parts 71 and 72

All references to the Division of Spent Fuel Storage and Transportation are

removed and replaced with the Division of Spent Fuel Management.

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments, because notice and opportunity for comment are unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR parts related only to management, organization, procedure, and practice. Specifically, the revisions are of the following types: Adding the address for a new building at NRC headquarters, removing references to three committees that no longer exist, adding the Computer Security Office to the list of offices, removing all references to the Office of Federal and State Materials and Environmental Management Programs because that office has now merged with another NRC office, and making conforming amendments reflecting the office merger. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC. Furthermore, for the reasons previously stated, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(2), that excludes from a major action rules that are corrective, minor, or nonpolicy in nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document displays a currently valid Office of Management and Budget control number.

VII. Backfitting and Issue Finality

The NRC has determined that the amendments in this final rule do not constitute backfitting and are not inconsistent with any of the issue finality provisions in 10 CFR part 52. The revisions are non-substantive in nature and do not impose any new requirements and make no substantive changes to the regulations. The amendments do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting or represent an inconsistency with any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this rulemaking addressing backfitting or issue finality.

VIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 1

Organization and functions (Government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 37

Byproduct material, Criminal penalties, Export, Hazardous materials transportation, Import, Licensed material, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive waste treatment and disposal, Low-level waste policy

amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR chapter I.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

■ 1. The authority citation for part 1 continues to read as follows:

Authority: Atomic Energy Act secs. 23, 29, 161, 191 (42 U.S.C. 2033, 2039, 2201, 2241); Energy Reorganization Act secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.3, revise paragraph (a) to read as follows:

§ 1.3 Sources of additional information.

(a) A statement of the NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority is in the Nuclear Regulatory Commission Management Directives System and other NRC issuances, including local directives issued by Regional Offices. Letters and memoranda containing directives, delegations of authority and the like are also issued from time to time and may not yet be incorporated into the Management Directives System, parts of which are revised as necessary. Copies of the Management Directives System and other delegations of authority are available for public inspection and copying for a fee at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at each of NRC's Regional Offices. Information may also be obtained from the Office of Public Affairs or from Public Affairs Officers at the Regional Offices.

* * * * *

■ 3. In § 1.5, revise paragraph (a)(3) and remove paragraph (a)(4) to read as follows:

§ 1.5 Location of principal offices and regional offices.

* * * * *

(a) * * *

(3) Three White Flint North Building, 11601 Landsdown Street, North Bethesda, Maryland 20852.

* * * * *

§ 1.18 [Removed and Reserved]

■ 4. Remove and reserve § 1.18.

§ 1.19 [Amended]

■ 5. In § 1.19, remove paragraphs (b) and (c) and redesignate paragraph (d) as paragraph (b).

§ 1.32 [Amended]

■ 6. In § 1.32, paragraph (b), first sentence, remove the phrase ''the Office of Federal and State Materials and Environmental Management Systems''.

■ 7. Add § 1.38 to read as follows:

§ 1.38 Computer Security Office.

The Computer Security Office—

(a) Plans, recommends, and oversees the NRC's Information Technology (IT) Security Program consistent with applicable laws, regulations, management initiatives, and policies;

(b) Provides principal advice to the NRC on the infrastructure, as well as the programmatic and administrative aspects of cybersecurity;

(c) Establishes NRC-wide cybersecurity guidelines;

(d) Guides security process maturity, as well as formulating and overseeing the cybersecurity program budget; and

(e) Ensures NRC-wide integration, direction and coordination of IT security planning and performance within the framework of the NRC IT Security Program and with related Office of Information Services activities.

§ 1.41 [Removed and Reserved]

■ 8. Remove and reserve § 1.41.

■ 9. Revise § 1.42 to read as follows:

§ 1.42 Office of Nuclear Material Safety and Safeguards.

(a) The Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for regulating activities that provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors; the safe storage, transportation, and disposal of low-level and high-level radioactive waste and spent nuclear fuel; the transportation of radioactive materials regulated under the Atomic Energy Act of 1954, as amended (the Act); and all other medical, industrial, academic, and commercial uses of radioactive isotopes. The NMSS ensures safety and security by implementing a regulatory program involving activities including licensing, inspection, assessment of environmental impacts for all nuclear material facilities and activities, assessment of licensee performance, events analysis, enforcement, and identification and resolution of generic issues. The NMSS is also responsible for developing all

new regulations and amending existing regulations for all nuclear material facilities and activities regulated by NMSS.

(b) The Office of Nuclear Material Safety and Safeguards—

(1) Develops and implements NRC policy for the regulation of: Uranium recovery, conversion, and enrichment; fuel fabrication and development; transportation of nuclear materials, including certification of transport containers and reactor spent fuel storage; safe management and disposal of spent fuel and low-level and high-level radioactive waste; and medical, industrial, academic, and commercial uses of radioactive isotopes;

(2) Has lead responsibility within NRC for domestic and international safeguards policy and regulation for fuel cycle facilities, including material control and accountability;

(3) Plans and directs NRC's program of cooperation and liaison with States, local governments, interstate and Indian tribe organizations; and coordinates liaison with other Federal agencies;

(4) Participates in formulation of policies involving NRC/State cooperation and liaison;

(5) Develops and directs administrative and contractual programs for coordinating and integrating Federal and State regulatory activities;

(6) Maintains liaison between NRC and State, interstate, regional, Tribal, and quasi-governmental organizations on regulatory matters;

(7) Promotes NRC visibility and performs general liaison with other Federal agencies, and keeps NRC management informed of significant developments at other Federal agencies that affect the NRC;

(8) Monitors nuclear-related State legislative activities;

(9) Directs regulatory activities of State Liaison and State Agreement Officers located in Regional Offices;

(10) Participates in policy matters on State Public Utility Commissions (PUCs);

(11) Administers the State Agreements program in a partnership arrangement with the States;

(12) Develops staff policy and procedures and implements State Agreements program under the provisions of Section 274b of the Act;

(13) Provides oversight of the program for reviews of Agreement State programs to determine their adequacy and compatibility as required by Section 274j of the Act and other periodic reviews that may be performed to maintain a current level of knowledge of the status of the Agreement State programs;

(14) Provides training to the States as provided by Section 274i of the Act and also to NRC staff and staff of the U.S. Navy and U.S. Air Force;

(15) Provides technical assistance to Agreement States;

(16) Maintains an exchange of information with the States;

(17) Conducts negotiations with States expressing an interest in seeking a Section 274b Agreement;

(18) Supports, consistent with Commission directives, State efforts to improve regulatory control for radiation safety over radioactive materials not covered by the Act;

(19) Serves as the NRC liaison to the Conference of Radiation Control Program Directors, Inc. (CRCPD) and coordinates NRC technical support of CRCPD committees;

(20) Conducts high-level waste pre-licensing activities, consistent with direction in the Nuclear Waste Policy Act and the Energy Policy Act, to ensure appropriate standards and regulatory guidance are in place, and interacts with the applicant;

(21) Is responsible for regulation and licensing of recycling technologies intended to reduce the amount of waste to be disposed through geologic disposal and to reduce proliferation concerns since the technologies do not produce separated plutonium;

(22) Interacts with the Department of Energy and international experts, in order to develop an appropriate regulatory framework, in recycling during development, demonstration, and deployment of new advanced recycling technologies that recycle nuclear fuel in a manner that does not produce separated plutonium;

(23) Creates and maintains the regulatory infrastructure to support the agency's role in licensing a reprocessing facility and a related fuel fabrication facility and vitrification and/or waste storage facility;

(24) Prepares the NRC to perform its regulatory role for new, expanded, and modified commercial fuel cycle facilities that may include recycling, transmutation, and actinide burning. This includes regulatory processes such as licensing, inspection, assessment of license performance assessment, events analysis, and enforcement that will ensure that this technology can be safely and securely implemented commercially in the United States;

(25) Develops, promulgates, and amends regulations generally associated with the materials regulated by NMSS and for all security-related regulations that will be applied to licensees and holders of certificates of compliance issued by NMSS;

(26) Supports safeguards activities including—

(i) Developing overall agency policy;

(ii) Monitoring and assessing the threat environment, including liaison with intelligence agencies, as appropriate; and

(iii) Conducting licensing and review activities appropriate to deter and protect against threats of radiological sabotage and threats of theft or diversion of nuclear material at regulated facilities and during transport;

(27) Regulates medical, industrial, academic, and commercial uses of radioactive isotopes;

(28) Oversees safe management and disposal of low-level radioactive wastes;

(29) Plans and directs program for financial assurance of NMSS licensees;

(30) Manages the decommissioning of facilities and sites when their licensed functions are over; and

(31) Identifies and takes action for activities under its responsibility, including consulting and coordinating with international, Federal, State, Tribal and local agencies, as appropriate.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 10. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); FOIA 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201(b),(i),(o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear

Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

■ 11. In part 2:

■ a. Wherever it may occur, remove the phrase ''Director, Office of Federal and State Materials and Environmental Management Programs,'';
■ b. Wherever it may occur, remove the phrase ''The Director, Office of Federal and State Materials and Environmental Management Programs,'';
■ c. Wherever it may occur, remove the phrase ''or the Director, Office of Federal and State Materials and Environmental Management Programs,'';
■ d. Wherever it may occur, remove the phrase ''or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate,'';
■ e. Wherever it may occur, remove the phrase ''or Director, Office of Federal and State Materials and Environmental Management Programs,''; and
■ f. Wherever it may occur, remove the phrase ''or Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate,''.

§ 2.101 [Amended]

■ 12. In § 2.101, in paragraph (a)(1), add the word ''or'' after the phrase ''Office of Nuclear Reactor Regulation,''.

§ 2.103 [Amended]

■ 13. In § 2.103, paragraph (a), in the second sentence, add the word ''or'' after the phrase ''Office of New Reactors,''.

§ 2.106 [Amended]

■ 14. In § 2.106, paragraph (d), remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

§ 2.340 [Amended]

■ 15. In § 2.340, in paragraphs (e)(2) and (k), remove the comma after the phrase ''the Commission'' and add the word ''or'' after the phrase ''the Commission''.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 16. The authority citation for part 30 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 17. In part 30, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

■ 18. The authority citation for part 31 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 183, 223, 234 (42 U.S.C. 2111, 2201, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 19. In part 31, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 20. The authority citation for part 32 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 21. In part 32, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 34—LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

■ 22. The authority citation for part 34 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note). Atomic Energy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 34.45 also issued under Energy Reorganization Act sec. 206 (42 U.S.C. 5846).

■ 23. In part 34, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 24. The authority citation for part 35 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201, 206 (42 U.S.C. 5841, 5842, 5846); sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 25. In part 35, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

■ 26. The authority citation for part 37 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234 (42 U.S.C. 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201a., 2232, 2233, 2273, 2282).

■ 27. In part 37, wherever it may occur, the term or phrase in the left column in the following table is removed and the term or phrase in the right column is added in its place.

Remove	Add
Division of Intergovernmental Liaison and Rulemaking	Division of Material Safety, State, Tribal, and Rulemaking Programs.
Office of Federal and State Materials and Environmental Management Programs.	Office of Nuclear Material Safety and Safeguards.

§ 37.7 [Amended]

■ 28. In § 37.7, remove the phrase ''Director, Office of Federal and State Materials and Environmental Management Programs;''.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 29. The authority citation for part 40 continues to read as follows:

Authority: Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 30. In part 40, wherever it may occur, the term or phrase in the left column in the following table is removed and the term or phrase in the right column is added in its place.

Remove	Add
Office of Federal and State Materials and Environmental Management Programs.	Office of Nuclear Material Safety and Safeguards.
Division of Fuel Cycle Safety and Safeguards	Division of Fuel Cycle Safety, Safeguards, and Environmental Review.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 31. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub. L. 95–604, Title II, 92 Stat. 3033–3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243).

Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 32. In part 51, wherever it may occur, remove the phrase ''Director, Office of Federal and State Materials and Environmental management Programs''.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 33. The authority citation for part 61 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 65, 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846), sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Pub. L. 95–601, sec. 10, 14, 92 Stat. 2951, 2953 (42 U.S.C. 2021a, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 34. In part 61, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

■ 35. The authority citation for part 62 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 161, 274 (42 U.S.C. 2111, 2201, 2021); Energy Reorganization Act secs. 201, 209 (42 U.S.C. 5841, 5849); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 36. In part 62, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 37. The authority citation for part 70 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)). Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237).

Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

■ 38. In part 70, wherever it may occur, remove the phrase ''Office of Federal and State Materials and Environmental Management Programs'' and add in its place the phrase ''Office of Nuclear Material Safety and Safeguards''.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 39. The authority citation for part 71 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy

Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

■ 40. In part 71, wherever it may occur, the phrase in the left column in the following table is removed and the term or phrase in the right column is added in its place.

Remove	Add
Office of Federal and State Materials and Environmental Management Programs.	Office of Nuclear Material Safety and Safeguards.
Division of Spent Fuel Storage and Transportation	Division of Spent Fuel Management.
Division of Intergovernmental Liaison and Rulemaking	Division of Material Safety, State, Tribal, and Rulemaking Programs.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 41. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under Nuclear Waste Policy Act sec. 218(a) (42 U.S.C. 10198).

■ 42. In part 72, wherever it may occur, the phrase in the left column in the following table is removed and the phrase in the right column is added in its place.

Remove	Add
Office of Federal and State Materials and Environmental Management Programs.	Office of Nuclear Material Safety and Safeguards.
Division of Spent Fuel Storage and Transportation	Division of Spent Fuel Management.
Division of Fuel Cycle Safety and Safeguards	Division of Fuel Cycle Safety, Safeguards, and Environmental Review.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 43. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C, 10155, 10161).

Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 44. In part 73, wherever it may occur, the phrase in the left column in the following table is removed and the phrase in the right column is added in its place.

Remove	Add
Division of Intergovernmental Liaison and Rulemaking	Division of Material Safety, State, Tribal, and Rulemaking Programs.
Division of Fuel Cycle Safety and Safeguards	Division of Fuel Cycle Safety, Safeguards, and Environmental Review.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

■ 45. The authority citation for part 74 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

■ 46. In part 74, wherever it may occur, remove the phrase ''Division of Fuel Cycle Safety and Safeguards'' and add in its place the phrase ''Division of Fuel Cycle Safety, Safeguards, and Environmental Review''.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

■ 47. The authority citation for part 75 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 63, 103, 104, 122, 161, 223, 234 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 75.4 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155, 10161).

■ 48. In part 75, wherever it may occur, remove the phrase ''Division of Fuel Cycle Safety and Safeguards'' and add in its place the phrase ''Division of Fuel Cycle Safety, Safeguards, and Environmental Review''.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

■ 49. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act secs. 201, as amended, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 Pub. L. 109–58, 119 Stat. 594 (2005).

■ 50. In part 140, wherever it may occur, remove the phrase ''Director, Office of Federal and State Materials and Environmental Management Programs,''.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 51. The authority citation for part 150 continues to read as follows:

Authority: Atomic Energy Act sec. 161, 181, 223, 234 (42 U.S.C. 2201, 2021, 2231, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114).

Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073).

Section 150.15 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155).

Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

■ 52. In part 150, wherever it may occur, the phrase in the left column in the following table is removed and the phrase in the right column is added in its place.

Remove	Add
Office of Federal and State Materials and Environmental Management Programs.	Office of Nuclear Material Safety and Safeguards.
Division of Fuel Cycle Safety and Safeguards	Division of Fuel Cycle Safety, Safeguards, and Environmental Review.

Dated at Rockville, Maryland, this 9th day of December, 2014.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Executive Director for Operations.

[FR Doc. 2014–29664 Filed 12–18–14; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 339 and 391

RIN 3064–AE03

Loans in Areas Having Special Flood Hazards

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule to rescind and remove regulations entitled ''Loans in Areas Having Flood Hazards'' and to amend regulations entitled ''Loans in Areas Having Flood Hazards.'' The final rule will integrate the flood insurance regulations for State nonmember banks and State savings associations in accordance with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). The integration of the regulations was originally proposed as part of an interagency joint notice of proposed rulemaking issued in October 2013 pursuant to the Biggert-Waters Flood Insurance Reform Act of 2012 (the BW Act). The FDIC has decided to integrate the flood insurance regulations by means of an individual final rule.

DATES: The final rule is effective on January 20, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Mellon, Counsel, Consumer Compliance Section (202) 898–3884, Legal Division; or John Jackwood, Senior Policy Analyst (202) 898–3991, Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

The Dodd-Frank Act [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, (''Transfer Date''), the powers, duties, and functions formerly performed by the OTS were respectively divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (''OCC''), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB''), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the Transfer Date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, the Dodd-Frank Act did not affect the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (''FDI Act'') and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal

[1] Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5301 *et seq.*).

[2] 76 FR 39247 (July 6, 2011).

banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency,'' or under similar terminology, for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

Pursuant to this authority, the FDIC's Board of Directors reissued and re-designated certain transferring regulations of the former OTS on June 14, 2011, as noted earlier. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[3] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

B. The BW Act

The BW Act,[4] signed into law by the President on July 6, 2012, significantly revised Federal flood insurance statutes. Pursuant to the BW Act, the FDIC along with the OCC, the FRB, the Farm Credit Administration, and the National Credit Union Administration published a Notice of Proposed Rulemaking on October 30, 2013 (the ''NPR'').[5] Among other topics, the NPR discussed the OCC and FDIC's proposals to integrate their flood insurance regulations for national banks and Federal savings associations and for State non-member banks and State savings associations, respectively, pursuant to the previously discussed requirements of the Dodd-Frank Act. Specifically, the OCC proposed to add language to its flood insurance regulation for national banks, 12 CFR part 22, to make it applicable to both national banks and Federal savings associations, and to remove its flood insurance regulation for Federal savings associations, 12 CFR part 172. Similarly, the FDIC proposed to add language to 12 CFR part 339, its flood regulation for State nonmember banks, to make it applicable to both State nonmember banks and State savings associations and to remove its flood insurance regulation for State savings associations, 12 CFR part 391 subpart D. The NPR noted that Parts 22, 172, 339, and 391 subpart D, are nearly identical and contain no substantive differences, as they were originally adopted through an interagency rulemaking process.

II. Comments

The NPR had a sixty-day comment period, which closed on December 29, 2013. No comments were received on the FDIC's proposed integration of its flood insurance rules. Consequently this final rule pertaining solely to the integration of FDIC and OTS flood insurance rules is adopted basically as proposed in the interagency NPR.

III. Explanation of the Final Rule

As discussed in the NPR, part 391, subpart D is almost identical to part 339, and the designation of part 339 as the single regulation for depository institutions supervised by the FDIC will serve to streamline the FDIC's rules and eliminate unnecessary regulations. To that effect, the final rule removes and rescinds 12 CFR part 391, subpart D in its entirety.

Consistent with the NPR, the final rule also amends part 339 by deleting the definition of ''bank,'' inserting a definition of ''FDIC-supervised institution'' that includes both non-member banks and State savings associations, and replacing the term ''bank'' with the term ''FDIC-supervised institution'' throughout the rule. The amendments make it plain that the rule applies to both non-member banks and State savings associations.

IV. Administrative Law Matters

A. Paperwork Reduction Act

Pursuant to the NPR, the FDIC will rescind and remove from its regulations 12 CFR part 391, subpart D. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 391, subpart D is redundant and duplicative of the FDIC's rule at part 339 regarding loans in areas having special flood hazards. Removing part 391, subpart D and adding a definition of *FDIC-supervised institution* to part 339 will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), requires that each federal agency either (1) certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities, or (2) prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. The proposal to integrate the FDIC's flood insurance regulations makes no substantive changes to the requirements set forth pursuant to that rule. It instead would only merge two nearly identical regulations, thus reducing redundancy and the potential for confusion as to which regulation applies. On this basis, the FDIC certifies that the present rule revision will not have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA.

C. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured depository institutions.[6] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review, which is expected to be completed by 2016. The NPR solicited comments on the proposed rescission of part 391, subpart D and amendments to part 339. No comments on this issue were received. Upon review, the FDIC does not believe that part 339, as amended by the Final Rule, imposes any outdated or unnecessary regulatory requirements on any insured depository institutions.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. Although the FDIC did not receive any comments, the FDIC sought to present the final rule in a simple and straightforward manner.

List of Subjects

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 391

Savings associations.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation amends Parts 339 and 391 of Chapter III of Title

[3] 76 FR 47652 (Aug. 5, 2011).

[4] Public Law 112–141, 126 Stat. 916 (2012).

[5] 78 FR 65108.

[6] Pub. L. 104–208, 110 Stat. 3009 (Sept. 30, 1996).

12, Code of Federal Regulations as follows:

■ 1. Part 339 is revised to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.
339.1 Authority, purpose, and scope.
339.2 Definitions.
339.3 Requirement to purchase flood insurance where available.
339.4 Exemptions.
339.5 Escrow requirement.
339.6 Required use of standard flood hazard determination form.
339.7 Forced placement of flood insurance.
339.8 Determination fees.
339.9 Notice of special flood hazards and availability of federal disaster relief assistance.
339.10 Notice of servicer's identity.
Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462, 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 339.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(c) *Community* means a state or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(d) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(e) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(f) *FDIC-supervised institution* means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(g) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(g).

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 339.3 Requirement to purchase flood insurance where available.

(a) *In general.* An FDIC-supervised institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* An FDIC-supervised institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purpose of this part.

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any state-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of states falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 339.5 Escrow requirement.

If an FDIC-supervised institution requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the FDIC-supervised institution shall also require the escrow of all premiums and fees for any flood insurance required under § 339.3. The FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 339.6 Required use of standard flood hazard determination form.

(a) *Use of form.* An FDIC-supervised institution shall use the standard flood hazard determination form developed

by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. An FDIC-supervised institution may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794–2012.

(b) *Retention of form.* An FDIC-supervised institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the FDIC-supervised institution owns the loan.

§ 339.7 Forced placement of flood insurance.

If an FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the FDIC-supervised institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the FDIC-supervised institution or its servicer shall purchase insurance on the borrower's behalf. The FDIC-supervised institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 339.8 Determination fees.

(a) *General.* Notwithstanding any federal or state law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001—4129), any FDIC-supervised institution, or a servicer acting on behalf of the FDIC-supervised institution, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 339.9 Notice of special flood hazards and availability of federal disaster relief assistance.

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally-declared disaster.

(c) *Timing of notice.* The FDIC-supervised institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the FDIC-supervised institution provides notice to the borrower and in any event no later than the time the FDIC-supervised institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The FDIC-supervised institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the FDIC-supervised institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an FDIC-supervised institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The FDIC-supervised institution shall retain a record of the written assurance from the seller or lessor for the period of time the FDIC-supervised institution owns the loan.

(f) *Use of prescribed form of notice.* An FDIC-supervised institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 339.10 Notice of servicer's identity.

(a) *Notice requirement.* When an FDIC-supervised institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the FDIC-supervised institution shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the FDIC-supervised institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The FDIC-supervised institution shall notify the Director of FEMA (or the Director of FEMA's designee) of any change in the

servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information. _____

The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover the *lesser of:*

(1) The outstanding principal balance of the loan; or

(2) the maximum amount of coverage allowed for the type of property under the NFIP. Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for federal disaster relief assistance in the event of a federally-declared flood disaster.

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 2. The authority citation for Part 391 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.

Subpart B also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; 1881–1884; 15 U.S.C.1681w; 15 U.S.C. 6801; 6805.

Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; and 1881–1884; 15 U.S.C. 1681m; 1681w.

Subpart E also issued under 12 U.S.C. 1467a; 1468; 1817; 1831i.

Subpart D—[Removed and Reserved]

■ 3. Remove and reserve Subpart D consisting of §§ 391.30 through 391.39 and the Appendix to Subpart D.

Dated at Washington, DC, this 16th day of December 2014.

By Order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–29761 Filed 12–18–14; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 722

RIN 3133–AE36

Appraisals—Availability to Applicants and Requirements for Transactions Involving an Existing Extension of Credit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: As part of NCUA's Regulatory Modernization Initiative, the NCUA Board (Board) is revising two of NCUA's regulations regarding appraisals. In response to a recent amendment to the Consumer Financial Protection Bureau's (CFPB) Regulation B, the Board is eliminating from NCUA's regulations the now duplicative requirement that federal credit unions (FCUs) make available, to any requesting member, a copy of the appraisal used in connection with that member's application for a loan secured by a first lien on a dwelling. Also, the Board is amending NCUA's appraisal regulations by expanding the current exemption for certain transactions involving an existing extension of credit. More specifically, under the expanded exemption, a federally insured credit union (FICU) will be permitted to refinance or modify a real estate-related loan held by the FICU, without having to obtain another appraisal, if there is no advancement of new monies or if there is adequate collateral protection even with the advancement of new monies. Lastly, the Board is making a minor technical amendment to the definition of the term ''application.''

DATES: This rule is effective January 20, 2015.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6593.

SUPPLEMENTARY INFORMATION:

I. Background and Proposal
II. Final Rule
III. Regulatory Procedures

I. Background and Proposal

A. Background

Each year, NCUA reviews one-third of its regulations for substance and to ensure they are clear, current, and appropriate in scope. NCUA notifies the public of those regulations under review so that the public may have an opportunity to provide comments on those regulations.

In 2013, NCUA reviewed part 722, along with several other parts of NCUA's regulations.[1] Part 722 sets forth the appraisal requirements for federally-related transactions involving real estate. The appraisal requirements in part 722 are generally equivalent to the appraisal requirements of the other federal financial regulatory agencies.[2]

However, NCUA received numerous comments during the public comment period requesting a specific change to § 722.3(a)(5) to better align NCUA's appraisal requirements with those of the

[1] As part of the 2013 regulatory review process, NCUA also reviewed parts 711, 712, 713, 714, 715, 716, 717, 721, 723, 724, 725, 740, 741, 745, and 747 of NCUA's regulations.

[2] For purposes of this rulemaking, these agencies are the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of Currency.

other federal financial regulatory agencies. Specifically, commenters requested that NCUA expand the current appraisal exemption for existing extensions of credit to allow a FICU to refinance or modify a real estate-related loan held by that FICU without having to obtain an additional appraisal.

In addition, a number of commenters requested that NCUA eliminate the now duplicative portion of § 701.31(c)(5) of NCUA's regulations, which requires an FCU to retain the appraisal used in connection with a real estate-related loan application for a period of 25 months and to make a copy of the appraisal available to the applicant upon request. A recent amendment to § 1002.14 of CFPB's Regulation B requires that all creditors, including FCUs, automatically provide applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. As a result of this amendment to Regulation B, the requirements of § 701.31(c)(5) of NCUA's regulations and § 1002.14 of Regulation B overlap with respect to providing copies of appraisals used in connection with an application for a loan secured by a first lien on a dwelling.

B. June 2014 Proposed Rule

In June 2014, as part of NCUA's regulatory review and in response to public comments received, the Board issued a proposed rule to amend two of NCUA's regulations regarding appraisals.[3] Consistent with NCUA's Regulatory Modernization Initiative, the proposed amendments improve NCUA's regulations by better aligning them with the current marketplace, reduce costs for FICUs and their members, and remove outdated regulatory requirements.

Specifically, the Board proposed to make the following three changes to NCUA's regulations. First, as requested by the public, the Board proposed to eliminate the now duplicative requirement in NCUA's regulations that requires FCUs to make available, to any requesting member, a copy of the appraisal used in connection with that member's application for a loan secured by a first lien on a dwelling. FCUs would still be required to provide a borrower with a copy of the appraisal used for a loan involving a subordinate lien on a dwelling.

Additionally, the Board proposed to amend § 722.3(a)(5) of NCUA's appraisal regulations to better align this appraisal exemption for existing extensions of credit with that applicable to banks. The current provision exempts from the appraisal requirement transactions that involve an existing extension of credit at the FICU, provided that: (i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs, and (ii) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction. Under the current regulation, for a transaction involving an existing extension of credit to be exempt from the general requirement to obtain an appraisal, the transaction must satisfy both the criteria in paragraph (i) and the criteria in paragraph (ii) of current § 722.3(a)(5).

The revised provision will allow FICUs to refinance or modify existing real estate-related loans without obtaining an appraisal if (1) there is no advancement of new monies; or (2) in transactions where there is an advancement of new monies, if there is no obvious and material change in market conditions or physical aspects of the property. In addition to achieving parity with banking regulations, the amendment gives FICUs more latitude to modify or refinance existing real estate loans for distressed borrowers without having to obtain an appraisal.

Finally, the Board proposed to make a minor technical amendment to correct and update the definition of the term ''application'' in § 701.31(a)(1) of NCUA's regulations. Current § 701.31(a)(1) defines the term ''application'' for purposes of part 701 as carrying the same ''meaning of that term as defined in 12 CFR 1002.2(f) (Regulation B)'' and then provides a parenthetical quoting the text of the Regulation B definition of application, which has since been revised. As a result, the definition of application in § 1002.2(f) no longer matches the quote in § 701.31(a)(1). The technical amendment to § 701.31(a)(1) will update the definition.

II. Final Rule

NCUA received thirteen comments on the proposed rule. Two comments were received from trade associations representing credit unions, seven from state credit union leagues, one from an FCU, and three from federally insured, state-chartered credit unions.

All of the comments were supportive of the proposal. Commenters generally indicated that the proposed amendments will provide greater parity and consistency among federal financial regulations, eliminate redundancies, and benefit credit unions and their members by easing administrative and cost impediments to successful loan modifications. Several commenters, however, requested clarification of current regulatory requirements or offered comments beyond the scope of the June 2014 proposal.

For example, two commenters suggested eliminating the current requirement that FCUs make available, to any requesting member, a copy of the appraisal used in connection with that member's application for a dwelling secured by a subordinate lien. The Board, however, proposed only to eliminate the portion of the current requirement in § 701.31(c)(5) relative to loans secured by a first lien on a dwelling because it is duplicative of Regulation B. The Board did not propose to eliminate those current protections provided under § 701.31(c)(5) for FCU members regarding loans secured by subordinate liens because that portion of NCUA's regulations are not duplicative of Regulation B.

As stated in the proposed rule, the consumer protections provided by NCUA's regulation and Regulation B do not overlap entirely. Under current § 701.31(c)(5), FCUs are required under certain circumstances to provide copies of appraisals used in connection with an application for a real estate-related loan, which includes any loan to be secured by a first lien or a subordinate lien on a dwelling. The protections provided in § 1002.14 of Regulation B extend to appraisals developed in connection with an application for a loan secured by a first lien on a dwelling. Despite this, the Board continues to believe the requirements of § 701.31(c)(5) relating to appraisals used in connection with a loan secured by a subordinate lien on a dwelling must be retained as a consumer protection for FCU members.

Several commenters asked for additional amendments to modify or clarify existing definitions or other current regulatory requirements. For example, one commenter requested clarification of the scope and meaning of the term ''dwelling'' in § 701.31(a)(2)) of NCUA's regulations. The Board notes that the proposed rule did not modify any existing definitions or impose any new requirements on credit unions. All definitions in the current regulation have the same meaning under this final rule as they do under the current regulation. The Board also emphasizes that this final rule does not modify the 2010 Federal Financial Institutions Examination Council's interagency appraisal and evaluation guidelines and credit unions may continue to rely on that guidance.

[3] 79 FR 36248 (June 26, 2014).

Accordingly, the Board is adopting the June 2014 proposed rule as final without change.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[4] requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $50 million).[5] The amendments to parts 701 and 722 will only reduce regulatory impacts on credit unions by exempting them from certain regulatory requirements. Accordingly, the Board certifies the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.[6] For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. This final rule would not impose or expand upon any existing reporting or recordkeeping requirements. Accordingly, this final rule would not create new paperwork burdens or increase any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. NCUA has, therefore, determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

[4] 5 U.S.C. 601 *et seq.*

[5] 78 FR 4032 (Jan. 18, 2013).

[6] 44 U.S.C. 3507(d); 5 CFR part 1320.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996[7] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[8] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA because it will only reduce regulatory burden on credit unions by exempting them from certain regulatory requirements. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

12 CFR Part 722

Appraisals, Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 11, 2014.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR parts 701 and 722 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

[7] Public Law 104–121, 110 Stat. 857 (1996).

[8] 5 U.S.C. 551.

§ 701.31 [Amended]

■ 2. Amend § 701.31 as follows:

■ a. In paragraph (a)(1), remove the words '', which is as follows:'' and remove the indented definition parenthetical ''An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested''.

■ b. In paragraph (c)(5) in the first sentence, remove the words ''a copy of the appraisal used in connection with that member's real estate-related loan application'' and add in their place the words ''a copy of the appraisal used in connection with that member's application for a loan to be secured by a subordinate lien on a dwelling'', and, in the second sentence, remove the words ''real estate-related loan application'' and add in their place the words ''application for a loan to be secured by a subordinate lien on a dwelling''.

PART 722—APPRAISALS

■ 3. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 3339.

§ 722.3 [Amended]

■ 4. Amend § 722.3 as follows:

■ a. In paragraph (a)(5) introductory text add the word ''lending'' before the words ''credit union'';

■ b. In paragraph (a)(5)(i) remove the word ''and'' and add in its place the word ''or''; and

■ c. In paragraph (a)(5)(ii) add the words '', even with the advancement of new monies'' to the end of the paragraph.

[FR Doc. 2014–29635 Filed 12–18–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2014–0267; FRL–9920–60–Region 4]

Approval of Implementation Plans and Designation of Areas; Georgia; Redesignation of the Georgia Portion of the Chattanooga, 1997 $PM_{2.5}$ Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 14, 2012, the Georgia Department of Natural Resources, through the Georgia Environmental Protection Division (GA

EPD), submitted a request to redesignate the Georgia portion of Chattanooga, TN-GA-AL fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Chattanooga TN-GA-AL Area'' or ''Area'') to attainment for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) and to approve a state implementation plan (SIP) revision containing a maintenance plan for the Chattanooga TN-GA-AL Area. The Georgia portion of Chattanooga TN-GA-AL Area is comprised of two Counties: Catoosa and Walker Counties in Georgia. EPA is approving the redesignation request and the related SIP revision for the Georgia portion of Chattanooga TN-GA-AL Area, including GA EPD's plan for maintaining attainment of the 1997 Annual $PM_{2.5}$ standard in the Chattanooga TN-GA-AL Area. EPA is also approving, into the Georgia SIP, the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_x) and $PM_{2.5}$ for the year 2025 for the Georgia portion of Chattanooga TN-GA-AL Area. On April 23, 2013, and November 13, 2014, Alabama and Tennessee (respectively) submitted requests to redesignate the Alabama and Tennessee portions of the Chattanooga TN-GA-AL Area. EPA will be taking separate action on the requests from Alabama and Tennessee.

DATES: This rule will be effective December 19, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0267. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joydeb Majumder may be reached by phone at (404) 562–9121 or via electronic mail at *majumder.joydeb@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the background for the actions?

On September 14, 2012, the Georgia Department of Natural Resources, through GA EPD, submitted a request to EPA for redesignation of the Georgia portion of Chattanooga TN-GA-AL Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and for approval of a Georgia SIP revision containing a maintenance plan for the Area.[1] On November 12, 2014, EPA proposed to redesignate the Georgia portion of Chattanooga TN-GA-AL Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and to approve, as a revision to the Georgia SIP, the State's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan, including the MVEBs for direct $PM_{2.5}$ and NO_x, for the Georgia portion of Chattanooga TN-GA-AL Area.[2] *See* 79 FR 67120. EPA also proposed to determine that the Chattanooga TN-GA-AL Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS and that attainment can be maintained through 2025. EPA received no adverse comments on the November 12, 2014, proposed rulemaking. EPA notes that it inadvertently referred to the Area as the ''Chattanooga, TN-GA Area'' in the November 12, 2014, proposed rulemaking. In today's final rulemaking, EPA is clarifying this Area should have been referred to as the ''Chattanooga, TN-GA-AL Area'' to account for a correction for the name of this Area that was published in the **Federal Register** on May 5, 2014, at 79 FR 25508.

In its November 12, 2014, proposed action, EPA stated that the adequacy public comment period on the 2025 NO_X and $PM_{2.5}$ MVEBs for the Georgia portion of the Area (as contained in Georgia's September 14, 2012, submittal) began on March 4, 2013, and closed on April 3, 2013. No comments were received during this public comment period, and therefore, EPA deems the 2025 NO_X and $PM_{2.5}$ MVEBs adequate for the Georgia portion of the Area for the purposes of transportation conformity.

As stated in EPA's November 12, 2014, proposal notice, the 3-year design value of 12.9 micrograms per cubic meter (μg/m³) for the Area for 2007–2009 meets the $PM_{2.5}$ Annual NAAQS of 15.0 μg/m³. EPA has reviewed the most recent ambient monitoring data, which confirms that the Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS beyond the 3-year attainment period of 2007–2009.

II. What are the actions EPA is taking?

In today's rulemaking, EPA is also approving Georgia's redesignation request to change the legal designation of Catoosa and Walker Counties in Georgia from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and as a revision to the Georgia SIP, the State's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan and the MVEBs for direct $PM_{2.5}$ and NO_X for the Georgia portion of the Area included in that maintenance plan. The maintenance plan is designed to demonstrate that the Chattanooga TN-GA-AL Area will continue to attain the 1997 Annual $PM_{2.5}$ NAAQS through 2025. EPA's approval of the redesignation request is based on EPA's determination that the Georgia portion of Chattanooga TN-GA-AL Area meets the criteria for redesignation set forth in the CAA, including EPA's determination that the Chattanooga TN-GA-AL Area has attained and continues to attain the 1997 Annual $PM_{2.5}$ NAAQS and that attainment can be maintained through 2025. EPA's analyses of Georgia's redesignation request and maintenance plan are described in detail in the November 12, 2014, proposed rule. *See* 79 67120. Through this final action, EPA is finding the 2025 NO_X and $PM_{2.5}$ MVEBs adequate for the Georgia portion of the Area for transportation conformity purposes.

EPA is now taking final action as described above. Additional background for today's action is set forth in EPA's November 12, 2014, proposal and is summarized below.

EPA has reviewed the most recent ambient monitoring data for the Area, which indicate that the Chattanooga TN-GA-AL Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2007–2009. As stated in EPA's November 12, 2014, proposal notice, the 3-year design value of 12.9 μg/m³ for the

[1] EPA designated the Chattanooga TN-GA-AL Area as nonattainment for the annual 1997 $PM_{2.5}$ NAAQS on January 5, 2005 (70 FR 944) as supplemented on April 14, 2005 (70 FR 19844).

[2] On February 8, 2012, EPA approved, under section 172(c)(3) of the Clean Air Act (CAA or Act), Georgia's 2002 base-year emissions inventory for the Chattanooga TN-GA-AL Area as part of the SIP revision submitted by GA EPD to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the Area. *See* 77 FR 6467.

Area for 2007–2009 meets the NAAQS of 15.0 μg/m³. Quality assured and certified data in EPA's Air Quality System (AQS) for 2013 provide a 3-year design value of 10.5 μg/m³ for the Area for 2011–2013. Furthermore, preliminary monitoring data for 2014 indicate that the Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS. The 2014 preliminary data are available in AQS although the data are not yet quality assured and certified.

III. Why is EPA taking these actions?

EPA has determined that the Chattanooga TN-GA-AL Area has attained the 1997 Annual $PM_{2.5}$ NAAQS and has also determined that all other criteria for the redesignation of the Georgia portion of Chattanooga TN-GA-AL Area from nonattainment to attainment of the 1997 Annual $PM_{2.5}$ NAAQS have been met. *See* CAA section 107(d)(3)(E). One of those requirements is that the Georgia portion of Chattanooga TN-GA-AL Area has an approved plan demonstrating maintenance of the 1997 Annual $PM_{2.5}$ NAAQS over the ten-year period following redesignation. EPA has determined that attainment can be maintained through 2025 and is taking final action to approve the maintenance plan for the Georgia portion of Chattanooga TN-GA-AL Area as meeting the requirements of sections 175A and 107(d)(3)(E) of the CAA. The detailed rationale for EPA's findings and actions is set forth in the November 12, 2014, proposed rulemaking. *See* 79 FR 67120.

IV. What are the effects of these actions?

Approval of the redesignation request changes the legal designation of Catoosa and Walker Counties from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA is modifying the regulatory table in 40 CFR 81.311 to reflect a designation of attainment for these counties. EPA is also approving, as a revision to the Georgia SIP, the State's plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS in the Chattanooga TN-GA-AL Area. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 Annual $PM_{2.5}$ NAAQS and establishes 2025 MVEBs for direct $PM_{2.5}$ and NO_X for the Georgia portion of Chattanooga TN-GA-AL Area. Within 24 months of the effective date of EPA's approval of the maintenance plan, the transportation partners will need to demonstrate conformity to the new $PM_{2.5}$ and NO_X MVEBs pursuant to 40 CFR 93.104(e).

V. Final Action

EPA is taking final action to approve the redesignation and change the legal designation of Catoosa and Walker Counties in Georgia from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. Through this action, EPA is also approving into the Georgia SIP the 1997 Annual $PM_{2.5}$ maintenance plan for the Georgia portion of the Chattanooga TN-GA-AL Area, which includes the new 2025 $PM_{2.5}$ and NO_X MVEBs of 44.2 tons per year (tpy) and 1,386.5 tpy, respectively, for this Area. EPA's approval of the redesignation request is based on the Agency's determination that the Georgia portion of the Chattanooga TN-GA-AL Area meets the criteria for redesignation set forth in CAA, including EPA's determination that the Chattanooga TN-GA-AL Area has attained and continues to attain the 1997 Annual $PM_{2.5}$ NAAQS and that attainment can be maintained through 2025. Finally, EPA is finding the 2025 $PM_{2.5}$ and NO_X MVEBs contained in Georgia's September 14, 2012, SIP revision adequate for the purposes of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of various requirements for the Georgia portion of the Chattanooga TN-GA-AL Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and,

• Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: December 9, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

Therefore, 40 CFR parts 52 and 81 are amended as follows:

PART 52–APPROVAL AND PROMULGATION OF PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. In § 52.570, the table in paragraph (e) is amended by adding the entry ''1997 Annual $PM_{2.5}$ Maintenance Plan for the Georgia portion of the Chattanooga TN-GA-AL Area'' at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
1997 Annual $PM_{2.5}$ *Maintenance Plan for the* Georgia portion of the Chattanooga TN-GA-AL Area.	Catoosa and Walker Counties	9/14/12	12/19/14 [Insert **Federal Register** citation].	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.311, the table entitled ''Georgia—1997 Annual $PM_{2.5}$ NAAQS'' is amended by revising the entry for ''Chattanooga, TN-GA-AL:'' to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and Secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
*	*	*	*	*
Chattanooga, TN-GA-AL:	.....	.....	.....	
Catoosa County	12/19/14	Attainment	.....	
Walker County	12/19/14	Attainment	.....	
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2014–29702 Filed 12–18–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 168

[EPA–HQ–OPP–2009–0607; FRL–9919–63]

RIN 2070–AJ53

Labeling of Pesticide Products and Devices for Export; Clarification of Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising the regulations that pertain to the labeling of pesticide products and devices that are intended solely for export. Pesticide products and devices intended solely for export will be able to meet the Agency's export labeling requirements by attaching a label to the immediate product container or by providing collateral labeling that is either attached to the immediate product being exported or that accompanies the shipping container of the product being exported at all times when it is shipped or held for shipment in the United States. Collateral labeling will ensure the availability of the required labeling information, while allowing pesticide products and devices that are intended solely for export to be labeled for use in, and consistent with the applicable requirements of the importing country.

DATES: This final rule is effective February 17, 2015.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0607, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; email address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action affect me?

You may be potentially affected by this action if you export a pesticide product, a pesticide device, or an active ingredient used in producing a pesticide. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include, but are not limited to: Pesticide and other agricultural chemical manufacturing (NAICS code 325320), *e.g.,* Pesticides manufacturing, Insecticides manufacturing, Herbicides manufacturing, Fungicides manufacturing, etc.

B. What is the agency's authority for taking this action?

This action is issued under the authority of section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136w(a), to carry out the provisions of FIFRA section 17(a), 7 U.S.C. 136o(a).

C. What action is the agency taking?

EPA is revising the regulations that pertain to the labeling of pesticide products and devices that are intended solely for export. Pesticide products and devices intended solely for export will be able to meet the Agency's labeling requirements by attaching a label to the immediate product container or by providing collateral labeling that either is attached to the immediate product being exported or accompanies the shipping container of the product being exported at all times when it is shipped or held for shipment in the United States. Collateral labeling will ensure the availability of the required labeling information, while allowing pesticide products and devices that are intended solely for export to be labeled for use in and consistent with the applicable requirements of the importing country.

D. What are the impacts of this action?

There are no costs associated with this action, and the benefits provided are related to avoiding potential costs. Without these labeling provisions, registrants would be required to place export-related labeling on the immediate package of each individual pesticide product in a shipping container that is intended solely for export. According to stakeholders, the inability to use the labeling method allowed before the regulations were amended in 2013 could significantly increase their costs and create trade barriers.

II. Background

In the **Federal Register** of January 18, 2013 (78 FR 4073) (FRL–9360–8), EPA published a final rule to revise its export label regulations, in 40 CFR part 168, subpart D, concerning the labeling of pesticide products and devices intended solely for export. The revisions were effective on March 19, 2013, with a compliance date of January 21, 2014.

Industry stakeholders subsequently expressed concern to EPA that certain labeling provisions allowing the use of ''supplemental labeling'' had been removed from this subpart, and that the inability of registrants to use the labeling method allowed in the previous regulations could create trade barriers and increase costs. EPA agreed and in the **Federal Register** of April 30, 2014 (79 FR 24347) (FRL–9909–82), published a direct final rule to replace the provision that was inadvertently removed. Since EPA received written adverse comment on the direct final rule, EPA withdrew that direct final rule in the **Federal Register** of July 11, 2014 (79 FR 39975) (FRL–9913–18) and in the same **Federal Register** issue published a proposed rule (79 FR 40040) (FRL–9913–19) seeking to make the same changes.

In the proposed rule entitled ''Labeling of Pesticide Products and Devices for Export; Clarification of Requirements,'' EPA proposed to restore the inadvertently eliminated provisions that allowed exporters to use such ''collateral labeling'' attached to, or accompanying, the product shipping container of the export pesticide at all times when shipped or held for shipment in the United States. (As EPA explained in the direct final rule, the term ''collateral labeling'' is more appropriate than ''supplemental labeling'' to describe the materials other than labels that are acceptable for meeting these requirements.) Additionally, the document proposed to restructure 40 CFR part 168, subpart D, by moving the text in § 168.68 and some of the text in § 168.66 to new § 168.65.

The public comment period closed on August 11, 2014. EPA received four comments. Three commenters stated their support for finalizing the proposal. Another commenter stated that ''transporting dangerous substances across any part of the U.S. without

labeling each of the individual containers is asking for a catastrophe.''

Apparently this commenter mistakenly assumes that there would be no information at all on individual containers of export pesticides that are transported in bulk with collateral labeling. This is not the case. Under FIFRA section 17(a)(1), export pesticides must be prepared or packed according to the specifications or directions of the foreign purchaser. This means that individual containers of export pesticides will still be labeled in accordance with the requirements of the importing country. The change being made to EPA's regulations will only apply to information that is required by EPA regulations, but that is not relevant to distribution of the product in the importing country. Because collateral labeling must be attached to or must accompany a shipment at all times, EPA believes that the information contained in that labeling will be accessible during transport in the United States, while avoiding any potential conflicts with labeling requirements in the importing country.

After considering the comments received, EPA has determined no changes are needed and is finalizing the regulatory text as proposed.

III. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA submitted a draft of the final rule to the Secretary of Agriculture (USDA), the FIFRA Scientific Advisory Panel (SAP), and the appropriate Congressional committees. On November 3, 2014, the FIFRA SAP waived its review of this final rule. On November 3, 2014, USDA waived review of this final rule, because this action merely ''corrects the regulatory text and concerns no policy or scientific actions.''

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and was not, therefore, submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, as applicable

The information collection requirements associated with reporting under 40 CFR 168 have already been approved by OMB pursuant to PRA under OMB control number 2070–0027 (EPA ICR No. 0161). This rule is not expected to involve an increase in information collection activities. There are no additional burdens imposed by this rule that requires additional review or approval by OMB.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of an initial regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' 5 U.S.C. 603. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden effect on the small entities subject to the rule. As indicated previously, EPA is restoring a provision that was inadvertently removed from the regulation. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments, because no State, local, or Tribal government is known to produce, transport, formulate, package, or export unregistered pesticide products or devices. As indicated previously, EPA is restoring a provision that was inadvertently removed from the regulation.

E. Executive Order 13132: Federalism

This action will not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications because it is expected to only affect producers, transporters, formulators, packagers, and exporters of unregistered pesticide products and devices. Since no Indian Tribal government is known to produce, transport, formulate, package, or export unregistered pesticide products or devices, this action has no tribal implications. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000) do not apply.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. As such, this

action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

V. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 168

Environmental protection, Administrative practice and procedure, Advertising, Exports, Labeling, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 12, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 168—[AMENDED]

■ 1. The authority citation for part 168 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

■ 2. Revise the heading for subpart D to part 168 to read as follows:

Subpart D—Procedures for Exporting Pesticides

■ 3. Add § 168.65 to subpart D to read as follows:

§ 168.65 Applicability.

(a) This subpart describes the labeling requirements applicable to pesticide products and devices that are intended solely for export from the United States under the provisions of FIFRA section 17(a).

(b) This subpart applies to all export pesticide products and export pesticide devices that are exported for any purpose, including research.

(c) Export pesticide products and export pesticide devices are also subject to requirements for pesticide production reporting, recordkeeping and inspection, and purchaser acknowledgement provisions that can be found in the following parts:

(1) Pesticide production reporting requirements under FIFRA section 7 are located in part 167 of this chapter (as referenced in § 168.85(b)).

(2) Recordkeeping and inspection requirements under FIFRA section 8 are located in part 169 of this chapter (as referenced in § 168.85(a)).

(3) Purchaser acknowledgement statement provisions under FIFRA section 17(a) are located in § 168.75.

■ 4. Revise § 168.66 to read as follows:

§ 168.66 Labeling of pesticide products and devices for export.

Any label and labeling information requirements in §§ 168.69, 168.70, and 168.71 that are not met fully on the product label attached to the immediate product container may be met by collateral labeling that is either:

(a) Attached to the immediate product (container label); or

(b) Attached to or accompanies the shipping container of the export pesticide or export device at all times when it is shipped or held for shipment in the United States.

§ 168.68 [Removed and Reserved]

■ 5. Remove and reserve § 168.68.

■ 6. In § 168.69, revise paragraph (a) to read as follows:

§ 168.69 Registered export pesticide products.

(a) Each export pesticide product that is registered under FIFRA section 3 or FIFRA section 24(c) must bear labeling approved by EPA for its registration or collateral labeling in compliance with § 168.66.

* * * * *

■ 7. In § 168.70, revise the introductory text of paragraph (b) to read as follows:

§ 168.70 Unregistered export pesticide products.

* * * * *

(b) Each unregistered export pesticide product must bear labeling that complies with all requirements of this section or collateral labeling in compliance with § 168.66.

* * * * *

■ 8. In § 168.71, revise paragraph (a) to read as follows:

§ 168.71 Export pesticide devices.

(a) Each export pesticide device sold or distributed anywhere in the United States must bear labeling that complies with all requirements of this section or collateral labeling in compliance with § 168.66.

* * * * *

[FR Doc. 2014–29787 Filed 12–18–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0761; FRL–9919–26]

Tobacco Mild Green Mosaic Tobamovirus Strain U2; Amendment to an Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing temporary tolerance exemption for *Tobacco mild green mosaic tobamovirus* by establishing a permanent exemption from the requirement of a tolerance for residues of *Tobacco mild green mosaic tobamovirus* strain U2 in or on all commodities of crop groups 17 and 18 when applied as a post-emergent herbicide and used in accordance with label directions and good agricultural practices. Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Tobacco mild green mosaic tobamovirus* strain U2 under FFDCA.

DATES: This regulation is effective December 19, 2014. Objections and requests for hearings must be received on or before February 17, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0761, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P),

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0761 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 17, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0761, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background

In the **Federal Register** of February 21, 2014 (79 FR 9870) (FRL–9904–98), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3E8181) by IR–4, 500 College Rd. East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Tobacco mild green mosaic tobamovirus* strain U2. That document referenced a summary of the petition prepared by the petitioner IR–4, which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on *Tobacco mild green mosaic tobamovirus* strain U2 and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the October 30, 2014, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Tobacco mild green mosaic tobamovirus* strain U2.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**. Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Tobacco mild green mosaic tobamovirus* strain U2. Therefore, the existing temporary tolerance exemption for *Tobacco mild green mosaic tobamovirus* is amended by establishing a permanent exemption from the requirement of a tolerance for residues of *Tobacco mild green mosaic tobamovirus* strain U2 in or on all commodities of crop groups 17 and 18 when applied as a post-emergent herbicide and used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons contained in the October 30, 2014, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Tobacco mild green mosaic tobamovirus* strain U2'' and because EPA is establishing an exemption from the requirement of a

tolerance without any numerical limitation.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for *Tobacco mild green mosaic tobamovirus* strain U2.

D. Revisions to Petitioned-for Tolerance Exemption

In the **Federal Register** document of February 21, 2014, EPA announced IR–4's filing of a pesticide petition that proposed establishing an exemption from the requirement of a tolerance for residues of *Tobacco mild green mosaic tobamovirus* strain U2. In 2009, EPA established a temporary tolerance exemption for *Tobacco mild green mosaic tobamovirus* (40 CFR 180.1276). The active ingredient described in this provision is the same active ingredient that is before EPA currently for a decision on a tolerance exemption petition, although, in accordance with 40 CFR 158.2100(c)(2), the petitioner has now added a unique identifier/strain designation after the microbe's taxonomic name. Since a temporary tolerance exemption for *Tobacco mild green mosaic tobamovirus* already exists at 40 CFR 180.1276, EPA has decided to amend this particular section instead of establishing a new tolerance exemption section in 40 CFR part 180. With the presence of only one section in 40 CFR part 180 dedicated to tolerance exemptions associated with this microbial active ingredient and the replacement of a dated temporary tolerance exemption with a permanent tolerance exemption, EPA believes this action will, in the future, help avoid the potential for confusion amongst the regulated community and any other individuals interested in this action.

IV. Statutory and Executive Order Reviews

This action amends a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are amended on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 11, 2014.

Jack Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1276 is revised to read as follows:

§ 180.1276 *Tobacco mild green mosaic tobamovirus* strain U2; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Tobacco mild green mosaic tobamovirus* strain U2 in or on all commodities of crop groups 17 and 18 when applied as a post-emergent herbicide and used in accordance with label directions and good agricultural practices.

[FR Doc. 2014–29789 Filed 12–18–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AI47

Defense Federal Acquisition Regulation Supplement: Elimination of Quarterly Reporting of Actual Performance Outside the United States (DFARS Case 2015–D001); Correction

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Correcting amendments to final regulations.

SUMMARY: This document contains corrections to DFARS final rule 2015–D001, Elimination of Quarterly Reporting of Actual Performance Outside the United States, which was published Thursday, December 11, 2014 (79 FR 73499). The rule that is the subject of this correction eliminates the requirement for quarterly reporting of actual contract performance outside the United States contained at DFARS clause 252.225–7006.

DATES: Effective December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone 571–372–6088.

SUPPLEMENTARY INFORMATION: As published, the DFARS final rule 2015–D001 contains errors, which are in need of correction. DFARS section 252.225–7005 was inadvertently removed instead of section 252.225–7006. To correct this error, this technical amendment reinstates 252.225–7005 and removes DFARS section 252.225–7006.

List of Subjects in 48 CFR Part 252

Government procurement.

Accordingly, 48 CFR part 252 is corrected by making the following correcting amendments:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 252.225–7005 to read as follows:

252.225–7005 Identification of Expenditures in the United States.

As prescribed in 225.1103(1), use the following clause: Identification of Expenditures In The United States (Jun 2005)

(a) *Definition. United States,* as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) This clause applies only if the Contractor is—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225–7006 [Removed and Reserved]

■ 3. Remove and reserve 252.225–7006.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2014–29724 Filed 12–18–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA–2001–11213, Notice No. 18]

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2015

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of determination.

SUMMARY: This notice of determination provides the FRA Administrator's minimum annual random drug and alcohol testing rates for calendar year 2015. According to data from FRA's Management Information System, the rail industry's random drug testing positive rate has remained below 1.0 percent for the last two years. FRA's Administrator has therefore determined that the minimum annual random drug testing rate for the period January 1, 2015 through December 31, 2015, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2015 through December 31, 2015. Railroads remain free, as always, to conduct random testing at higher rates.

DATES: This notice of determination is effective December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Jerry Powers, FRA Drug and Alcohol Program Manager, W38–105, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6313); or Sam Noe, FRA Drug and Alcohol Program Specialist (telephone 615–719–2951).

SUPPLEMENTARY INFORMATION: FRA determines the minimum annual random drug testing rate and minimum random alcohol testing rate for the next calendar year based on railroad industry data available for two calendar years (for this Notice, calendar years 2012 and 2013). Data from FRA's Management Information System shows the rail industry's random drug testing positive rate has remained below 1.0 percent for the applicable two calendar years. FRA's Administrator has therefore determined the minimum annual random drug testing rate for the period

January 1, 2015, through December 31, 2015, will remain at 25 percent of covered railroad employees under 49 CFR 219.602. In addition, because the industry-wide random alcohol testing violation rate has remained below 0.5 percent for the applicable two calendar years, the Administrator has determined the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2015, through December 31, 2015 under 49 CFR 219.608. Because these rates represent minimums, railroads may conduct FRA random testing at higher rates.

Issued in Washington, DC, on December 10, 2014.

Joseph C. Szabo,

Administrator.

[FR Doc. 2014–29747 Filed 12–18–14; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 79, No. 244
Friday, December 19, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–1506]

RIN 7100–AE 27

Regulatory Capital Rules: Regulatory Capital, Proposed Rule Demonstrating Application of Common Equity Tier 1 Capital Qualification Criteria; Regulation Q

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is inviting public comment on amendments to the Board's revised capital framework (Regulation Q) that would illustrate how the Board would apply the common equity tier 1 capital qualification criteria to depository institution holding companies that are organized in forms other than as stock corporations (''proposed rule''). The proposed rule discusses some of the qualification criteria for common equity tier 1 capital under Regulation Q and provides examples of how the Board would apply the criteria in specific situations involving partnerships and limited liability companies. In addition, the proposed rule would amend Regulation Q to address unique issues presented by certain savings and loan holding companies that are trusts and by depository institution holding companies that are employee stock ownership plans.

DATES: Comments must be received by February 28, 2015.

ADDRESSES: You may submit comments, identified by *Docket No. R–1506 and RIN 7100–AE 27 ''Regulatory Capital, Application of Common Equity Tier 1 Capital Qualification Criteria,''* by any of the following methods:

Board of Governors of the Federal Reserve System:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the Board's docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.
- *Instructions:* All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Alison Thro, Assistant General Counsel, (202) 452–3236, Christine Graham, Counsel, (202) 452–3005, or Mark Buresh, Attorney, (202) 452–5270, Legal Division; or Thomas Boemio, Manager, (202) 452–2982, Juan Climent, Manager, (202) 872–7526, or Page Conkling, Supervisory Financial Analyst, (202) 912–4647, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

In July 2013, the Board approved a final rule [1] (Regulation Q) that enhances and replaces the capital adequacy guidelines for state member banks [2] and bank holding companies [3] (collectively, capital adequacy guidelines), and implements capital adequacy rules for savings and loan holding companies (other than those substantially engaged in commercial activities or insurance underwriting activities). Regulation Q increases the quality and quantity of capital that must be maintained by institutions subject to the rule by raising the minimum capital ratios and imposing more stringent criteria for capital instruments that are intended to qualify as regulatory capital. The definition of common equity tier 1 capital in Regulation Q is designed to ensure that qualifying instruments do not include features that would cause an organization's condition to weaken during a period of significant financial and economic stress.[4]

A. Description of the Proposed Rule

The proposed rule describes how the Board would apply the qualification criteria for common equity tier 1 capital under Regulation Q to instruments issued by bank holding companies and savings and loan holding companies (holding companies) that are organized as legal entities other than stock corporations.

The proposed rule focuses in particular on the qualification criteria that relate to the economic rights of common equity tier 1 capital instruments relative to the capital instruments issued by holding companies organized in forms other than as stock corporations. The proposed rule provides examples of instruments issued by limited liability companies and partnerships, discusses features that would prevent certain instruments from qualifying as common equity tier 1 capital, and offers potential solutions for holding companies to resolve these qualification issues. The examples provided in the proposed rule are based on structures that have been reviewed by the Board and demonstrate how the Board would apply the common equity tier 1 capital qualification criteria to capital instruments with the same or similar features. Holding companies should review their organizational documents consistent with this proposed rule in order to determine whether their capital instruments comply with the Regulation Q qualification criteria. If a holding company determines that some or all of its capital instruments do not meet the specific qualification criteria under Regulation Q, the company may need to take steps to ensure that it is in

[1] 78 FR 62018 (October 11, 2013) (codified at 12 part CFR 217).

[2] 12 CFR part 208, appendices A, B, and E.

[3] 12 CFR part 225, appendices A, D, and E.

[4] 12 CFR 217.20(b); 78 FR 62018, 62044.

compliance with Regulation Q, including modifying its capital structure or the governing documentation of specific capital instruments.[5]

B. Timeframe for Implementation

Because the proposed rule provides specific guidance on the application of the qualification criteria to particular structures, the Board recognizes that some entities may need time to evaluate or revise their capital instruments. Therefore, the Board would expect that all holding companies organized in forms other than as stock corporations that are subject to Regulation Q and have issued capital instruments that would not qualify as common equity tier 1 capital due to § 217.20 because of the requirements set forth in proposed § 217.501 would be in compliance with the proposed rule by January 1, 2016, except as discussed below. The proposed rule would provide this temporary exemption to allow companies to make necessary changes to comply with Regulation Q.

C. Inapplicability of the Requirements to Estate Trust Savings and Loan Holding Companies

As noted above, Regulation Q implements capital adequacy rules for savings and loan holding companies (other than those substantially engaged in commercial activities or insurance underwriting activities). Approximately 120 personal or family trusts (collectively, ''estate trusts'') qualify as saving and loan holding companies and would be subject to Regulation Q beginning on January 1, 2015.[6]

The Board understands that many of the estate trust SLHCs do not issue capital instruments and would be unable to meet the minimum regulatory capital ratios under Regulation Q. Further, the Board understands that many of the estate trust SLHCs do not hold retained earnings due to their nature as non-business personal or family trusts. In order to comply with the technical requirements of Regulation Q, estate trust SLHCs would likely entail significant burden and expense to develop and implement the management information systems necessary to prepare financial statements.

To address these issues, the Board is developing a proposal to apply alternative regulatory capital requirements to estate trust SLHCs that take into account their existing capital structure and activities, consistent with section 171 of the Dodd-Frank Act. Until the Board adopts such a proposal or until further notice, the Board will not require estate trust SLHCs to comply with Regulation Q. The proposed rule would temporarily exempt estate trusts from the requirements of Regulation Q until the Board adopts alternative regulatory requirements.

D. Inapplicability of the Requirements to Employee Stock Ownership Plans That Are Depository Institution Holding Companies

Employee Stock Ownership Plans (ESOPs) are entities created as part of employee benefits arrangements that hold shares of the sponsoring entities' stock. There are ESOPs that are bank holding companies and savings and loan holding companies (ESOP holding companies), generally due to their ownership interest in the banking organization that sponsors the ESOP. Under generally accepted accounting principles, the assets and liabilities of ESOP holding companies are consolidated onto the balance sheet of the organization that sponsors the ESOP, which would be either a depository institution or a holding company that may be subject to Regulation Q.[7] The Board is developing a proposal to revise Regulation Q to clarify the treatment of ESOP holding companies under the regulatory capital rules. Until the Board adopts such a proposal or until further notice, the Board will evaluate the compliance of the ESOP with Regulation Q by looking to the regulatory capital of the sponsor banking organization. The proposed rule would temporarily exempt ESOP holding companies from Regulation Q until the Board finalizes the clarifying revisions.

II. Request for Comment

The Board invites comment on the proposed rule and specifically invites comment on following aspects of the proposed rule:

1. What features of capital instruments that are not described in the proposed rule could affect whether a capital instrument of a non-stock corporation qualifies as common equity tier 1 capital?

2. What features of capital instruments issued by non-stock corporations could raise issues with qualification as additional tier 1 or tier 2 capital similar to the issues related to qualification as common equity tier 1 capital discussed in the proposed rule?

3. How might the Board revise the proposed rule to better illustrate the application of the common equity tier 1 capital qualification criteria to the structures discussed?

III. Regulatory Analysis

A. Paperwork Reduction Act (PRA)

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no requirements subject to the PRA.

B. Regulatory Flexibility Act Analysis

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, the proposed rule describes how the Board would apply the qualification criteria for common equity tier 1 capital under Regulation Q to instruments issued by depository institution holding companies and state member banks that are organized as legal entities other than stock corporations. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a bank holding company, bank, or savings and loan holding company with assets of $550 million or less (small banking organization).[8] As of June 30, 2014, there were approximately 657 small state member banks, 3,719 small bank holding companies, and 254 small savings and loan holding companies.

The proposed rule would apply to top-tier depository institution holding companies and state member banks that are subject to Regulation Q. As a result, many small bank holding companies would not be affected because they are subject to the Board's Small Bank Holding Company policy statement rather than Regulation Q.[9] Small state member banks and small covered savings and loan holding companies would be affected. However, the Board does not believe that the proposed rule

[5] Entities whose capital instruments do not meet the qualification criteria under Regulation Q could potentially meet the minimum capital ratios in other ways, such as through retained earnings. *See e.g.,* 12 CFR 217.20(b)(2) through (5).

[6] *See* 12 U.S.C. 1467a(a)(3)(B); 12 U.S.C. 1841(b); 12 CFR 238.2(m)(2); 12 CFR 225.2(d)(3) (testamentary trust exemption).

[7] *See* the American Institute of Certified Public Accountants (AICPA) Statement of Position 93–6.

[8] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

[9] *See* 12 CFR 217.1.

would have a significant impact on small banking organizations because the Board considers the proposed rule to clarify the common equity tier 1 capital qualification criteria, and provide specific guidance on the application of the qualification criteria to entities subject to Regulation Q.

Therefore, there are no significant alternatives to the proposed rule that would have less economic impact on small bank holding companies. As discussed above, the projected reporting, recordkeeping, and other compliance requirements of the proposed rule are expected to be minimal. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is the section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Board incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. Add subpart I to read as follows:

Subpart I—Application of Capital Rules

Sec.

217.501 The Board's Regulatory Capital Framework for Depository Institution Holding Companies Organized as Non-Stock Companies.
217.502 Application of the Board's Regulatory Capital Framework to Employee Stock Ownership Plans that are Depository Institution Holding Companies and Certain Trusts that are Savings and Loan Holding Companies.

§ 217.501 The Board's Regulatory Capital Framework for Depository Institution Holding Companies Organized as Non-Stock Companies.

(a) *Applicability.* (1) This rule applies to all depository institution holding companies that are not organized in corporate form and are subject to the Board's regulatory capital rules (Regulation Q, 12 CFR part 217).[30]

(2) Notwithstanding §§ 217.2 and 217.10, a bank holding company or covered savings and loan holding company that is not organized in corporate form and has issued capital instruments that do not qualify as common equity tier 1 capital under § 217.20 because of the requirements set forth in this section may treat such capital instruments as common equity tier 1 capital until January 1, 2016.

(b) *Common equity tier 1 criteria applied to capital instruments issued by non-stock companies.* (1) Subpart C of this part provides criteria for capital instruments to qualify as common equity tier 1 capital. This section describes certain of these criteria and how the criteria apply to capital instruments issued by bank holding companies and certain savings and loan holding companies that are organized as legal entities other than stock corporations, such as limited liability companies (LLCs), partnerships, and similar structures.

(2) Holding companies are organized using a variety of legal structures, including corporate forms, LLCs, partnerships, and similar structures.[31] In the Board's experience, some depository institution holding companies that are organized in non-stock form issue multiple classes of capital instruments that allocate distributions of profit and loss differently among classes, which may affect the ability of those classes to qualify as common equity tier 1 capital.[32]

(3) Common equity tier 1 capital is defined in section 217.20(b) of this part. To qualify as common equity tier 1 capital, capital instruments must satisfy a number of criteria. This section provides examples of the application of certain common equity tier 1 capital criteria that relate to the economic interests in the company represented by particular capital instruments.

(c) *Examples.* The following examples show how the criteria for common equity tier 1 capital apply to particular partnership or LLC structures.[33]

(1) *LLC with one class of membership interests.* (i) An LLC issues one class of membership interests that provides that all holders of the interests bear losses and receive dividends proportionately to their levels of ownership.

(ii) Provided that the other criteria are met, the membership interests would qualify as common equity tier 1 capital.

(2) *Partnership with limited and general partners.* (i) A partnership has two classes of interests: General

[30] *See* 12 CFR 217.1(c)(1) through (3).

[31] A stock corporation's common stock should satisfy the common equity tier 1 capital criteria so long as the common stock does not have unusual features, such as a limited duration.

[32] Notably, voting powers or other means of exercising control are not relevant for purposes of satisfying the common equity tier 1 capital qualification criteria. Thus, the fact that a partner or member that controls a holding company as general partner or managing member is not material to this discussion.

[33] Although the examples refer to specific types of legal entities for purposes of illustration, the substance of the Regulation Q criteria reflected in the examples applies to all types of legal entities.

partnership interests and limited partnership interests. The general partners and the limited partners bear losses and receive distributions proportionately to their capital contributions. In addition, the general partner has unlimited liability for the debts of the partnership.

(ii) Provided that the other criteria are met, the general and limited partnership interests would qualify as common equity tier 1 capital. The fact of unlimited liability of the general partner is not relevant to the common equity tier 1 capital qualification criteria, provided that the general partner and limited partners share losses equally to the extent of the assets of the partnership, and the general partner is liable after the assets of the partnership are exhausted. In this regard, the general partner's unlimited liability is similar to a guarantee provided by the general partner, rather than a feature of the partnership interest.

(3) *LLC with two classes of membership interests.* (i) An LLC issues two types of membership interests, Class A and Class B, holders of which share proportionately in all losses and in the return of contributed capital. The holders of these membership interests also share proportionately in profit distributions up to the point where all holders receive a specific annual rate of return on capital contributions. To the extent that the company makes additional distributions, holders of Class B receive double their proportional share and holders of Class A receive the remainder of the distribution.

(ii) Class A and Class B would qualify as common equity tier 1 capital, provided that under all circumstances they share losses proportionately for as long as the company controls a depository institution, and they satisfy the other criteria. Although distributions to holders of the classes can become different, this can only occur in a profit situation, and the holders bear losses equally.

(iii) The common equity tier 1 capital qualification criteria in Regulation Q do not require that holders of all classes of capital instruments that qualify as common equity tier 1 capital share equally in distributions of profits, provided that under all circumstances losses are shared proportionately.

(4) *Senior and junior classes of capital instruments.* (i) An LLC issues two types of membership interests, Class A and Class B. Holders of Class A and Class B participate equally in operating distributions and have equal voting rights. However, in liquidation, holders of Class B interests must receive their entire amount of contributed capital in order for any distributions to be made to holders of Class A interests.

(ii) Class B interests have a preference over Class A interests in liquidation and, therefore, would not qualify as common equity tier 1 capital as they are not the most subordinated claim (criterion (i); § 217.20(b)(1)(i)) and do not share losses proportionately (criterion (viii); § 217.20(b)(1)(viii)).

(A) If all other criteria are satisfied, Class A interests would qualify as common equity tier 1 capital.

(B) Class B interests may qualify as additional tier 1 capital, or tier 2 capital, if the Class B interests meet the applicable qualification criteria.

(5) *Mandatory distributions.* (i) A partnership agreement contains provisions that require distributions to holders of one or more classes of capital instruments on occurrence of particular events, such as upon specific dates or following a significant sale of assets, but not including final liquidating distributions.

(ii) Classes of capital instruments that provide holders with rights to mandatory distributions would not qualify as common equity tier 1 capital (criterion (vi); § 217.20(b)(1)(vi)). Companies must ensure that they have a sufficient amount of capital instruments that do not have such rights, and that meet the other criteria of common equity tier 1 capital, in order to meet the requirements of Regulation Q.

(6) *Payment waterfalls.* (i) The terms of Class A and Class B interests include a payment ''waterfall'' that differentiates distribution rights between holders of Class A and Class B interests, such that the Class B interests bear a disproportionately high level of the first loss in liquidation. Unlike the example in paragraph (c)(3) of this section, the different participation rights apply to distributions in loss situations, including losses at liquidation.

(ii) Because the Class A interests do not bear a proportional interest in the losses (criterion (ii); § 217.20(b)(1)(ii)), they would not qualify as common equity tier 1 capital.

(A) Companies with such structures may revise their capital structures in order to provide for a sufficiently large class of capital instruments that proportionally bear first losses in liquidation (*i.e.,* the Class B interests in this example).

(B) Alternatively, companies could address such issues by revising their capital structure to ensure that all classes of capital instruments that are intended to qualify as common equity tier 1 capital share equally in losses in liquidation consistent with criteria (i), (ii), (vii), and (viii) (§ 217.20(b)(1)(i), (ii), (vii), and (viii)), even if each class of capital instruments has different rights to distributions of profits, as in Example 3.

(7) *Clawback features.* (i) The terms of LLC membership interests provide that, under certain circumstances, holders of Class A interests must return a portion of earlier distributions, which are then distributed to holders of Class B interests (often called a ''clawback'').

(ii) If a class of capital instruments is advantaged by such a provision (*i.e.,* Class B in this example), such that the advantaged class might not bear losses equally and pro rata in the event of liquidation with the class of capital instruments whose holders are required to return earlier distributions, the advantaged class would not qualify as common equity tier 1 capital.

(A) Companies must ensure that the classes of capital instruments that are intended to qualify as common equity tier 1 capital would remain the most subordinated classes (sharing losses on a pro rata basis) in liquidation under all circumstances (criterion (i); § 217.20(b)(1)(i)).

(B) Companies also may be able to satisfy the requirements of Regulation Q by revising the timing of distributions so that holders a class of capital instruments do not receive, and are not allocated, distributions that later may be subject to a clawback while the company controls or may control a depository institution.

§ 217.502 Application of the Board's Regulatory Capital Framework to Employee Stock Ownership Plans That are Depository Institution Holding Companies and Certain Trusts That are Savings and Loan Holding Companies.

(a) *Employee stock ownership plans.* Notwithstanding § 217.1(c), a bank holding company or covered savings and loan holding company that is an employee stock ownership plan is exempt from this part until the Board adopts regulations that directly relate to the application of capital regulations to employee stock ownership plans.

(b) *Personal or family trusts.* Notwithstanding § 217.1(c), a covered savings and loan holding company is exempt from this part if it is a personal or family trust and not a business trust until the Board adopts regulations that apply capital regulations to such a covered savings and loan holding company.

By order of the Board of Governors of the Federal Reserve System, December 12, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–29561 Filed 12–18–14; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: National Credit Union Administration.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The NCUA Board (Board) is continuing its comprehensive review of its regulations to identify outdated, unnecessary, or burdensome regulatory requirements imposed on federally insured credit unions, as contemplated by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). This second decennial review of regulations began when the Board issued its first EGRPRA notice on May 22, 2014, covering the two categories of ''Applications and Reporting'' and ''Powers and Activities.'' [1] Today, the Board continues the review process with the publication of this second notice, covering the next three categories of rules: ''Agency Programs,'' ''Capital,'' and ''Consumer Protection.'' This review presents a significant opportunity to consider the possibilities for burden reduction in groups of similar regulations. The Board welcomes comment on the categories, the order of review, and all other aspects of this initiative in order to maximize the review's effectiveness.

DATES: Comment must be received on or before March 19, 2015.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Regulatory Review pursuant to EGRPRA'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Special Counsel to the General Counsel, at the above address, or telephone: (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted EGRPRA [2] as part of an effort to minimize unnecessary government regulation of financial institutions consistent with safety and soundness, consumer protection, and other public policy goals. Under EGRPRA, the appropriate federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation; herein Agencies [3]) and the Federal Financial Institutions Examination Council (FFIEC) must review their regulations to identify outdated, unnecessary, or unduly burdensome requirements imposed on insured depository institutions. The Agencies are required, jointly or individually, to categorize regulations by type, such as ''consumer regulations'' or ''safety and soundness'' regulations. Once the categories have been established, the Agencies must provide notice and ask for public comment on one or more of these regulatory categories.

NCUA is not technically required to participate in the EGRPRA review process, since NCUA is not an ''appropriate Federal banking agency'' as specified in EGRPRA. In keeping with the spirit of the law, however, the Board has once again elected to participate in the review process. Thus, NCUA has participated along with the Agencies in the planning process, but has developed its own regulatory categories that are comparable with those developed by the Agencies. Because of the unique circumstances of federally insured credit unions and their members, the Board is issuing a separate notice from the Agencies. NCUA's notice is consistent and comparable with the Agencies' notice, except on issues that are unique to credit unions.

In accordance with the objectives of EGRPRA, the Board asks the public to identify areas of its regulations that are outdated, unnecessary, or unduly burdensome. In addition to this second notice, the Board will issue two more notices for comment during 2015, at regular intervals. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.[4]

As the Board noted in its initial EGRPRA notice in May 2014, the creation of the Consumer Financial Protection Bureau (CFPB) resulted in the transfer to CFPB of responsibility for certain consumer protection rules that had previously been the responsibility of the Agencies and/or NCUA, such as Regulation Z and rules governing consumer privacy. Because the CFPB is not covered by EGRPRA or required to participate in this regulatory review process, the Agencies and NCUA have excluded certain consumer protection regulations from the scope of the current review.[5] In the case of rules implementing specific aspects of the Fair Credit Reporting Act, the Truth in Savings Act, rules pertaining to fair lending in the housing area, and flood insurance, NCUA has retained rule-writing authority. Therefore, these rules are retained for purposes of the EGRPRA

[1] 79 FR 32121 (June 4, 2014).

[2] Pub. L. 104–208, Div. A, Title II, section 2222, 110 Stat. 3009 (1996); codified at 12 U.S.C. 3311.

[3] The Office of Thrift Supervision was still in existence at the time EGRPRA was enacted and was included in the listing of Agencies. Since that time, the OTS has been eliminated and its responsibilities have passed to the Agencies and the Consumer Financial Protection Bureau.

[4] Interpretive Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (Sept. 8, 1987) as amended by IRPS 03–2, 68 FR 32127 (May 29, 2003.) (Reflecting NCUA's commitment to ''periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'')

[5] In addition to rules that have been transferred to the CFPB, insured credit unions are also subject to certain other regulations that are not required to be reviewed under the EGRPRA process, such as regulations issued by the Department of the Treasury's Financial Crimes Enforcement Network. Any comment received during the EGRPRA process that pertains to such a rule will be forwarded to the appropriate agency.

review and comprise one of the categories for which comment is currently being solicited. Rules pertaining to share insurance and advertising also remain within NCUA's province and, therefore, are included as well.

EGRPRA contemplates a two-part regulatory response. First, NCUA will publish in the **Federal Register** a summary of the comments it receives, identifying and discussing the significant issues raised. Second, the law directs the Agencies to ''eliminate unnecessary regulations to the extent that such action is appropriate.'' As was done during the initial decennial review process, the Board anticipates that it will prepare its response separately from the Agencies, but at around the same time.

EGRPRA further requires the FFIEC to submit a report to the Congress within 30 days after NCUA and the Agencies publish the comment summary and analysis in the **Federal Register**. This report must summarize any significant issues raised by the public comments and the relative merits of those issues. The report also must analyze whether the appropriate federal financial regulator involved is able to address the regulatory burdens associated with the issues by regulation, or whether the burdens must be addressed by legislation. The FFIEC report submitted to Congress following the initial decennial EGRPRA review included an Agency section discussing banking sector issues and a separate section devoted to NCUA and credit union issues. It is likely that the FFIEC will follow a similar approach in this second decennial EGRPRA review and report process.

II. The EGRPRA Review's Special Focus

The regulatory review contemplated by EGRPRA provides a significant opportunity for the public and the Board to consider groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the totality of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. For example, the EGRPRA review may facilitate the identification of regulatory requirements that are no longer consistent with the way business is conducted and that therefore might be eliminated. Of course, reducing regulatory burden must be consistent with ensuring the continued safety and soundness of federally insured credit unions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with NCUA's statutory mandates, many of which currently require certain regulations. One of the significant aspects of the EGRPRA review program is the recognition that effective burden reduction in certain areas may require legislative change. The Board will be soliciting comment on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements, and statutory mandates. This will be a key aspect of the report to Congress.

The Board views the approach of considering the relationship of regulatory and statutory change on regulatory burden, in concert with EGRPRA's provisions calling for grouping regulations by type, to provide the potential for particularly effective burden reduction. The Board believes the EGRPRA review can also significantly contribute to its on-going efforts to reduce regulatory burden. Since 1987, a formally adopted NCUA policy has required the Board to review each of its regulations at least once every three years with a view toward eliminating, simplifying, or otherwise easing the burden of each regulation.[6] Further, the Board addresses the issue of regulatory burden every time it proposes and adopts a rule. NCUA complies with the Paperwork Reduction Act of 1995 [7] the Regulatory Flexibility Act [8] and the Small Business Regulatory Enforcement Fairness Act of 1996 [9] in connection with each rulemaking and evaluates the burdens the rulemaking might impose on the industry, consistent with safety and soundness and consumer protection considerations.

The Board is particularly sensitive to the impact of agency rules on small institutions. In 2013, the Board formally increased the threshold for meeting the ''small'' classification to having assets of $50 million or less. The Board is cognizant that each new or amended regulation has the potential for requiring significant expenditures of time, effort, and money to achieve compliance, and also that this burden can be particularly difficult for institutions of smaller asset size, with fewer resources available.

III. The Board's Proposed Plan

EGRPRA contemplates the categorization of regulations by ''type.'' During the initial decennial review, the Board developed and published for comment ten categories for NCUA's rules, including some that had been issued jointly with the Agencies. The Board believes these initial categories worked well for the purpose of presenting a framework for the review and so has retained them for this second review.[10] The categories, in alphabetical order, are: Agency Programs; Applications and Reporting; Capital; Consumer Protection; Corporate Credit Unions; Directors, Officers and Employees; Money Laundering; Powers and Activities; Rules of Procedure; and Safety and Soundness. As noted above, some of the rules in the consumer protection category are now under CFPB's jurisdiction and administration, and those affected rules have been eliminated. Any rules adopted for the first time since 2006 have been included in the appropriate category.[11] Rules still in proposed form are not included in this review; commenters may be sure that comments submitted directly in response to proposed rules will be given due consideration within that process.

As the Board noted during the initial decennial review, although there are other possible ways of categorizing its rules, these ten categories ''are logical groupings that are not so broad such that the number of regulations presented in any one category would overwhelm potential commenters. The categories also reflect recognized areas of industry interest and specialization or are particularly critical to the health of the credit union system.'' As was also noted during the initial review, some regulations, such as lending, pertain to more than one category and are included in all applicable categories.

The Board remains convinced that publishing its rules for public comment separately from the Agencies is the most effective method for achieving EGRPRA's burden reduction goals for federally insured credit unions. Owing to differences in the credit union system as compared to the banking system, there is not a direct, category by category, correlation between NCUA's rules and those of the Agencies. For example, credit unions deal with issues such as membership, credit union service organizations, and corporate credit unions, all of which are unique to credit union operations. Similarly,

[6] IRPS 87–2, 52 FR 35231 (Sept. 8, 1987) as amended by IRPS 03–2, 68 FR 32127 (May 29, 2003).

[7] 44 U.S.C. 3501 *et seq.*

[8] 5 U.S.C. 601 *et seq.*

[9] Pub. L. 104–121, 110 Stat 857 (1996).

[10] Consistent with EGRPRA's focus on reducing burden on insured credit unions, the Board has not included internal, organizational or operational regulations in this review. These regulations impose minimal, if any, burden on insured credit unions.

[11] Commenters should note, in this respect, that for new regulations that have only recently gone into effect, some passage of time may be necessary before the burden associated with the regulatory requirements can be fully and properly understood.

certain categories identified by the Agencies have limited or no applicability in the credit union sector, such as community reinvestment, international operations, and securities. The categories developed by the Board and the Agencies reflect these differences. The Board intends to maintain comparability with the Agencies' notices to the extent there is overlap or similarity in the issues and the categories.

After the conclusion of the comment period for each EGRPRA notice published in the **Federal Register**, the Board will review the comments it has received and decide whether further action is appropriate with respect to the categories of regulations included in that notice.

The Board has prepared two charts to assist public understanding of the organization of its review. The first chart, set forth at Section V.A. below, presents the three categories of regulations on which NCUA is requesting burden reduction recommendations in this notice. The three categories are shown in the left column. In the middle column are the subject matters that fall within the categories and in the far right column are the regulatory citations. The second chart, set forth at Section V.B. below, presents the remaining five categories in alphabetical order in a similar format.

IV. Request for Burden Reduction Recommendations for the Categories of Regulations: ''Agency Programs,'' ''Capital,'' and ''Consumer Protection''

The Board seeks public comment on regulations within the following three categories—''Agency Programs,'' ''Capital,'' and ''Consumer Protection''—that may impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally insured credit unions. Comments that cite particular provisions or language, and provide reasons why such provisions should be changed, would be most helpful to NCUA's review efforts. Suggested alternative provisions or language, where appropriate, would also be helpful. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change.

Specific issues for commenters to consider. While all comments related to any aspect of the EGRPRA review are welcome, the Board specifically invites comment on the following issues:

- Need and purpose of the regulations. Do the regulations in these categories fulfill current needs? Has industry or other circumstances changed since a regulation was written such that the regulation is no longer necessary? Have there been shifts within the industry or consumer actions that suggest a re-focus of the underlying regulations?

Do any of the regulations in these categories impose burdens not required by their authorizing statutes?

- Need for statutory change. Do the statutes impose unnecessary requirements? Are any of the statutory requirements underlying these categories redundant, conflicting or otherwise unduly burdensome? If so, how should the statutes be amended?
- Overarching approaches/flexibility of the regulatory standards. Generally, is there a different approach to regulating that the Board could use that would achieve statutory goals while imposing less burden? Do any of the regulations in these categories or the statutes underlying them impose unnecessarily inflexible requirements?
- Effect of the regulations on competition. Do any of the regulations in these categories or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry? If so, how should these regulations be amended?
- Reporting, recordkeeping and disclosure requirements. Do any of the regulations in these categories or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden? Please provide specific recommendations.
- Consistency and redundancy. Do any of the regulations in these categories impose inconsistent or redundant regulatory requirements that are not warranted by the circumstances?
- Clarity. Are the regulations in these categories and the underlying statutes drafted in clear and easily understood language? Are there specific regulations or underlying statutes that need clarification?
- Scope of rules. Is the scope of each rule in these categories consistent with the intent of the underlying statute(s)? Could NCUA amend the scope of a rule to clarify its applicability or to reduce the burden, while remaining faithful to statutory intent? If so, specify which regulation(s) should be clarified.
- Burden on small insured institutions. The Board has a particular interest in minimizing burden on small insured credit unions (those with less than $50 million in assets). NCUA solicits comment on whether any regulations within these categories should be continued without change, amended or rescinded in order to minimize any significant economic impact the regulations may have on a substantial number of small federally insured credit unions.

V. A. Regulations About Which Burden Reduction Recommendations Are Requested Currently

Agency Programs	Community Development Revolving Loan Program	12 CFR 705.
	Central Liquidity Facility	12 CFR 725.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
Capital	Prompt corrective action	12 CFR 702.
	Adequacy of reserves	12 CFR 741.3(a).
Consumer Protection	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31.
	Truth in Savings (TIS)	12 CFR 707.
	Loans in areas having special flood hazards	12 CFR 760.
	Fair Credit Reporting—identity theft red flags	12 CFR 717, Subpart J.
	Fair Credit Reporting—disposal of consumer information	12 CFR 717.83.
	Fair Credit Reporting—duties regarding address discrepancies	12 CFR 717.82.
	Share insurance	12 CFR 745.
	Advertising	12 CFR 740.
	Disclosure of share insurance	12 CFR 741.10.
	Notice of termination of excess insurance coverage	12 CFR 741.5.
	Uninsured membership shares	12 CFR 741.9.
	Member inspection of credit union books, records, and minutes	12 CFR 701.3.

V. B. CATEGORIES AND REGULATIONS ABOUT WHICH NCUA WILL SEEK COMMENT LATER

Corporate Credit Unions	Corporate credit unions	12 CFR 704.
Directors, Officers, and Employees	Loans and lines of credit to officials	12 CFR 701.21(d).
	Reimbursement, insurance, and indemnification of officials and employees.	12 CFR 701.33.
	Retirement benefits for employees	12 CFR 701.19.
	Management officials interlock	12 CFR 711.
	Fidelity bond and insurance coverage	12 CFR 713.
	General authorities and duties of federal credit union directors	12 CFR 701.4.
	Golden parachutes and indemnification payments	12 CFR 750.
Money Laundering	Report of crimes or suspected crimes	12 CFR 748.1.
	Bank Secrecy Act	12 CFR 748.2.
Rules of Procedure	Liquidation (involuntary and voluntary)	12 CFR 709 and 710.
	Uniform rules of practice and procedure	12 CFR 747, subpart A.
	Local rules of practice and procedure	12 CFR 747, subparts B–M
Safety and Soundness	Lending	12 CFR 701.21.
	Investments	12 CFR 703.
	Supervisory committee audit	12 CFR 715.
	Security programs	12 CFR 748.0.
	Guidelines for safeguarding member information and responding to unauthorized access to member information.	12 CFR 748, Appendices A and B.
	Records preservation program and appendices—record retention; catastrophic act preparedness.	12 CFR 749.
	Appraisals	12 CFR 722.
	Examination	12 CFR 741.1.
	Liquidity and contingency funding plans	12 CFR 741.12.
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions.	12 CFR 741, subpart B.

By the National Credit Union Administration Board on December 11, 2014.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2014–29629 Filed 12–18–14; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM14–2–000]

Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; data request to Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs).

SUMMARY: On December 12, 2014, pursuant to authority delegated to the Director, Office of Energy Policy and Innovation, a data request was issued to each ISO and RTO regarding the effect on the reliable and efficient operations of natural gas-fired generators of the current 9 a.m. CCT start to the Gas Day. The requests seek data from the ISOs/RTOs with respect to derates by natural gas generators during the morning ramp period.

DATES: Responses to the data request must be filed on or before January 12, 2015 in Docket No. RM14–2–000. Comments on the responses to the data request must be filed in the same docket within 10 days of the data request response, on or before January 22, 2015.

ADDRESSES: Responses and Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting responses and comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Anna Fernandez (Legal Information), Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE., Washington, DC 20426, 202–502–6682;

Caroline Daly Wozniak (Technical Information), Federal Energy Regulatory Commission, Office of Energy Policy and Innovation, 888 First Street NE., Washington, DC 20426, 202–502–8931.

SUPPLEMENTARY INFORMATION: The data requests can be obtained over the Internet from the Commission's eLibrary system (*http://www.ferc.gov/docs-filing/elibrary.asp*) under Docket No. RM14–2–000 or from the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426. The full text of the data requests are available on eLibrary in PDF and Microsoft Word format. To access these documents in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

All responses and comments will be placed in the Commission's public files in Docket No. RM14–2–000, and may be viewed, printed, or downloaded remotely from the eLibrary system or obtained from the Commission's Public Reference Room. The data responses and comments are not required to be served on other commenters or entities.

User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Dated: December 12, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29701 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–402]

Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration is issuing this notice of intent to temporarily schedule three synthetic cannabinoids into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. The substances are: *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (common name: AB-CHMINACA), *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (common name: AB-PINACA) and [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (common name: THJ-2201). This action is based on a finding by the Deputy Administrator that the placement of these synthetic cannabinoids into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I substances under the CSA on the manufacture, distribution, possession, importation, exportation, research, and conduct of instructional activities of these synthetic cannabinoids.

DATES: December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Any final order will be published in the **Federal Register** and may not be effective prior to January 20, 2015.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, every controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308. 21 U.S.C. 812(a).

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA, 28 CFR 0.100, who in turn has redelegated that authority to the Deputy Administrator of the DEA, 28 CFR part 0, appendix to subpart R.

Background

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Deputy Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[1] The Deputy Administrator transmitted notice of his intent to place AB–CHMINACA, AB–PINACA, and THJ–2201 in schedule I on a temporary basis to the Assistant Secretary by letter dated September 17, 2014. The Assistant Secretary responded to this notice by letter dated September 30, 2014, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for AB–CHMINACA, AB–PINACA, or THJ–2201. The Assistant Secretary also stated that HHS has no objection to the temporary placement of AB–CHMINACA, AB–PINACA, and THJ–2201 into schedule I of the CSA. AB–CHMINACA, AB–PINACA, and THJ–2201 are not currently listed in any schedule under the CSA, a condition of 21 U.S.C. 811(h)(1).

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for

[1] Because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this notice of intent, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.'' As set forth in a memorandum of understanding entered into by the HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Assistant Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985.

abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for AB–CHMINACA, AB–PINACA, and THJ–2201 indicate that these three synthetic cannabinoids (SCs) have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

Synthetic Cannabinoids

SCs are chemicals synthesized in laboratories and mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana. These chemicals, such as CP–47,497 and cannabicyclohexanol (both designed in the 1980s and currently controlled pursuant to the Food and Drug Administration Safety and Innovation Act (FDASIA), Pub. L. 112–144), were initially used as research tools to investigate the biological mechanisms in the cannabinoid system and to develop novel therapies for various clinical conditions. Other SCs including JWH–018, JWH–073, and JWH–200 (all permanently controlled pursuant to FDASIA) were synthesized in the mid-1990s and studied to advance the understanding of drug-receptor interactions in the cannabinoid system.

SCs were marketed in several European countries as ''herbal incense'' before the initial encounter in the United States by U.S. Customs and Border Protection (CBP) in November 2008. In 2009, their use began increasing in the United States with law enforcement encounters describing SCs laced on plant material and being abused for their psychoactive properties. In addition, forensic analyses by the DEA and other Federal, State, and local laboratories have identified multiple variations in both the type and amount of SC applied to the plant material.

As observed by the DEA and CBP, SCs originate from foreign sources, including China and other countries in Southeast Asia. Bulk substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. The powder form of SCs are typically dissolved in solvents (*e.g.,* acetone) before being applied to a green plant material or dissolved in a propellant intended for use in e-cigarette devices.

SCs are marketed under hundreds of different brand names, including ''Spice,'' ''K2,'' ''Blaze,'' ''Red X Dawn,'' ''Paradise,'' ''Demon,'' ''Black Magic,'' ''Spike,'' ''Mr. Nice Guy,'' ''Ninja,'' ''Zohai,'' ''Yucatan,'' ''Fire,'' ''Crazy Clown,'' ''Mojo,'' ''Black Mamba,'' ''Black Voodoo,'' ''Scooby Snax,'' ''Bizzaro,'' and many others. In addition, various ''new generations'' of SCs reflect the same or similar product labels while yielding a higher intensity and longer lasting highs, but with the user still being deprived of knowledge as to exactly what is contained inside the packaging.

The drug products laced with SCs are often sold under the guise of ''herbal incense,'' ''potpourri,'' etc., using various product names and routinely labeled ''not for human consumption.'' Additionally, these products are marketed as a ''legal high'' or ''legal alternative to marijuana'' and are readily available over the Internet, in head shops, or sold in convenience stores. There is an incorrect assumption that these products are safe and further, that mislabeling these products as ''not for human consumption'' is a legal defense to criminal prosecution.

These substances have no accepted medical use in the United States and have been reported to produce adverse health effects in humans while having a negative effect on communities. Acute and chronic abuse of SCs in general have been linked to adverse health effects including signs of addiction and withdrawal, numerous reports of emergency room admissions resulting from their abuse, overall toxicity, and death.

AB–CHMINACA, AB–PINACA, and THJ–2201 are SCs that have pharmacological effects similar to the schedule I hallucinogen THC and other temporarily and permanently controlled schedule I substances. With no approved medical use and limited safety or toxicological information, AB–CHMINACA, AB–PINACA, and THJ–2201 have emerged on the illicit drug market and are being abused for their psychoactive properties. The DEA's analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under docket number DEA–402.

Factor 4. History and Current Pattern of Abuse

SCs have been developed over the last 30 years as tools for investigating the cannabinoid system. Synthetic cannabinoids intended for illicit use were first reported in the United States in a November 2008 encounter, where a shipment of ''Spice'' was seized and analyzed by CBP in Dayton, Ohio. At approximately the same time, in December 2008, JWH–018 and cannabicyclohexanol (CP–47,497 C8 homologue) were identified by German forensic laboratories. Since the initial identification of JWH–018 (November 2008), many other SCs have been found applied on plant material and encountered as drug products. The popularity of these cannabinoids and their associated products appears to have increased since January 2010 in the United States based on seizure exhibits and public health and media reports.

Numerous SCs have been identified as product adulterants, and law enforcement has seized bulk amounts of these substances. The first SCs identified as being abused include JWH–018, JWH–073, JWH–200, CP–47,497, and CP–47,497 C8 homologue, followed shortly thereafter by new generations of SCs including drugs such as UR–144, XLR11, AKB48, PB–22, 5F–PB–22, AB–FUBINACA, ADB–PINACA, and numerous other SCs varying only by slight modifications to their chemical structure. JWH–018, JWH–073, JWH–200, CP–47,497, and CP–47,497 C8 homologue were temporarily scheduled on March 1, 2011 (76 FR 11075), and later permanently placed in schedule I by Section 1152 of FDASIA on July 9, 2012. Section 1152 of FDASIA amended the CSA by placing cannabimimetic agents and 26 specific substances (including 15 synthetic cannabinoids, 2 synthetic cathinones, and 9 synthetic phenethylamines of the 2C- series) into schedule I. UR–144, XLR11, and AKB48 were temporarily scheduled on May 16, 2013 (78 FR 28735). PB–22, 5F–PB–22, AB–FUBINACA, and ADB–PINACA were temporarily scheduled on February 10, 2014 (79 FR 7577).

Another generation of SCs including AB–CHMINACA, AB–PINACA, and THJ–2201 has recently been encountered. AB–CHMINACA, AB–PINACA, and THJ–2201 are not included among the 15 SCs that are specifically named under FDASIA, and do not fall under the legal definition of cannabimimetic agents as provided under FDASIA. These substances and products laced with these substances are commonly marketed under the guise of being a ''legal high'' with a disclaimer of ''not for human consumption.'' As detailed in reports, law enforcement and public health officials are encountering the abuse of these substances.

A major concern as reiterated by public health officials and medical professionals remains the targeting and direct marketing of SCs and SC-

containing products to adolescents and youth. This is supported by law enforcement encounters and reports from emergency rooms (see Factor 6 of Background Information and Evaluation of ''Three Factor Analysis'' (Factors 4, 5, and 6) for Temporary Scheduling); however, all age groups have been reported by media as abusing these substances and related products. Recently, law enforcement has been encountering new variations of SCs in liquid form. The liquids contain one or more SCs, including AB–CHMINACA and AB–PINACA. Users have been identified applying the liquid to hookahs (an instrument for vaporizing and smoking a given material whereby the smoke or vapor passes through a water basin prior to inhalation), vaporizers (also known as ''vaping'' or an ''e-cigarette,'' which allows the user to administer a liquid to be aerosolized and then inhaled), and hookah pens (a type of vaporizer, often much smaller and intended for increased discretion while smoking). Similar to conventional illicit manufacturing of SC products, liquid preparations of these substances do not adhere to any manufacturing standards with regard to dosage, the substance(s) included, purity, or contamination. It is important to note that following manufacturing principles or standards would not eliminate the adverse effects observed with SC products and SCs would still be considered a threat to public safety.

Factor 5. Scope, Duration and Significance of Abuse

Despite multiple scheduling actions in an attempt to safeguard the public from the adverse effects and safety issues associated with SCs, encounters by law enforcement and health care professionals demonstrate the continued abuse of these substances and their associated products. With the passing of each Federal control action, clandestine drug manufacturers and suppliers are adapting at an alarmingly quick pace to switch the ingredients to new, non-controlled variations of SCs. Exposure incidents involving SCs continue to be documented by poison control centers in the United States as the abuse of these substances remain a threat to both the short- and long-term public health and safety. Exposures to SCs were first reported to the American Association of Poison Control Centers (AAPCC) in 2011. Recently, AAPCC exposure reports have begun to increase. The number of exposures reported demonstrates the dangerous health effects observed involving these chemicals. Exposures for August 2014 (442) were the highest received in a monthly period by the AAPCC since July 2012 (459). As of October 31, 2014, the AAPCC has received approximately 2,996 calls involving exposure to SCs for 2014.

The following information details information obtained through STRIDE [2] and NFLIS [3] (queried on October 1, 2014 (STRIDE); November 25, 2014 (NFLIS)), including dates of first encounter, exhibits/reports, and locations.

AB–CHMINACA: STRIDE –21 exhibits, first encountered in March 2014; NFLIS–586 reports, first encountered in February 2014, locations include Arkansas, Arizona, California, Colorado, Georgia, Iowa, Indiana, Kansas, Kentucky, Louisiana, Missouri, North Dakota, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas and Wisconsin.

AB–PINACA: STRIDE–245 exhibits, first encountered in June 2013; NFLIS–3,783 reports, first encountered in March 2013, locations include Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, North Dakota, Nebraska, New Hampshire, New Jersey, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia and Wyoming.

THJ–2201: STRIDE–65 exhibits, first encountered in September 2013; NFLIS–220 reports, first encountered in January 2014, locations include Arkansas, Arizona, Connecticut, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Minnesota, Missouri, North Dakota, Nebraska, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee and Wisconsin.

Factor 6. What, if Any, Risk There Is to the Public Health

THJ–2201 was first observed in September 2013 while AB–CHMINACA was first observed in February 2014. AB–PINACA has been for sale on the illicit drug market as early as March 2013. From December 2013 through September 2014, CBP reported select encounters of these substances with most shipments originating in China and intended for destinations within the United States: AB–CHMINACA–17 seizures involving 15.825 kg; AB–PINACA–4 seizures involving 6 kg; THJ–2201–6 seizures involving 5.5 kg (see Three Factor Analysis). The DEA has reported multiple encounters of large quantities of AB–CHMINACA, AB–PINACA and THJ–2201 that have been confirmed by forensic laboratories (STRIDE and/or NFLIS).

From October 2013 to the present, multiple deaths and severe overdoses have occurred involving AB–CHMINACA and AB–PINACA. Adverse effects reported from these incidences have included a variety of the following effects: Seizures, coma, severe agitation, loss of motor control, loss of consciousness, difficulty breathing, altered mental status, and convulsions that in some cases resulted in death. There have been multiple overdose reports involving AB–CHMINACA, AB–PINACA, or a combination of both substances. In addition, there have been at least four documented deaths involving AB–CHMINACA and three documented deaths involving AB–PINACA.

Since abusers obtain these drugs through unknown sources, the identity and purity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users. By sharing pharmacological similarities with schedule I substances (Δ9–THC, JWH–018 and other temporarily and permanently controlled schedule I substances), AB–CHMINACA, AB–PINACA, and THJ–2201 pose a risk to the abuser. AB–CHMINACA, AB–PINACA, and THJ–2201 are being encountered on the illicit drug market and have no accepted medical use within the United States. Regardless, these products continue to be easily available and abused by diverse populations.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

Based on the above summarized data and information, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of AB–CHMINACA, AB–PINACA, and THJ–2201 pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for these SCs in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States,

[2] System to Retrieve Information from Drug Evidence (STRIDE) is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other Federal agencies, and law enforcement agencies.

[3] National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories in the United States.

and a lack of accepted safety for use under medical supervision. Available data and information for AB–CHMINACA, AB–PINACA, and THJ–2201 indicate that these three SCs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Deputy Administrator, through a letter dated September 17, 2014, notified the Assistant Secretary of the DEA's intention to temporarily place these three SCs in schedule I.

Conclusion

This notice of intent initiates an expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h). In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Deputy Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule three SCs, *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (AB–CHMINACA), *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (AB–PINACA) and [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (THJ–2201) in schedule I of the CSA, and finds that placement of these SCs into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Deputy Administrator hereby finds that it is necessary to temporarily place these SCs into schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Deputy Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. AB–CHMINACA, AB–PINACA, and THJ–2201 will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, possession, importation, exportation, research, and conduct of instructional activities of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

In as much as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Deputy Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Deputy Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(29) through (31) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(29) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers—7031 (Other names: AB–CHMINACA)

(30) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers—7023 (Other names: AB–PINACA)

(31) [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers—7024 (Other names: THJ–2201)

* * * * *

Dated: December 12, 2014.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2014–29651 Filed 12–18–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2014–OPE–0161]

RIN 1840–AD18

Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings—William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations governing the William D. Ford Federal Direct Loan (Federal Direct Loan) Program authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the topics proposed for negotiations. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee, and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before January 20, 2015. The dates, times, and locations of the committee meetings are set out in the *Schedule for Negotiations* section in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *wendy.macias@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *wendy.macias@ed.gov.*

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On September 3, 2014, we published a notice in the **Federal Register** (79 FR 52273) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations to allow more student borrowers of Federal Direct Loans to use a ''Pay as You Earn'' repayment plan in accordance with the Presidential Memorandum issued on June 9, 2014 (available at *www.whitehousce.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments*). We also announced two public hearings at which interested parties could comment on the topic suggested by the U.S. Department of Education (Department) and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings were held on October 23, 2014, in Washington, DC, and on November 4, 2014, in Anaheim, California. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html.* Written comments submitted in response to the September 3, 2014, notice may be viewed through the Federal eRulemaking Portal at *www.regulations.gov.* Instructions for finding comments are available on the site under ''How to Use Regulations.gov'' in the Help section. Individuals can enter docket ID ED–2014–OPE–0124 in the search box to locate the appropriate docket.

Regulatory Issues: After considering the information received at the regional hearings and the written comments, we have decided to establish a negotiating committee to (1) prepare proposed regulations to establish a new Pay as You Earn repayment plan for those not covered by the existing Pay as You Earn Repayment Plan in the Federal Direct Loan Program, and (2) establish procedures for Federal Family Education Loan (FFEL) Program loan holders to use to identify U.S. military servicemembers who may be eligible for a lower interest rate on their FFEL Program loans under section 527 of the Servicemembers Civil Relief Act (SCRA).

Under the Department's current regulations, once a loan holder (the Secretary or a FFEL loan holder) receives a servicemember's written request and a copy of the servicemember's military orders, the maximum interest rate on any Federal Direct Loan or FFEL program loan made prior to the borrower entering active-duty status is six percent while the borrower is on active-duty status. (*See* 34 CFR 685.202(a)(4) and 682.202(a)(8)). On August 25, 2014, the Department published Dear Colleague Letter GEN–14–16 (available at *http://ifap.ed.gov/dpcletters/GEN1416.html*) announcing that the Department had adopted new procedures for determining a borrower's eligibility for benefits under the SCRA and authorizing FFEL loan holders to adopt similar procedures. The Department now seeks to include those procedures in the regulations and to require FFEL loan holders to use those procedures.

These topics are tentative. Topics may be added or removed as the process continues.

We intend to select negotiators for the committee who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant topics proposed for negotiations. We will also select individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee size manageable.

We generally select a primary and alternate negotiator for each constituency represented on the committee. The primary negotiator participates for the purpose of determining consensus. The alternate participates for the purpose of determining consensus in the absence of the primary. Either the primary or the alternate may speak during the negotiations.

The committee may create subgroups on particular topics that may involve individuals who are not members of the committee. Individuals who are not

selected as members of the committee will be able to observe the committee meetings, will have access to the individuals representing their constituencies, and may be able to participate in informal working groups on various issues between the meetings.

Constituencies: We have identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to seat as negotiators individuals from organizations or groups representing these constituencies:

- Students.
- Legal assistance organizations that represent students.
- Consumer advocacy organizations.
- Groups representing U.S. military servicemembers or veterans.
- Financial aid administrators at postsecondary institutions.
- State attorneys general and other appropriate State officials.
- Institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, nonprofit institutions of higher education.
- Private, for-profit institutions of higher education.
- FFEL Program lenders and loan servicers.
- FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies).

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of the negotiating committee, including the committee member representing the Department. An individual selected as a negotiator will be expected to represent the interests of his or her organization or group and participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by members of such an organization or group.

Nominations: Nominations should include:

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that the nominee represents.
- Evidence of the nominee's expertise or experience in the topics proposed for negotiations.
- Evidence of support from individuals or groups within the constituency that the nominee will represent.
- The nominee's commitment that he or she will actively participate in good faith in the development of the proposed regulations.
- The nominee's contact information, including address, phone number, and email address.

For a better understanding of the negotiated rulemaking process, nominees should review *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* prior to committing to serve as a negotiator.

Nominees will be notified whether or not they have been selected as negotiators as soon as the Department's review process is completed.

Schedule for Negotiations: The committee will meet for three sessions on the following dates:

Session 1: February 24–26, 2015
Session 2: March 31–April 2, 2015
Session 3: April 28–30, 2015
Sessions will run from 9 a.m. to 5 p.m.

The committee meetings will be held at the U.S. Department of Education at: 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.

The meetings are open to the public.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *wendy.macias@ed.gov.*

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: December 16, 2014.

Lynn B. Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–29734 Filed 12–18–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 403 and 441

[EPA–HQ–OW–2014–0693; FRL–9920–66–OW]

RIN 2040–AF26

Effluent Limitations Guidelines and Standards for the Dental Category; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA received requests for an extension of the period for providing comments on the proposed rule entitled, ''Effluent Limitations Guidelines and Standards for the Dental Category,'' published in the **Federal Register** on October 22, 2014. EPA is extending the comment period from December 22, 2014 to February 20, 2015.

DATES: *Comments.* The public comment period for the proposed rule published October 22, 2014 (79 FR 63258) is being extended to February 20, 2015, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (79 FR 63258) for the addresses and detailed instructions.

Docket. Publically available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426. The EPA has established the official public docket no. EPA–HQ–OW–2014–0693.

FOR FURTHER INFORMATION CONTACT: Damon Highsmith, Engineering and Analysis Division (4303T), Office of Water, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone: 202–566–2504; email: *highsmith.damon@epa.gov.*

List of Subjects in 40 CFR Parts 403 and 441

Environmental protection, Dental, Dental office, Dentist, Mercury, Pretreatment, Waste treatment and disposal, Water pollution control.

Dated: December 12, 2014.

Kenneth J. Kopocis,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2014–29774 Filed 12–18–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–226; FCC 14–184]

Broadcast Licensee-Conducted Contests

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to amend its rules governing broadcast licensee-conducted contests (the ''Contest Rule'') in a manner that reflects how consumers access information in the 21st Century. This document proposes to amend the Contest Rule by, among other things, allowing licensees to comply with their obligation to disclose material contest terms either through broadcast announcements or by making such terms available in writing on a publicly accessible Internet Web site. In addition, the Commission proposes to adopt rules that would define the disclosure obligation in cases where a station chooses to meet that obligation through an Internet Web site.

DATES: Comments are due on or before February 17, 2015; reply comments are due on or before March 19, 2015. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 17, 2015.

ADDRESSES: You may submit comments, identified by MB Docket No. 14–226, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at (202) 418–2120 or *Raelynn.Remy@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 14–184, adopted and released on November 21, 2014. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

The Notice of Proposed Rulemaking seeks comment on potential information collection requirements. If the Commission adopts any information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 17, 2015.

Summary

I. Introduction

1. In the Notice of Proposed Rulemaking (*NPRM*), we propose to amend § 73.1216 of our rules governing broadcast licensee-conducted contests (''Contest Rule'') [1] by, among other things, allowing licensees to comply with their obligation to disclose material contest terms either by broadcasting the material terms or making such terms available in writing on a publicly accessible Internet Web site. The *NPRM* stems from a Petition for Rulemaking

[1] 47 CFR 73.1216.

(''Petition'') filed by Entercom Communications Corp. (''Entercom'' or ''Petitioner'') requesting that the Commission so update the Contest Rule in a manner that reflects how consumers access information in the 21st Century.[2] The Petition was unopposed, and supported by a number of commenters.[3] As discussed below, we propose to modernize our rules to provide broadcast licensees with greater flexibility in the methods by which they may satisfy their obligation to disclose material contest terms, without relaxing licensees' duty to conduct contests with due regard for the public interest.

II. Background

A. The Contest Rule

2. Radio and television stations frequently run contests as a form of promotion, advertisement, and entertainment. The Commission adopted the existing Contest Rule in 1976 to address concerns about the manner in which broadcast licensees were conducting contests over the air. That rule provides, in part:

A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.[4]

The Contest Rule contains prescriptions regarding the time and manner of disclosing material contest terms:

[T]he time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable number of announcements is sufficient. In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.[5]

The Contest Rule was premised on the Commission's conclusion that ''a licensee's contests should be conducted fairly and substantially as represented to the public, and . . . failure to do so falls short of the degree of responsibility expected of licensees.''

3. As set forth above, the Contest Rule requires a licensee to broadcast the material terms of a contest the first time it informs its audience how to enter or participate, and to repeat such terms a reasonable number of times thereafter.[6] Although, under the rule, licensees are permitted to employ non-broadcast methods for disclosing material contest terms, they may not substitute such methods for the required broadcast disclosure.

B. Petition for Rulemaking

4. In January 2012, Entercom filed the Petition requesting that the Commission revise the disclosure requirements of § 73.1216. Specifically, Petitioner proposes that the Commission amend § 73.1216 to permit broadcasters to satisfy their obligation to disclose material contest terms either by: (i) Broadcasting such terms on the station (as required by the current rule);[7] or (ii) providing material terms in written form on a Web site and upon request by email, facsimile, mail, or in person, provided that the station makes periodic announcements informing viewers and listeners how and where the public can obtain access to the material terms.[8] In addition, Petitioner asserts that broadcasters that lack their own Web sites should be allowed to post contest terms on the Web site of a state broadcasters' association that permits such posting.

5. Petitioner contends that its proposed revisions will bring the Contest Rule into alignment with how Americans access and consume information in the 21st Century and provide for a more effective means of distributing contest information to the public. It asserts that, ''[i]n today's fast paced world, Americans expect to instantly access information . . . by merely logging on to a Web site [or] conducting [an Internet] search''; thus, it argues, reliance on broadcast announcements to disseminate material contest information is no longer an acceptable way to inform the public about contest terms. Petitioner asserts that the vast majority of broadcasters already have dedicated Web sites where they can post complete contest information that the public can access ''on demand.'' Moreover, it argues that licensees can disseminate contest information via additional methods, such as email, that are more effective than broadcast at conveying contest terms.

6. Petitioner argues that, because the current rule requires licensees to disclose material contest terms via broadcast only periodically, such disclosures may not be heard or seen by an audience member interested in the contest. Further, Petitioner contends that the material terms of some contests can be quite complex and lengthy, such that even if listeners hear (or see, in the case of television) a periodic announcement of such terms, it is nearly impossible for them to comprehend and remember all of the information disclosed. Thus, it asserts, audiences are not likely to obtain useful information from such broadcasts.

7. Petitioner contends that the public today accesses information in ways that are dramatically different from how the public accessed information when the Contest Rule was adopted, and cites evidence that the Internet is the medium used by most Americans to obtain information instantaneously. According to Petitioner, the public is accustomed to accessing station Web sites to obtain current news, weather, traffic reports, and other information, and, therefore, the public reasonably expects to find contest information on station Web sites. Petitioner further notes that the Commission itself has recognized the

[2] *See* Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM–11684 (filed Jan. 20, 2012).

[3] We note that we received no comments on the Petition from consumer advocacy groups or members of the general public and encourage all interested parties to file in response to the *NPRM.*

[4] 47 CFR 73.1216. The Contest Rule defines ''contest'' as ''a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public.'' *Id.,* Note 1(a). In addition, the rule provides that:

[m]aterial terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending on the exact nature of the contest, they will generally include: How to enter or participate; eligibility restrictions; entry deadline dates, whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures. *Id.,* Note 1(b).

[5] *Id.,* Note 2. The Contest Rule does not apply to licensee-conducted contests that are not broadcast or advertised to the general public or to a substantial segment of the public, to contests in which the general public is not requested or permitted to participate, to the commercial advertisement of non-licensee-conducted contests, or to a contest conducted by a non-broadcast division of the licensee or by a non-broadcast company related to the licensee. *See id.,* Note 3.

[6] *See* 47 CFR 73.1216, Note 2.

[7] As discussed *infra,* Petitioner does not propose complete elimination of broadcast disclosure because, it argues, such on-air announcements may still make sense for some licensees and for simple contests where little information has to be conveyed to listeners. *See* Entercom Petition at 5.

[8] *Id.* Although Petitioner proposes to require licensees to make contest terms available, upon request, via email facsimile, postal mail, or in person, we decline to propose this at this time because we believe that permitting licensees to disclose contest terms through broadcast and Internet methods is adequate to ensure the availability of material contest information to the public.

ubiquity and efficiency of the Internet and its utility to Commission processes.

8. In November 2012, the Commission's Consumer and Governmental Affairs Bureau (''CGB'') issued a Public Notice inviting comment on the Petition. Each of the sixteen parties that responded to the Public Notice support the Petitioner's request to commence a rulemaking proceeding to modernize the Contest Rule.

III. Discussion

9. We propose to amend the Contest Rule to allow broadcasters to satisfy their obligation to disclose material contest terms by making such terms available in writing on a publicly accessible Internet Web site. We believe that this rule revision will give broadcasters greater flexibility in the means by which they may comply with the Contest Rule and is consistent with the Commission's recognition that the Internet is an effective tool for distributing information to broadcast audiences. We seek comment on this proposal. Although the Commission's rule currently requires that material terms be disclosed periodically by announcements broadcast on the station,[9] we agree with parties who assert that the dramatic changes in the way that consumers access information since the Contest Rule was adopted justify updating the rule. As some commenters note, the public is accustomed to accessing station Web sites to obtain a broad range of information. In fact, the record reflects that some licensees already use their Web sites to post contest-related information, and allow consumers to enter and participate in contests via station Web sites. Parties contend that posting material contest terms in writing on station Web sites will give potential contest participants immediate access to those terms and allow the public to review the terms at their convenience, thereby meeting consumer expectations for accessing such information and potentially reducing consumer confusion.

10. We propose to allow a broadcast station to satisfy its § 73.1216 disclosure obligation by posting material contest terms on the station's Internet Web site, the licensee's Web site, or, if neither the individual station nor the licensee has its own Web site, any readily publicly accessible Internet Web site.[10] We seek comment on the costs and benefits of adopting this proposal. In addition, we seek comment on whether and to what extent we should adopt rules specifying the format for contest disclosures that are posted on Internet Web sites.

11. If a licensee uses an Internet Web site to disclose material contest terms, how could we ensure that such terms are easy for consumers to locate on that Web site? For example, should we require a link on the Web site's home page to the contest terms? How long should a licensee be required to maintain the contest information on the Web site? NSBA asserts that a non-station Web site that is used to comply with the Contest Rule's disclosure requirements must be ''accessible to the public 24/7 during the contest, for free, and without any registration requirement.'' Should a revised Contest Rule contain these requirements? Are there other Web site characteristics or requirements that the rule should mandate to promote the goal of public accessibility? We are sensitive to the possibility that consumers may become frustrated if they cannot readily locate a contest's material terms on a non-licensee Web site, and seek comment on how licensees might anticipate and avoid problems associated with posting content rules to non-licensee sites. We propose to apply the same rule to radio and television licensees, but seek comment on whether any differences in those services merit different treatment in the rule. In particular, we seek comment on the impact of the above proposals on small broadcasters.

12. We note that the disclosure requirements in § 73.1216 pertain to ''material'' contest terms, defined as those terms that ''define the operation of the contest and which affect participation therein.'' Section 73.1216 provides that ''material terms may vary widely depending on the exact nature of the contest,'' but that such terms generally will include: How to enter or participate; eligibility restrictions; entry deadline dates, whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures. To the extent that licensees have difficulty determining which terms are ''material'' and thus subject to disclosure under the Contest Rule, would revising the rule as proposed eliminate or reduce the need for licensees to make this determination, insofar as they could post all contest information in writing online? On the other hand, is it necessary to require that licensees set apart or distinguish in some way contest terms deemed ''material'' from other contest information to ensure that this important information is readily available to the public and not buried in lengthy fine print? We seek comment generally on whether or to what extent we need to refine the definition of ''material'' given our proposed change to the Contest Rule. To avoid consumer confusion, we propose that, consistent with existing Commission precedent, any material terms announced on air must not differ from the material terms disclosed on a Web site.[11]

13. We propose further to modify the Contest Rule by requiring stations that choose to satisfy their disclosure obligations via an Internet Web site to broadcast the complete, direct Web site address where the contest terms are posted[12] each time the station mentions or advertises a contest. Under the current rule, stations are required to broadcast material terms periodically after their initial disclosure. The discretion afforded licensees under the current rule to determine when they will broadcast material terms after initial disclosure can potentially leave a consumer without access to such terms at the time a contest is advertised on air, as well as create uncertainty for broadcasters about their compliance

[9] In particular, the Contest Rule provides that: ''The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest. . . . In addition to the required broadcast announcements, disclosure of the material terms may be made in a non-broadcast manner.'' 47 CFR 73.1216, Note 2. *See also Good Karma Broad. LLC,* 27 FCC Rcd 10938, 10941 n.32 (EB 2012) (''Posting contest rules on a station's Web site does not satisfy § 73.1216's requirement that a licensee broadcast the material terms of a contest it conducts.''); Joint Commenters Comments at 2, citing *Clear Channel Communications, Inc.,* 27 FCC Rcd 343, 346 ¶ 6 (EB 2012) (''While stations are free to provide contest information in other formats, including Internet postings, numerous Commission decisions have repeatedly made clear that 'licensees cannot avail themselves of alternative non-broadcast announcements to satisfy the requirement that they accurately announce a contest's material terms.' '').

[10] As noted above, although Petitioner proposes to allow stations that do not have their own Web site to post material contest terms to the Web site of a state broadcasters' association, NSBA has asserted that ''there is no unanimity among the State Associations for agreeing to serve as a third-party Web host for station contest rules.'' *See* NSBA Comments at 6. *See also* VAB Comments at 3; OAB Comments at 4; NCAB Comments at 3. NSBA thus proposes to allow licensees the option of posting their contest rules on any Web site that allows such posting, under certain conditions. NSBA Comments at 6. Petitioner does not oppose NSBA's proposal. *See* Entercom Reply at 3–4.

[11] For example, if the on air announcement or advertising for the contest identifies a particular prize by brand name or model, then the Web site disclosure must be the same.

[12] By complete, direct Web site address, we mean the address that will take the consumer directly to the page on the Web site where the contest terms are posted. If licensees post the contest terms on the home page of the Web site or post a direct link to the contest terms on the home page, then announcing the home page address will suffice to ensure consumers can easily find and review the terms of the contest.

with the rule. Although the rule changes we propose diverge from Petitioner's proposal (which would require stations to broadcast announcements identifying the Web site address only periodically), we believe that requiring licensees to broadcast the Web site address where contest terms are available each time they mention or advertise a contest will better inform the public of material contest information and is not unduly burdensome. We believe that such a requirement is less burdensome than requiring a licensee to periodically broadcast material contest terms in full. Therefore, we propose to require licensees to broadcast the Web site address on which material contest terms are posted each time they mention or advertise a contest. In addition, if a licensee that chooses to satisfy its disclosure obligations via the Internet changes the material terms of a contest after the contest is first announced, we propose that the licensee must announce on air that the contest rules have changed and direct participants to the Web site to review the changes. We seek comment on the appropriate frequency and duration of this requirement. For example, should this announcement have to be made each time the licensee announces the contest and broadcasts the Web site address where such terms are posted, and if so, for how long should that requirement last? [13] We seek comment on these proposals, including the costs and benefits of adopting these rules. We also seek comment on the impact of these proposals on small licensees.

14. We propose that we should still permit broadcast disclosure as one means of complying with the Contest Rule. As Petitioner notes, broadcast disclosure of material contest information ''may still make sense for some broadcasters and for extremely simple contests where very little information has to be conveyed to the [audience].'' If we retain broadcast disclosure as a method of complying with the Contest Rule, should we make any changes to the rule to improve the effectiveness of broadcasting material contest terms?

IV. Procedural Matters

A. Regulatory Flexibility Act

15. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') [14] the Commission has prepared this present Initial Regulatory Flexibility Act Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[15] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[16]

1. Need for, and Objectives of, the Proposed Rule Changes

16. The *NPRM* stems from an unopposed Petition for Rulemaking filed by Entercom Communications Corp. requesting that the Commission update § 73.1216 of its rules governing broadcast licensee-conducted contests (the ''Contest Rule'') [17] in a manner that reflects how consumers access information in the 21st Century.[18] The *NPRM* proposes to amend the Contest Rule by, among other things, allowing licensees to comply with their obligation to disclose material contest terms either through broadcast announcements or by making such terms available in writing on a publicly accessible Internet Web site.

17. In particular, the *NPRM* proposes to amend the Contest Rule: (i) To permit a licensee that chooses to satisfy its disclosure obligations by means of an Internet Web site to make material contest terms available on the station's Web site, the licensee's Web site, or, if neither the station nor the licensee has its own Web site, any publicly accessible Internet Web site; (ii) to require that any material contest terms announced on air not differ from the material terms disclosed on a Web site; (iii) to require a station that chooses to satisfy its disclosure obligation via the Internet to broadcast the complete, direct Web site address where the contest terms are posted each time the station mentions or advertises a contest; and (iv) to require that, if a licensee that chooses to satisfy its disclosure obligation via the Internet changes the material terms of a contest after the contest is first announced, the licensee announce on air that the contest rules have changed and direct participants to the Web site to review the changes. These proposals are intended to modernize the Contest Rule in a manner that gives broadcasters greater flexibility in the methods by which they satisfy their obligation to disclose material contest terms, while ensuring adequate notice of such terms to the public.

2. Legal Basis

18. The proposed action is authorized pursuant to sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303.

3. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[19] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [20] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[21] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[22] The rules

[13] The Commission has interpreted the existing Contest Rule to impose on licensees an obligation to notify the public of changes to material contest terms by announcing such changes over the air. *See Access 1 New Jersey License Co., LLC,* Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4232, 4235, ¶ 8 and n.24 (EB 2007) (finding that a licensee's failure to notify the public of changes to material contest terms violated the Contest Rule). *See also Clear Channel Broad. Licenses, Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4072 (EB 2006) (imposing forfeiture for unannounced contest rule change that excluded contestant's multiple entries). Thus, if we were to amend the Contest Rule to permit disclosure of material contest terms via a Web site, licensees that chose to comply with their disclosure obligations via broadcast similarly would be required to notify the public of changes to such terms through broadcast announcements.

[14] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[15] *See* 5 U.S.C. 603(a).

[16] *See id.*

[17] 47 CFR 73.1216.

[18] *See* Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM–11684 (filed Jan. 20, 2012).

[19] 5 U.S.C. 603(b)(3).

[20] 5 U.S.C. 601(6).

[21] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[22] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

20. *Television Broadcasting.* This economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' [23] The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts.[24] The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000.[25] Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

21. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387 stations.[26] Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.[27] NCE stations are non-profit, and therefore considered to be small entities.[28] Based on these data, we estimate that the majority of television broadcast stations are small entities.

22. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations and low power television (LPTV) stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts.[29] The Commission has estimated the number of licensed Class A television stations to be 432.[30] The Commission has also estimated the number of licensed LPTV stations to be 2,028.[31] Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

23. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations [32] must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the revenue threshold noted above, our estimate of the number of small entities affected is likely overstated. In addition, we note that one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, our estimate of small television stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

24. *Radio Stations.* This economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' [33] The SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts.[34] Census data for 2007 shows that 2,926 firms in this category operated in that year.[35] Of this number, 2,877 firms had annual receipts of less than $25,000,000, and 49 firms had annual receipts of $25,000,000 or more.[36] Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

25. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,553 stations and the number of commercial FM radio stations to be 6,622, for a total number of 11,175.[37] Of this total, 9,898 stations (or about 90 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 23, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (''NCE'') AM radio stations to be 168 stations and the number of noncommercial educational FM radio stations to be 4,082, for a total of 4,250.[38] NCE stations are non-profit, and therefore considered to be small entities.[39] Therefore, we estimate that the majority of radio broadcast stations are small entities.

26. *Low Power FM Stations.* The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts.[40] The Commission has estimated the number of licensed low power FM stations to be 814.[41] Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

27. We note again, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations [42] must be included. Because

[23] U.S. Census Bureau, 2012 NAICS Definitions, ''515120 Television Broadcasting,'' at *http://www.census.gov./cgi-bin/sssd/naics/naicsrch.*

[24] 13 CFR 121.201; 2012 NAICS code 515120.

[25] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml ?pid=ECN_2007_US_51SSSZ4&prodType=table.*

[26] *See Broadcast Station Totals as of June 30, 2014,* Press Release (MB rel. July 9, 2014) (*Broadcast Station Totals)* at *https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf.*

[27] *See Broadcast Station Totals, supra.*

[28] *See generally* 5 U.S.C. 601(4), (6).

[29] 13 CFR 121.201; NAICS code 515120.

[30] *See Broadcast Station Totals, supra.*

[31] *See Broadcast Station Totals, supra.*

[32] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 21.103(a)(1).

[33] U.S. Census Bureau, 2012 NAICS Definitions, ''515112 Radio Stations,'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* This category description continues, ''Programming may originate in their own studio, from an affiliated network, or from external sources.''

[34] 13 CFR 121.201; NAICS code 515112.

[35] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515112), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml ?pid=ECN_2007_US_51SSSZ4&prodType=table.*

[36] *Id.*

[37] *See Broadcast Station Totals as of June 30, 2014,* Press Release (MB rel. July 9, 2014) (*Broadcast Station Totals*) at *https://apps.fcc.gov/edocs_public/attachmatch/DOC-328096A1.pdf.* This document only indicates the total number of AM stations as 4,721. The breakdown between licensed AM commercial and noncommercial stations was obtained from Staff review of the Consolidated Database System (CDBS). *See http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

[38] *See Broadcast Station Totals, supra.*

[39] *See generally* 5 U.S.C. 601(4), (6).

[40] *See* 13 CFR 121.201, NAICS Code 515112.

[41] *See News Release,* ''Broadcast Station Totals as of June 30, 2012'' (rel. Jul. 19, 2012) (*http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1315231A1.pdf*).

[42] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls

Continued

we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the *NPRM* and consider whether small entities are affected disproportionately by any such requirements.

29. *Reporting Requirements.* The *NPRM* does not propose to adopt reporting requirements.

30. *Recordkeeping Requirements.* The *NPRM* proposes certain recordkeeping requirements that would be applicable to covered small entities. In particular, the *NPRM:*

- Proposes to allow broadcast licensees to satisfy their obligation to disclose material contest terms by posting such terms on the station's Web site, the licensee's Web site, or, if neither the station nor the licensee has its own Web site, any publicly accessible Internet Web site;
- proposes that any material contest terms announced on air must not differ from the material terms disclosed on a Web site;
- proposes to require stations that choose to satisfy their disclosure obligations via an Internet Web site to broadcast the complete, direct Web site address where the contest terms are posted each time the station mentions or advertises a contest;
- proposes that, if a licensee that chooses to satisfy its disclosure obligations via an Internet Web site changes the material terms of a contest after the contest is first announced, such licensee be required to announce on air that the contest terms have changed and direct participants to the Web site to review the changes; and
- seeks comment on whether a licensee that chooses to satisfy its disclosure obligations via the Internet and that changes contest terms after a contest is first announced, must repeat that the contest terms have changed each time it announces the contest and broadcasts the Web site address where such terms are posted, and if so, how long that requirement should last.

31. *Other Compliance Requirements.* The *NPRM* seeks comment on other compliance requirements that would be applicable to covered small entities. In particular, the *NPRM:*

- Seeks comment on whether and to what extent the Commission should adopt rules specifying the format for contest disclosures that are posted on Internet Web sites and how long stations should be required to maintain such disclosures on a Web site;
- seeks comment on whether licensees should be required to set apart or distinguish in some way contest terms deemed ''material'' from other contest information to ensure that important contest information is readily available to the public;
- seeks comment on whether to adopt requirements designed to ensure that the material terms of a contest are easy for consumers to locate on a public Web site;
- seeks comment on whether to require that a public Web site that is used to comply with the Contest Rule's disclosure requirements be accessible to the public 24/7 during the contest, for free, and without any registration requirement, and whether there are other characteristics that such Web sites should be required to possess;
- seeks comment on how licensees can anticipate and avoid problems associated with posting contest terms to non-licensee Web sites;
- seeks comment on whether there are any differences between radio and television licensees that merit different treatment in the rule; and
- seeks comment on whether, if broadcast disclosure is retained as one method of complying with the Contest Rule, any changes should be made to the rule to improve the effectiveness of broadcasting material contest terms.

32. Because no commenter provided information specifically quantifying the costs and administrative burdens associated with the Petitioner's proposed rule revisions, we cannot precisely estimate the impact of the rules proposed in the *NPRM* on small entities. However, the proposed revisions will afford all licensees, including small broadcasters, greater flexibility in the method by which they comply with the Contest Rule. In addition, we note that the proposed revisions were derived largely from the Petition for Rulemaking in this proceeding, which was unopposed and supported by all commenters, including small broadcasters. Thus, we find it reasonable to conclude that any costs or burdens on small entities resulting from the proposed requirements will be outweighed by the benefits.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[43]

34. The accompanying *NPRM* principally proposes to amend § 73.1216 of the Commission's rules by allowing all licensees, including small broadcasters, to meet their obligation to disclose material contest terms either through broadcast announcements or by making such terms available in writing on a publicly accessible Internet Web site. This revision to the rule is intended to give broadcasters greater flexibility in the manner by which they satisfy their obligation to disclose material contest terms, while ensuring adequate notice of such terms to the public. Whereas under the current rule, licensees must expend time and resources developing broadcast messages that adequately disclose important contest information, licensees will have the option to disclose such information through the Internet. Permitting disclosure through this additional method is potentially less costly and administratively burdensome for licensees, and will minimize the economic impact on small entities. One commenter has estimated, for example, that as much as two hours that are presently devoted by licensees to the production of contest-related broadcast spots will be spared. Moreover, the air time that is likely to be freed up as a result of more abbreviated contest-related announcements in some cases could be

or has the power to control both.'' 13 CFR 21.103(a)(1).

[43] 5 U.S.C. 603(c)(1) through (c)(4).

used for advertising spots. As noted, the Petition for Rulemaking in this proceeding was uniformly supported by commenting parties, including small entities. Thus, we anticipate that the proposed rule revisions, if adopted, will only benefit small broadcast entities. Nevertheless, the *NPRM* seeks comment on the potential impact of its proposed rules on such entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

35. None.

B. Paperwork Reduction Act

36. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.[44] In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[45] we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' [46]

C. Ex Parte Rules

37. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the Commission's rules.[47] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[48] Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

D. Filing Requirements

38. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules,[49] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[50]

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

39. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

40. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

41. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

42. *Additional Information.* For additional information on this proceeding, contact Raelynn Remy of the Media Bureau, Policy Division, (202) 418–2936, *Raelynn.Remy@fcc.gov.*

V. Ordering Clauses

43. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, this Notice of Proposed Rulemaking *is adopted.*

44. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Advertising, Consumer protection, Fraud, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, 339.

■ 2. Amend § 73.1216 by revising Note 2 to read as follows:

§ 73.1216 Licensee-conducted contests.

* * * * *

Note 2: In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The disclosure of material terms shall be made by the station conducting the contest by either: (a) Periodic disclosures broadcast on the station; or (b) written disclosures on the

[44] Pub. L. 104–13.

[45] Pub. L. 107–198.

[46] 44 U.S.C. 3506(c)(4).

[47] *See* 47 CFR 1.1206(b); *see also id.* 1.1202, 1.1203.

[48] *See id.* 1.1206(b)(2).

[49] *See id.* 1.415, 1.419.

[50] *See Electronic Filing of Documents in Rulemaking Proceedings,* Report and Order, 13 FCC Rcd 11322 (1998).

station's Internet Web site, the licensee's Web site, or if neither the individual station nor the licensee has its own Web site, any Internet Web site that is publicly accessible. In the former case, a reasonable number of periodic broadcast disclosures is sufficient. In the latter case, the station shall announce over the air the availability of material terms on the Web site and identify the complete, direct Web site address where the terms are posted each time the station mentions or advertises the contest. Material contest terms that are disclosed on an Internet Web site must conform in all substantive respects to those mentioned over the air. Any changes to the material terms during the course of the contest must be fully disclosed on air or the fact that such changes have been made must be announced on air and participants must be directed to the written disclosures on the Web site.

* * * * *

[FR Doc. 2014–29633 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622

RIN 0648–BE20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 32

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 32 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 32 proposes actions to remove blueline tilefish from the deep-water complex; revise definitions of management thresholds for blueline tilefish; establish blueline tilefish commercial and recreational sector annual catch limits (ACLs), accountability measures (AMs), and recreational annual catch targets (ACTs); establish a blueline tilefish commercial trip limit; revise the blueline tilefish recreational bag limit; and revise the deep-water complex ACLs, AMs, and recreational ACT. The purpose of Amendment 32 is to specify ACLs and AMs for blueline tilefish to end overfishing of the stock and maintain catch levels consistent with achieving optimum yield (OY) for the blueline tilefish and deep-water complex resource.

DATES: Written comments must be received on or before February 17, 2015.

ADDRESSES: You may submit comments on Amendment 32, identified by ''NOAA–NMFS–2014–0145'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0145,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 32, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/am32/index.html.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

A benchmark assessment for the blueline tilefish stock in the South Atlantic was conducted through the Southeast, Data, Assessment, and Review (SEDAR) process in 2013 (SEDAR 32). At its October 2013 meeting, the Council's Scientific and Statistical Committee (SSC) and the Council determined the 2013 stock assessment was based on the best scientific information available and considered the assessment to be appropriate for management decisions. The assessment determined that the blueline tilefish stock is undergoing overfishing in the South Atlantic. As required by the Magnuson-Stevens Act, the Council must therefore implement measures to end overfishing within 2 years of notification of an overfishing status. NMFS notified the Council of the blueline tilefish stock status on December 6, 2013.

The Magnuson-Stevens Act requires that ACLs and AMs be implemented to prevent overfishing and achieve the OY from a fishery. An ACL is the level of annual catch of a stock that if exceeded, triggers AMs. AMs are management controls to prevent ACLs from being exceeded and to correct any overages of ACLs if they occur. Two examples of AMs include an in-season closure if landings reach or are projected to reach the ACL, and a post-season overage adjustment which would reduce the ACL if an overage occurred during the previous fishing year.

NMFS published an emergency rule on April 17, 2014 (79 FR 21636) that implemented temporary measures to reduce overfishing of blueline tilefish while Amendment 32 was being developed. Those measures were extended through a temporary rule on October 14, 2014 (79 FR 61262, October 10, 2014) and are effective through April 18, 2015, while Amendment 32 and its associated rulemaking are under review. The temporary measures of the emergency action include the following: Removal of blueline tilefish from the deep-water complex, specification of sector ACLs and AMs for blueline tilefish, and revision to the deep-water complex ACL to reflect the removal of blueline tilefish from the complex.

Amendment 32 proposes to remove blueline tilefish from the deep-water complex; revise definitions of management thresholds for blueline tilefish; establish blueline tilefish commercial and recreational sector ACLs, AMs, and recreational ACTs; establish a blueline tilefish commercial trip limit; revise the blueline tilefish recreational bag limit; and revise the

deep-water complex ACLs, AMs, and recreational ACT.

Removal of Blueline Tilefish From the Deep-Water Complex

Amendment 32 would remove blueline tilefish from the deep-water complex. In 2012, the Comprehensive ACL Amendment established a deep-water complex that contained the following eight species: Blueline tilefish, yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper (77 FR 15916, March 16, 2012). The Comprehensive ACL Amendment also specified ACLs and AMs for the complex where the complex's ACLs were based upon an acceptable biological catch (ABC) recommendation provided by the Council's SSC. In the absence of stock assessments, the ABCs for these and other unassessed species in the Comprehensive ACL Amendment were based on median or average catch. The Council placed most unassessed snapper-grouper species into complexes because many unassessed snapper-grouper species are data-limited stocks that are known to have issues with species identification and/or extreme fluctuations in relative landings through time due to rarity, or lack of targeted fishing effort.

As a result of blueline tilefish being assessed through SEDAR 32 and the Council's SSC providing an assessment-based ABC recommendation for blueline tilefish, the Council decided to remove blueline tilefish from the deep-water complex and establish individual ACLs and AMs for the blueline tilefish stock. The Council has determined that sufficient information to establish ACLs and AMs is now available for blueline tilefish and the rationale for grouping the species with other data-limited species in the deep-water complex no longer applies.

Modify the Definitions for Blueline Tilefish Management Thresholds

Definitions of maximum sustainable yield (MSY) and OY were established for blueline tilefish in Amendment 11 to the FMP (64 FR 59126, November 2, 1999). Amendment 32 would revise these definitions based upon the most recent scientific information contained in SEDAR 32. Amendment 32 would revise the MSY value for blueline tilefish and set the OY equal to ACL as described later in this notice.

Blueline Tilefish Commercial and Recreational ACLs, AMs, and Recreational ACTs

Amendment 32 would implement individual blueline tilefish commercial and recreational ACLs and AMs (based on the revised ABC for blueline tilefish specified in Amendment 32) to end overfishing of the stock. In Amendment 32, the Council defines the blueline tilefish stock ACL equal to 98 percent of the ABC. Due to improved data reporting, the Council has consistently chosen to set ACL equal to ABC for snapper-grouper species. However, for blueline tilefish in Amendment 32, the Council decided to set the stock ACL at 98 percent of the proposed ABC to account for landings that occur north of the Council's area of jurisdiction. Approximately 2 percent of the total blueline tilefish harvested were landed north of the North Carolina/Virginia border. Therefore, this amendment would establish blueline tilefish stock ACLs (combined commercial and recreational ACLs, equivalent to a total ACL), of 35,632 lb (16,162 kg) for 2015, 53,457 lb (24,248 kg) for 2016, 71,469 lb (32,418 kg) for 2017, and 87,974 lb (39,904 kg) for 2018, and subsequent fishing years. All ACL weights are expressed in round weight. Additionally, Amendment 32 would establish sector specific ACLs for the blueline tilefish commercial and recreational sectors based upon the Council's previously established blueline tilefish allocations of 50.07 percent and 49.93 percent for the commercial and recreational sectors, respectively. The commercial ACLs would be 17,841 lb (8,093 kg) for 2015, 26,766 lb (12,141 kg) for 2016, 35,785 lb (16,232 kg) for 2017, and 44,048 lb (19,980 kg) for 2018, and subsequent fishing years. The recreational ACLs would be 17,791 lb (8,070 kg) for 2015, 26,691 lb (12,107 kg) for 2016, 35,685 lb (16,186 kg) for 2017, and 43,925 lb (19,924 kg) for 2018, and subsequent fishing years.

Amendment 32 would implement commercial and recreational sector in-season AMs for blueline tilefish. If commercial or recreational landings for blueline tilefish reach or are projected to reach the applicable ACL, then the commercial or recreational sector, as applicable, would be closed for the remainder of the fishing year. The recreational sector would not have an in-season closure if the Regional Administrator (RA) determines, using the best scientific information available, that a closure would be unnecessary.

Additionally, if the total ACLs are exceeded in a fishing year, then during the following fishing year, the commercial and recreational sectors will not have an increase in their respective sector ACLs.

Amendment 32 would also implement post-season ACL overage adjustments (paybacks) for blueline tilefish. For the commercial sector, if commercial landings exceed the commercial ACL, and the combined commercial and recreational ACL (stock ACL) is exceeded, and blueline tilefish are overfished, then during the following fishing year the commercial ACL would be reduced for that following year by the amount of the commercial ACL overage in the prior fishing year. For the recreational sector, if recreational landings for blueline tilefish exceed the applicable recreational ACL, and the combined commercial and recreational ACL (stock ACL) is exceeded, and blueline tilefish are overfished, then the recreational fishing season in the following fishing year would be reduced to ensure recreational landings do not exceed the recreational ACL the following fishing year. Additionally, the recreational ACL would be reduced by the amount of the recreational ACL overage from the prior fishing year. However, the recreational fishing season and recreational ACL would not be reduced if the RA determines, using the best scientific information available that no reduction is necessary.

Amendment 32 would also establish recreational ACTs for blueline tilefish. The ACT is the amount of annual catch of a stock or stock complex that is the management target of the fishery and accounts for management uncertainty in controlling the actual catch below the ACL so that the ACL is not exceeded. The Council is using the ACT as a management reference point to track performance of the management measures imposed on the recreational sector, and no AMs are triggered if recreational landings reach the recreational ACT. The recreational ACT is set less than the recreational ACL so that if, in the future, the Council chose to limit recreational harvest to the recreational ACT, it could serve as an in-season AM for the recreational sector. The recreational ACT could then help to reduce or possibly eliminate the need to close or implement post-season recreational AMs that are meant to correct for ACL overages.

Additional Blueline Tilefish Management Measures

Amendment 32 would implement a commercial trip limit and revise the recreational bag limit for blueline tilefish. This amendment would

establish a commercial trip limit of 100 lb (45 kg), gutted weight; 112 lb (51 kg), round weight. The trip limit is expected to slow the rate of harvest, potentially lengthening the commercial season during a fishing year, and reduce the risk of the commercial ACL from being exceeded.

For the recreational bag limit, blueline tilefish are currently part of the aggregate grouper and tilefish bag limit of 3 fish per person per day. Amendment 32 would revise the blueline tilefish bag limit within the aggregate to set a specific blueline tilefish bag limit of one per vessel per day for the months of May through August. There would be no retention of blueline tilefish by the recreational sector from January through April and from September through December each year. A bag limit of one blueline tilefish per vessel per day and an 8-month annual closure was determined to best meet the needs of ending overfishing, reducing recreational harvest, and potentially reducing blueline tilefish discards if blueline tilefish are targeted less during the open season because of the lower bag limit. The Council determined that the shortened summer seasonal opening could provide increased stability for planning purposes to recreational fishermen as it could minimize the risk of an in-season closure and the recreational ACL being exceeded, which may require post-season AMs in the following fishing year. In addition, the Council determined that an opening during the summer months could increase safety at sea by allowing fishing to occur in the generally calmer summer weather compared to a January 1 season opening during the winter. The vessel limit and fishing season dates for the blueline tilefish recreational sector would match what is being proposed by the Council for snowy grouper through Regulatory Amendment 20 to the FMP. The Council determined that similar recreational management measures and fishing seasons would be beneficial to the fish stocks as both species are caught at the same depths and have similar high release mortality rates.

Deep-Water Complex Commercial and Recreational ACLs, AMs, and Recreational ACT

Amendment 32 would revise the ACLs and AMs for the deep-water complex (composed of yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper). The ACLs are being revised for two reasons. First, as Amendment 32 proposes to remove blueline tilefish from the deep-water complex, this amendment would remove the current blueline tilefish portion from the complex total ACL. The permanent blueline tilefish portion of the complex ACL is 631,341 lb (286,371 kg), round weight, and the total deep-water complex ACL is 711,025 lb (322,516 kg), round weight. The emergency rule set both a new, separate blueline tilefish ACL of 224,100 lb (101,650 kg), round weight and a revised deep-water complex ACL without blueline tilefish of 79,684 lb (36,144 kg), round weight. Second, through Amendment 29 to the FMP, which is currently in rulemaking, the Council is proposing a revision to the ABC control rule for data-poor species based on recommendations from the SSC. If Amendment 29 is approved and implemented, the portion of the deep-water complex ABC for silk snapper and yellowedge grouper would change. The Council submitted Amendment 29 to the Secretary of Commerce on October 14, 2014, the notice of availability for the amendment was published in the **Federal Register** on November 24, 2014 (79 FR 69819), and the proposed rule published in the **Federal Register** on December 8, 2014 (79 FR 72567).

Therefore, Amendment 32 would change the deep-water complex total ACL (both sectors without blueline tilefish but with the increased catch levels for silk snapper and yellowedge grouper resulting from Amendment 29), to 170,278 lb (77,237 kg), round weight. Additionally, this amendment would establish sector specific ACLs for the deep-water complex based on the allocations for species in the deep-water complex that were established in the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012). The commercial ACL for the complex would be 131,634 lb (59,708 kg), round weight and the recreational ACL for the complex would be 38,644 lb (17,529 kg), round weight.

Amendment 32 would revise the AMs for the deep-water complex. The amendment would retain the current commercial in-season AM, revise the commercial post-season AM, and implement revised recreational AMs for the deep-water complex. In Amendment 32, if commercial or recreational landings for the deep-water complex reach or are projected to reach their applicable ACL, then the commercial or recreational sector, as applicable, would be closed for the remainder of the fishing year. The recreational sector would not have an in-season closure if the RA determined, using the best scientific information available, that a closure was unnecessary. The Council decided that the in-season AM for both sectors is necessary to reduce the risk that landings exceed the ACL.

Amendment 32 would also modify the post-season ACL overage adjustments for the deep-water complex. Currently, if deep-water complex commercial landings exceed the ACL and at least one species in the complex is overfished, the commercial ACL is reduced in the following year by the overage amount. The amendment would modify the commercial post-season AMs as follows: If commercial landings exceed the commercial ACL, and the combined commercial and recreational ACL (total ACL) is exceeded, and at least one species in the deep-water complex is overfished, then during the following fishing year the complex commercial ACL would be reduced for that following year by the amount of the complex's commercial ACL overage in the prior fishing year.

Currently, if recreational landings for the deep-water complex exceed the recreational ACL, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the length of the following recreational fishing season will be reduced by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. Amendment 32 would modify the recreational post-season AMs as follows: For the recreational sector, if recreational landings for the deep-water complex exceed the applicable recreational ACL, and the combined commercial and recreational ACL is exceeded, and at least one species in the complex is overfished, then the length of the recreational fishing season in the following fishing year would be reduced to ensure that recreational landings do not exceed the recreational ACL the following fishing year. Additionally, the recreational ACL would be reduced by the amount of the recreational ACL overage from the prior fishing year. However, the recreational fishing season and recreational ACL would not be reduced if the RA determined, using the best scientific information available that no reduction is necessary.

Amendment 32 also revises the deep-water complex recreational ACTs to reflect the removal of blueline tilefish from the complex and the change in the deep-water complex ABC as described above. These ACTs are management reference points to track performance of the management measures but do not trigger AMs.

A proposed rule that would implement measures outlined in Amendment 32 has been drafted. In

accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 32 for Secretarial review, approval, and implementation on November 14, 2014. Comments received by February 17, 2015, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 180 *et seq.*

Dated: December 15, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–29726 Filed 12–18–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 244

Friday, December 19, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Services (SES) Performance Review Board: Update

AGENCY: Office of Inspector General, U.S. Agency for International Development.

ACTION: Notice.

SUMMARY: This notice is hereby given of the appointment of members of the updated U.S. Agency for International Development, Office of Inspector General's Senior Executive Service Performance Review Board.

DATES: December 12, 2014.

FOR FURTHER INFORMATION CONTACT: Robert S. Ross, Assistant Inspector General for Management, Office of Inspector General, U.S. Agency for International Development, 1300 Pennsylvania Avenue NW., Room 8.08–029, Washington, DC 20523–8700; telephone 202–712–0010; FAX 202–216–3392; Internet Email address: *rross@usaid.gov* (for Email messages, the subject line should include the following reference –USAID OIG SES Performance Review Board).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(b)(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and Section 430.307 thereof in particular, one or more SES Performance Review Boards. The board shall review and evaluate the initial appraisal of each USAID OIG senior executive's performance by his or her supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. This notice updates the membership of the USAID OIG's SES Performance Review Board as it was last published on October 2, 2013.

Approved: December 12, 2014.

The following have been selected as regular members of the SES Performance Review Board of the U.S. Agency for International Development, Office of Inspector General:

Lisa Risley, Assistant Inspector General for Investigations
Robert S. Ross, Assistant Inspector General for Management
Lisa S. Goldfluss, Legal Counsel
Alvin A. Brown, Deputy Assistant Inspector General for Audit
Melinda Dempsey, Deputy Assistant Inspector General for Audit
Lisa McClennon, Deputy Assistant Inspector General for Investigations
Tricia Hollis, Assistant Inspector General for Management, Department of Treasury
Rodney DeSmet, Deputy Assistant Inspector General for Audit, Department of Agriculture
Frank Rokosz, Deputy Assistant Inspector General for Audit, Department of Housing and Urban Development

Dated: December 12, 2014.

Michael Carroll,

Acting Inspector General.

[FR Doc. 2014–29759 Filed 12–18–14; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0043]

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) are sponsoring a public meeting on February 5, 2015. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 36th Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex), taking place in Budapest, Hungary, February 23–27, 2015. The Deputy Under Secretary for Food Safety and the Food and Drug Administration recognize the importance of providing interested parties the opportunity to obtain background information on the 36th Session of CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, February 5, 2015 from 10:00 a.m.–12:00 p.m.

ADDRESSES: The public meeting will take place at the Jamie L. Whitten Building, United States Department of Agriculture (USDA), 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 36th Session of CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/*.

Dr. Gregory O. Noonan, U.S. Delegate to the 36th Session of CCMAS, and the FDA, invites U.S. interested parties to submit their comments electronically to the following email address: *Gregory.Noonan@fda.hhs.gov*

Call in Number

If you wish to participate in the public meeting for the 36th Session of CCMAS by conference call, please use the call-in number listed below:

Call in Number: 1–888–844–9904.

The participant code will be posted on the Web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings*.

For Further Information about the 36th Session of CCMAS Contact: Gregory O. Noonan, Ph.D., Research Chemist, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (240) 402–2250, Fax: (301) 436–2634, Email: *Gregory.Noonan@fda.hhs.gov*

For Further Information about the Public Meeting Contact: Marie Maratos, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250. Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *Marie.Maratos@fsis.usda.gov*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCMAS is responsible for defining the criteria appropriate to Codex Methods of Analysis and Sampling; serving as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories; specifying the basis of final recommendations submitted to it by other bodies; considering, amending, and endorsing, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee. The Committee is charged with elaborating sampling plans and procedures; considering specific sampling and analysis problems submitted to it by the Commission or any of its Committees; defining procedures, protocols, guidelines, or related texts for the assessment of food laboratory proficiency; and developing quality assurance systems for laboratories.

The Committee is hosted by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 36th Session of CCMAS will be discussed during the public meeting:

- Methods of Analysis and Sampling in Codex Standards at different steps
- Proposed Draft Principles for the Use of Sampling and Testing in International Food Trade-Explanatory notes and practical examples
- Discussion paper on development of procedures/guidelines for determining equivalency to type I methods
- Discussion paper on criteria approach for methods which use a sum of components
- Review and update of methods in Codex Stan 234–1999 (Recommended Methods of Analysis and Sampling)
- Follow-up methods of analysis and sampling plans
- Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 5, 2015 public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 36th Session of CCMAS, Gregory Noonan (see **ADDRESSES**). Written comments should state that they relate to activities of the 36th Session of CCMAS.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/committees-and-task-forces/mailing-list/CT_Index.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail

U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax

(202) 690–7442

Email

program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on December 15, 2014.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2014–29677 Filed 12–18–14; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, January 12–14, 2015 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, January 12, 2015

10:00–Noon Ad Hoc Committee Meetings: Closed to public

1:30–5:00 p.m. Roundtable Discussion on Hearing Access

Tuesday, January 13, 2015

9:30–11:00 a.m. Frontier Issues Ad Hoc Committee

11:00–Noon Ad Hoc Committees: Closed to public

1:30–2:00 p.m. Budget Committee

2:00–3:00 Planning and Evaluation Committee

3:00–4:00 Technical Programs Committee

Wednesday, January 14, 2015

1:30–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, January 14, 2015, the Access Board will consider the following agenda items:

- Approval of the draft November 19, 2014 meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues; Information and Communications Technologies; Medical Diagnostic Equipment; Passenger Vessels; Public Rights-of-Way and Shared Use Paths; Self-Service Transaction Machines; and Transportation Vehicles
- Budget Committee
- Technical Programs Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Executive Director's Report

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2014–29748 Filed 12–18–14; 8:45 am]

BILLING CODE 8150–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces a change in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective December 19, 2014.

FOR FURTHER INFORMATION CONTACT: John Lau, Human Resources Director, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations as to final annual performance ratings for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individuals to the CSB Senior Executive Service PRB:

PRB Members—Fran Leonard, Chief of Staff, Federal Mediation and Conciliation Service serves as Chair of the PRB. William Huneke, Director, Office of Economics, Surface Transportation Board will serve as a Member of the PRB.

Nancy Weiss, General Counsel, Institute of Museum and Library Services, continues to serve as a Member of the PRB, as announced in the **Federal Register** of September 20, 2013 (78 FR 57837).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: December 15, 2014.

Rafael Moure-Eraso,

Chairperson.

[FR Doc. 2014–29711 Filed 12–18–14; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Steel Import License.

OMB Control Number: 0625–0245.

Form Number(s): ITA–4141P.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 3,500.

Average Hours per Response: 0.17 hour/response (10 minutes).

Burden Hours: 92,878.

Needs and Uses: In order to monitor steel imports in real-time and to provide the public with real-time data, the Department of Commerce (DOC) must collect and provide timely aggregated summaries about these imports. The Steel Import License proposed by the International Trade Administration of the DOC is the tool used to collect the necessary information. The Census Bureau currently collects import data and disseminates aggregate information about steel imports. However, the time required to collect, process, and disseminate this information through Census can take up to 70 days after importation of the product, giving interested parties and the public far less time to respond to injurious sales.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: December 16, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–29736 Filed 12–18–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–166–2014]

Foreign-Trade Zone 231—Stockton, California Application for Subzone Expansion Medline Industries, Inc.; Lathrop, California

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Stockton, California, grantee of FTZ 231, requesting an additional site within Subzone 231A on behalf of Medline Industries, Inc. (Medline), located in Lathrop, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 15, 2014.

Subzone 231A was approved on March 4, 2007 (72 FR 14516, 03/28/2007) and currently consists of one site: *Site 1* (12.49 acres) 18250 Murphy Parkway, Lathrop. The applicant is now requesting authority to include an additional site: Proposed *Site 2* (9.03 acres), 501 D'Arcy Parkway, Lathrop. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 231.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 28, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 12, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *christopher.kemp@trade.gov* or (202) 482–0862.

Dated: December 15, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–29782 Filed 12–18–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On September 12, 2014, the Department of Commerce (the ''Department'') published the *Preliminary Results* of the 2013–2014 administrative review on certain frozen warmwater shrimp (''shrimp'') from the People's Republic of China (''PRC''), covering the period of review (''POR'') from February 1, 2013, through January 31, 2014.[1] We gave interested parties an opportunity to submit comments on the *Preliminary Results,* but none were received. Therefore, these final results are unchanged from the *Preliminary Results,* and we continue to find that Shantou Yuexing Enterprise Company (''SYEC''), and Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Regal'') did not have reviewable entries during this POR. Additionally, we continue to find that Rizhao Smart Foods Co., Ltd. (''Smart Foods'') is not eligible for a separate rate, and we will continue to treat it as part of the PRC-wide entity.

DATES: *Effective Date:* December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2014, the Department published the *Preliminary Results* of this administrative review. SYEC, Smart Foods, and Regal[2] submitted ''no shipment certifications'' to the Department.[3] In response to the Department's query, U.S. Customs and Border Protection (''CBP'') did not provide any evidence that contradicted SYEC or Regal's claims of no shipments. The Department received no comments from interested parties concerning the results of the CBP queries. Therefore, based on SYEC and Regal's certifications and our analysis of CBP information, we preliminarily determined that SYEC and Regal did not have any reviewable entries during the POR.[4] With regard to Smart Foods, we noted that because it was previously found to be part of the PRC-wide entity, and continues to be part of the PRC-wide entity for this review, we were not making a determination regarding its no shipments certification.[5] In the *Preliminary Results* we determined that 58 companies in total should be treated as part of the PRC-wide entity.[6] We invited interested parties to comment on the *Preliminary Results.* We received no comments from interested parties.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of

[1] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 79 FR 54678 (September 12, 2014) (''*Preliminary Results*'').

[2] In the *Initiation Notice,* we stated that because the order was revoked with respect to subject merchandise produced and exported by Regal, this administrative review covers all subject merchandise exported by Regal and manufactured by any company other than Regal. *See Initiation Notice* 79 FR at 18275 at footnote 5.

[3] *See* Letter to the Secretary of Commerce from Shantou Yuexing ''Shantou Yuexing Enterprise Company's Request for rescinding an Administrative Review'' (April 2, 2014); Letter to the Secretary of Commerce from Rizhao Smart Foods Co., Ltd. ''Certificate of No Sales'' (April 9, 2014); Letter to the Secretary of Commerce from Zhanjiang Regal Integrated Marine Resources Co., Ltd. ''No Shipments Statement of Zhanjiang Regal Integrated Marine Resources Co., Ltd.'' (June 2, 2014).

[4] *See Preliminary Results,* 79 FR at 54679.

[5] *Id.*

[6] *Id.*

[7] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce;[8] (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.0003, 0306.17.0006, 0306.17.0009, 0306.17.0012, 0306.17.0015, 0306.17.0018, 0306.17.0021, 0306.17.0024, 0306.17.0027, 0306.17.0040, 1605.21.1030, and 1605.29.1010. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of these orders is dispositive.[9]

Final Determination of No Shipments

In the *Preliminary Results,* the Department determined that Regal and SYEC had no sales of subject merchandise to the United States during the POR.[10] We stated, consistent with the recently announced refinement to its assessment practice in non-market economy (''NME'') cases, that the Department would not rescind the review in these circumstances but, rather, would complete the review with respect to Regal and SYEC and issue appropriate instructions to CBP based on the final results of the review. As stated above, we did not receive any comments on our *Preliminary Results* nor did we receive information from CBP indicating that there were reviewable transactions for Regal or SYEC during the POR. Therefore, we continue to determine that Regal and SYEC had no reviewable transactions of subject merchandise during the POR. Consistent with our ''automatic assessment'' clarification, the Department will issue appropriate instructions to CBP based on our final results.[11]

PRC-Wide Entity

Because Smart Foods was found to be part of the PRC-wide entity in recent administrative reviews of the *Order,*[12] had no reviewable sales or entries in this review, and, consequently, did not demonstrate eligibility for a separate rate, Smart Foods continues to be part of the PRC-wide entity. Therefore, we continue to find that 58 companies, including Smart Foods, should be treated as part of the PRC-wide entity. The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[13] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate is not subject to change. The Department finds that 58 companies[14] under review have

[8] The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the PRC case.

[9] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the CIT decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010), and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011) (''*Order*''); *see also Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

[10] *See Preliminary Results,* 79 FR at 54679.

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*''). *See also* the ''Assessment'' section of this notice, below.

[12] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 77 FR 53856 (September 4, 2012) at Appendix II; *see also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209 (September 12, 2013).

[13] *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[14] Those companies for which a review was requested and which we determine are part of the PRC-wide entity include: Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Angbang Seafood Co., Ltd., Beihai Boston Frozen Food Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Taiyang Aquatic Products Co., Ltd., Eimskip Logistics (Qingdao) Co., Ltd., EZ Logistics Inc., EZ Logistics LLC (Qingdao Branch), Fujian Chaohui International Trading, Fujian Rongjiang Import and Export Co., Ltd., Fujian Tea Import & Export Co., Ltd., Fujian Zhaoan Haili Aquatic Co., Ltd., Fuqing Dongwei Aquatic Products Ind., Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Guangdong Foodstuffs Import & Export (Group) Corporation, Guangdong Gourmet Aquatic Products Co., Ltd., Guangdong Jinhang Food Co., Ltd., Guangdong Jinhang Foods Co., Ltd., Guangdong Wanshida Holding Corp., Guangdong Wanya Foods Fty. Co., Ltd., Guangzhou Shi Runjin Trading Development Co., Ltd., Haida Seafood Co., Ltd., HaiLi Aquatic Product Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hua Yang (Dalian), International Transportation Service Co., Huazhou XinHai Aquatic Products Co. Ltd., Jiazhou Foods Industry Co., Ltd., Longhai Gelin Foods Co., Ltd., Longhai Gelin Seafoods Co., Ltd., Maoming Xinzhou Seafood Co., Ltd., North Seafood Group Co., Panwin International Logistics Co., Ltd., Pingye Foreign Transportation Corp. Ltd of Shantou, SE.Z., Rizhao Smart Foods Company Limited, Savvy Seafood Inc., Shanghai Lingpu Aquatic Products Co., Ltd., Shanghai Smiling Food Co., Ltd.. Shantou Freezing Aquatic Product Foodstuffs Co., Shantou Jiazhou Food Industrial Co., Ltd., Shantou Jin Cheng Food Co., Ltd., Shantou Jintai Aquatic Product Industrial Co., Ltd., Shantou Li An Plastic Products Co. Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Wanya Foods Fty. Co., Ltd., Thai Royal Frozen Food Zhanjiang Co., Ltd., Yangjiang Anyang Food Co., Ltd., Yangjiang City Haida

not established eligibility for a separate rate and, thus, they should continue to be part of the PRC-wide entity for these final results.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[15]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding that are not listed in footnote 14, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate (including the firms listed in footnote 14), the cash deposit rate will be the existing rate for the PRC-wide entity; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19

CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: December 12, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–29675 Filed 12–18–14; 8:45 am]

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Seafood Company Ltd., Yangjiang City Hongwai Seafood Company, Ltd., Zhangzhou Xinwanya Aquatic Product Co., Ltd., Zhangzhou Yanfeng Aquatic Product, Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Universal Seafood Corp., Zhanjiang Newpro Foods Co., Ltd., Zhaoan Yangli Aquatic Co., Ltd.

[15] *See Assessment Practice Refinement,* 76 FR at 65694.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel bar (SSB) from Brazil. The period of review (POR) is February 1, 2013, through January 31, 2014. The review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (Villares). We preliminarily find that subject merchandise has not been sold at less than normal value. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is SSB. The SSB subject to the order is currently classifiable under subheadings 7222.1000, 7222.1100, 7222.1900, 7222.2000, 7222.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price and export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[2] ACCESS is available to registered users at *http://access.trade.gov* and is

[1] *See* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from Brazil,'' dated concurrently with this notice (Preliminary Decision Memorandum), which is hereby adopted by this notice.

[2] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html*.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for Villares for the period February 1, 2013, through January 31, 2014.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[5] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If Villares' weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). If Villares' weighted-average dumping margin continues to be zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.''[6]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[7] This clarification will apply to entries of subject merchandise during the POR produced by Villares for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of SSB from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Villares will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.43 percent, the all-others rate established in the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil,* 59 FR 66914 (December 28, 1994). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
(1) Comparisons to Normal Value
A. Determination of Comparison Method
B. Results of Differential Pricing Analysis
(2) Product Comparisons
(3) Date of Sale
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(5) Export Price
(6) Normal Value
A. Home Market Viability and Comparison Market
B. Level of Trade
C. Cost of Production
1. Calculation of Cost of Production
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D. Calculation of Normal Value Based on Comparison Market Prices
V. Currency Conversion
VI. Recommendation

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[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.303 (for general filing requirements).

[5] *See* 19 CFR 351.310(c).

[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[7] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea). The period of review (POR) is February 1, 2013, through January 31, 2014. The Department preliminarily determines that the producers/exporters subject to this review made sales of subject merchandise at less than normal value or had no shipments of subject merchandise. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5760.

Scope of the Order

The products covered by the antidumping duty order are certain CTL plate. Imports of CTL plate are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

Preliminary Determination of No Reviewable Entries

We received timely submissions of letters from Hyosung Corporation (Hyosung), Samsung C&T Corporation (Samsung), and TCC Steel Corporation (TCC) reporting to the Department that they had no exports, sales or entries of subject merchandise to the United States during the POR.[2] Based on record evidence, we preliminarily determine that Hyosung, Samsung, and TCC had no reviewable entries during the POR. For additional information on our preliminary determination of no reviewable entries, *see* the Preliminary Decision Memorandum.

Methodology

We selected one company for individual examination in this administrative review, Dongkuk Steel Mill Co., Ltd. (DSM). The Department conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[3] ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.*

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period February 1, 2013, through January 31, 2014. The rate for the companies not selected for individual examination is equal to the weighted-average dumping margin for the selected respondent, DSM.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Bookuk Steel Co., Ltd.	0.56
Dongkuk Steel Mill Co., Ltd.	0.56
SM Solution Co. Ltd.	0.56

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[5]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[6] Requests should contain: (1) The party's name, address and telephone number; (2) the

[1] *See* the memorandum from Associate Deputy Assistant Secretary Gary Taverman to Assistant Secretary Paul Piquado entitled, ''Preliminary Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea'' dated concurrently with this notice and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* the no shipment letters from Hyosung and Samsung dated May 30, 2014, and TCC dated May 14, 2014. *See also* the correction letter from Samsung dated June 5, 2014. Hyosung reported that the correct name of Hyosung International in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262, 18264 (April 1, 2014), is Hyosung Corporation. *See* Hyosung's no shipment letter dated May 30, 2014.

[3] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (IA ACCESS) to AD and CVD Centralized Electronic Service System (ACCESS). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *See* 19 CFR 351.310(c).

number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

If DSM's weighted-average dumping margin continues to be above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[7] If DSM's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct U.S. Customs and Border Protection (CBP) not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.[8]

For entries of subject merchandise during the POR produced by DSM, for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

Consistent with the *May 2003 Clarification,* in the final results of this review, if we continue to find that Hyosung, Samsung, and TCC had no reviewable transactions of subject merchandise, we will instruct CBP to liquidate any existing entries of merchandise produced by Hyosung, Samsung, or TCC but exported by other companies at the all-others rate.[10]

For the companies which were not selected for individual examination, Bookuk Steel Co., Ltd., and SM Solution Co. Ltd., we will instruct CBP to apply the rates listed above to all entries of subject merchandise produced and/or exported by those firms.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of CTL plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.98 percent,[11] the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Preliminary Determination of No Reviewable Entries
Rates for Respondents Not Selected for Individual Examination
Comparisons to Normal Value
Determination of Comparison Method
Results of the Differential Pricing Analysis
Product Comparisons
Date of Sale
Level of Trade/CEP Offset
Export Price
Constructed Export Price
Normal Value
1. Overrun Sales
2. Selection of Comparison Market
3. Affiliated Parties
4. Affiliated Party Transactions and Arm's-Length Test
5. Cost of Production
6. Calculation of Normal Value Based on Comparison Market Prices
Currency Conversion
Recommendation

[FR Doc. 2014–29780 Filed 12–18–14; 8:45 am]

BILLING CODE 3510–DS–P

[7] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[8] *See Final Modification for Reviews,* 77 FR at 8102.

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*May 2003 Clarification*), for a full discussion of this clarification.

[10] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[11] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 54264, 54265 (September 11, 2014).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD664

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of online Webinar.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online Webinar to review new methodologies proposed for 2015 west coast groundfish stock assessments. The online SSC Webinar is open to the public.

DATES: The SSC Webinar will commence at 1 p.m. PT, Tuesday, January 6, 2015 and continue until 3 p.m. or as necessary to complete business for the day.

ADDRESSES: To attend the SSC Webinar, please join online at *http://www.gotomeeting.com/online/webinar/join-webinar* and enter the Webinar ID: 156–698–723, as well as your name and

email address. Once you have joined the Webinar, choose either your computer's audio or select ''Use Telephone.'' If you do not select ''Use Telephone'' you will be connected to audio using your computer's microphone and speakers (VolP). It is recommended that you use a computer headset as GoToMeeting allows you to listen to the meeting using your computer headset and speakers.

If you do not have a headset and speakers, you may use your telephone for the audio portion of the meeting by dialing this TOLL number 1–415–655–0059 (not a toll-free number); phone audio access code 892–406–076; audio phone pin shown after joining the Webinar System requirements for PC-based attendees: Windows 7, Vista, or XP; for Mac-based attendees: Mac OS X 10.5 or newer; and for mobile attendees: iPhone, iPad, Android phone, or Android tablet (see the GoToMeeting Webinar Apps). (See the PFMC GoToMeeting Audio Diagram for best practices). If you experience technical difficulties and would like assistance, please contact Mr. Kris Kleinschmidt at (503) 820–2425. Public comments during the webinar will be received from attendees at the discretion of the SSC chair. A public listening station will also be available at the Pacific Council office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The specific objectives of the SSC webinar are to review recommendations of the SSC's Groundfish Subcommittee regarding new methodologies proposed to inform 2015 groundfish stock assessments. No management actions will be decided in this Webinar.

Although non-emergency issues not identified in the webinar agenda may come before the webinar participants for discussion, those issues may not be the subject of formal action during this webinar. Formal action at the webinar will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the webinar participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the webinar date.

Dated: December 16, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–29744 Filed 12–18–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD668

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of the Standing, Special Reef Fish and Special Mackerel Scientific and Statistical Committee (SSC).

DATES: The meeting will convene at 1 p.m. Tuesday, January 6 until 12 noon Thursday, January 8, 2015.

ADDRESSES:

Meeting address: The meeting will be held at the Gulf Council's office.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *steven.atran@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agenda are as follows:

Standing, Special Reef Fish and Special Mackerel SSC Agenda, Tuesday, January 6, 2015, 1 p.m. Until Thursday, January 8, 2015, 12 Noon

1. Introductions and Adoption of Agenda
2. Approval of minutes
   a. August 6, 2013 Standing and Special Mackerel summary minutes
   b. August 6–7, 2014 Standing and Special Reef Fish summary minutes
   c. October 1–2, 2014 Standing and Special Reef Fish SSC summary minutes
3. Selection of SSC representative at January 26–29, 2015 Council meeting (Point Clear, AL)
4. Red Snapper Update Assessment
5. FWC Mutton Snapper Update Assessment
6. Greater Amberjack Rebuilding Timeline Projections
7. SEDAR 38 King Mackerel Benchmark Assessment (*this agenda item to be presented on Wednesday morning, January 7*)
   a. Review South Atlantic SSC recommendations
   b. Gulf SSC Recommendation for Overfishing Limit (OFL) and Acceptable Biological Catch (ABC)
8. Estimation of Red Tide Mortality on Gag
9. Ecosystem Modeling of red tide effects on gag and red grouper
10. Reevaluation of Gag OFL/ABC for 2015–16
    a. Council concerns with previous ABC recommendation
    b. Update on red tide
    c. OFL and ABC recommendation
11. Other Business

Adjourn

The Agenda is subject to change, and the latest version will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''SSC meeting -2015–01''.

The meetings will be webcast over the Internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids

should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 16, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–29745 Filed 12–18–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* January 19, 2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On October 10, 2014 (79 FR 61296), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the products to the Government.

2. The action will result in authorizing a small entity to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Rice, Long Grain, Parboiled

NSN: 8920–01–E62–4280—2/10 lb. Pkgs.
NSN: 8920–01–E62–4281—6/10 lb. Pkgs.
NPA: VisionCorps, Lancaster, PA
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–29733 Filed 12–18–14; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Closing Upper St. Anthony Falls Lock to Navigation, Located in Minneapolis, MN

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: Section 2010 of the Water Resources Reform and Development Act of 2014 (WRRDA) directed the Secretary of the Army to close the Upper St. Anthony Falls Lock and Dam located on the Mississippi River at river mile 853.9 no later than 1 year after the enactment date of WRRDA 2014. The provision specifically allows the U.S. Army Corps of Engineers to continue to carry out emergency lock operations necessary to mitigate flood damage. The WRRDA was enacted on June 10, 2014. To comply with WRRDA, the Corps will close Upper St. Anthony Falls Lock to navigation by June 10, 2015. The final closure date will be determined, within the statutory deadline, after the environmental analysis required by the National Environmental Policy Act is complete.

DATES: The Draft Environmental Assessment for this lock closure action will be available for public comment through January 23, 2015. The public notice and a link to the Environmental Assessment can be found at: *http://www.mvp.usace.army.mil/Home/PublicNotices.aspx.*

ADDRESSES: Questions concerning the Draft Environmental Assessment can be addressed to Mr. Elliott Stefanik, U.S. Army Corps of Engineers, 180 Fifth Street East, Suite 700, St. Paul, MN 55101–1678, or by email at *elliott.l.stefanik@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey McKee at Corps of Engineers Headquarters in Washington, DC, by phone at 202–761–8648.

SUPPLEMENTARY INFORMATION: The legal authority for the regulation governing the use, administration, and navigation of the Upper St. Anthony Falls lock is Section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended, which is codified at 33 U.S.C. Section 1. This statute requires the Secretary of the Army to ''prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States'' as the Secretary determines may be required by public necessity. Reference 33 CFR 207.300, Mississippi River above Cairo, Ill., and their tributaries; use, administration, and navigation.

Brenda S. Bowen,

Army Federal Liaison Officer.

[FR Doc. 2014–29716 Filed 12–18–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of Final Environmental Impact Statement for the Dallas Floodway Project, in the City of Dallas, Dallas County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Fort Worth District has prepared a Final Environmental Impact Statement (FEIS) that analyzes the potential effects for the implementation of flood risk management elements, ecosystem restoration features, recreation enhancement features, interior drainage plan improvements, and other proposed projects in and around the Dallas

Floodway, in the City of Dallas, Dallas County, TX. The FEIS documents the existing condition of environmental resources in and around areas considered for development, and potential impacts on those resources as a result of implementing the alternatives. The alternatives considered in detail are: (1) Alternative 1, the No-Action Alternative or ''Future Without Project Condition;'' (2) Alternative 2, the Proposed Action. Alternative 2 evaluates two different design variations, one that anticipates potential Trinity Parkway construction within the Floodway and one that does not.

DATES: All written comments must be postmarked on or before January 18, 2015.

ADDRESSES: Comments may be submitted in writing to: Marcia Hackett, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300, or via email to *marcia.r.hackett@usace.army.mil*.

FOR FURTHER INFORMATION CONTACT: Marcia Hackett at (817) 886–1373 or via email at *marcia.r.hackett@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The USACE, Fort Worth District has prepared a FEIS in accordance with the National Environmental Policy Act. The FEIS has been developed as a cooperative effort by the USACE Fort Worth District, the City of Dallas, TX (non-federal sponsor), and the Federal Highway Administration (cooperating agency). The FEIS describes the anticipated environmental and socioeconomic impacts of the proposed Dallas Floodway Project, and revises the Draft EIS released April 18, 2014. The City of Dallas proposes to implement flood risk management elements, Balanced Vision Plan (BVP) ecosystem and recreation features, and Interior Drainage Plan (IDP) improvements within the Dallas Floodway. The project area is located along the Trinity River from the abandoned Atchison, Topeka and Santa Fe bridge upstream to the confluence of the West and Elm Forks, then upstream along the West Fork for approximately 2.2 miles, and upstream along the Elm Fork for about 4 miles.

Section 5141 of the Water Resources Development Act of 2007 (Pub. L. 110–114; 121 Stat.1041), as amended in 2014, provides authorization for implementation of the City of Dallas Balanced Vision Plan Study and Interior Drainage Plan improvements following the preparation of required NEPA documentation. This action is in accordance with title 33 Code of Federal Regulations section 325.2(a)(4), which discusses NEPA procedures and documentation. The purpose of the Proposed Action is to reduce flood risk through flood risk management, enhance ecosystems, and provide greater recreation opportunities within the Dallas Floodway in Dallas, Texas. Flooding events on the Trinity River have historically caused loss of lives and damage to property and structures. Urbanization and past channelization and clearing have significantly degraded the natural terrestrial and aquatic habitat of the Dallas Floodway. Furthermore, the City of Dallas lacks sufficient recreational opportunities for citizens and visitors. Implementation of the Proposed Action is needed to comply with section 5141 of the Water Resources Development Act of 2007, as amended.

In addition to the Federal project described above, the City of Dallas has submitted an application for approval of the entire project (BVP and IDP) as a locally sponsored action under the provisions of 33 United States Code section 408 (section 408), section 404 of the Clean Water Act (CWA), and section 10 of the Rivers and Harbors Act. The Permit Number for this action is SWF–2014–00151.

USACE issued and made publicly available a Draft EIS (DEIS) on April 18, 2014. The findings of the DEIS were presented at a public meeting held on May 8, 2014, from 5:30 to 9:30 p.m., at the Dallas City Hall, L1FN Auditorium, 1500 Marilla, Dallas, Texas 75201. The DEIS was also made available via internet posting, hard copies available a local libraries, and discs provided on request. The comment period ran from April 18 through June 17, 2014. The USACE considered and responded to all relevant comments received during the Public Review Period and incorporated all relevant comments into the FEIS. Most of the comments were generally beyond the scope of the EIS and were related to the potential Trinity Parkway project, a separate project proposed by others.

Document Availability: Copies of the FEIS may be reviewed at the following location: U.S. Army Corps of Engineers, Fort Worth District Web site: *http://www.swf.usace.army.mil/Missions/WaterSustainment/DallasFloodway.aspx* Electronic copies may also be requested in writing at Marcia R. Hackett, P.O. Box 17300, Fort Worth, TX 76102–0300 or by telephone (817) 886–1373.

Rob Newman,

Director, Trinity River Corridor, Project Office.

[FR Doc. 2014–29714 Filed 12–18–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0145]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; College Affordability and Transparency Explanation Form (CATEF) 2015–2017

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 20, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0145 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ashley Higgins, 202–219–7061.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested

data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: College Affordability and Transparency Explanation Form (CATEF) 2015–2017.

OMB Control Number: 1840–0822.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 655.

Total Estimated Number of Annual Burden Hours: 2,172.

Abstract: The Office of Postsecondary Education (OPE) is seeking a renewed three-year clearance for the College Affordability and Transparency Explanation Form (CATEF) data collection. OPE has collected this information since 2011–12 and the collection of information through CATEF is required by § 132 of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. 1015a with the goal of increasing the transparency of college tuition prices for consumers. This submission is for the 2014–15, 2015–16, and 2016–17 collection years. CATEF collects follow-up information from institutions that appear on the tuition and fees and/or net price increase College Affordability and Transparency Center (CATC) Lists for being in the five percent of institutions in their institutional sector that have the highest increases, expressed as a percentage change, over the three-year time period for which the most recent data are available. The information collected through CATEF is used to write a summary report for Congress which is also posted on the CATC Web site (accessible through the College Navigator).

Dated: December 16, 2014

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–29723 Filed 12–18–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, invites public comment on a three year extension to a collection of information that DOE is developing for submission to the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before February 17, 2015. If you anticipate difficulty in submitting comments within that period, please contact Janet N. Freimuth, as listed below, as soon as possible.

ADDRESSES: Written comments may be sent to Janet N. Freimuth, HG–6, Acting Director, Office of Conflict Prevention and Resolution, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; or by fax at 202–287–1415 or by email at *janet.freimuth@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Janet Freimuth at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1910–5118; (2) *Information Collection Request Title:* ''Technology Partnerships Ombudsman Reporting Requirements''; (3) *Type of Review:* Renewal; (4) *Purpose:* The information collected will be used to determine whether the Technology Partnerships Ombudsmen are properly helping to resolve complaints from outside organizations regarding laboratory policies and actions with respect to technology partnerships; (5) *Annual Estimated Number of Respondents:* 22; (6) Annual Estimated Number of Total Responses: 88; (7) *Annual Estimated Number of Burden Hours:* 50; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $ 2,500. The cost burden is based on an average hourly rate of $ 50 per hour. We expect no start up or maintenance costs.

Statutory Authority: Section 11 of the Technology Transfer Commercialization Act of 2000, Public Law 106–404, codified at 42 U.S.C. 7261c(c)(3)(C).

Issued in Washington, DC, on December 15, 2014.

Janet N. Freimuth,

Acting Director, Office of Conflict Prevention and Resolution, Office of Hearings and Appeals.

[FR Doc. 2014–29737 Filed 12–18–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 14–98–LNG]

SCT&E LNG, LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on July 24, 2014, by SCT&E LNG, LLC (SCT&E LNG), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) to any country with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries). SCT&E LNG seeks authorization to export the LNG in a volume up to 12 million metric tons per annum, which SCT&E LNG states is equivalent to approximately 1.6 billion cubic feet (Bcf) per day of natural gas (or 584 Bcf per year). SCT&E LNG seeks authorization to export the LNG by

vessel from its proposed LNG terminal, which SCT&E LNG intends to construct, own, and operate on Monkey Island in the Calcasieu Ship Channel in Cameron Parish, Louisiana. SCT&E LNG requests this authorization for a 30-year term to commence on the earlier of the date of first export or 10 years from the date the requested authorization is granted. SCT&E LNG seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. The Application was filed under section 3(a) of the Natural Gas Act (NGA). Additional details can be found in SCT&E LNG's Application, posted on the DOE/FE Web site at: *http://energy.gov/fe/downloads/scte-lng-llc-14–98-lng*. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, February 17, 2015.

ADDRESSES:

Electronic Filing by email

fergas@hq.doe.gov.

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Cassandra Bernstein, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and DOE will consider any issues required by law or policy. To the extent determined to be relevant, these issues will include the domestic need for the natural gas proposed to be exported, the adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE may also consider other factors bearing on the public interest, including the impact of the proposed exports on the U.S. economy (including GDP, consumers, and industry), job creation, the U.S. balance of trade, and international considerations; and whether the authorization is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Due to the complexity of the issues raised by the Applicant, interested parties will be provided 60 days from the date of publication of this Notice in which to submit their comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 14–98–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 14–98–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Issued in Washington, DC, on December 15, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2014–29738 Filed 12–18–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–18–000]

Eastern Shore Natural Gas Company; Notice of Application for Certificate of Public Convenience and Necessity

Take notice that on November 21, 2014 Eastern Shore Natural Gas Company (Eastern Shore), 1110 Forrest Avenue, Dover, Delaware, 19904, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity authorizing Eastern Shore to construct, own, operate and maintain the White Oak Mainline Expansion Project. The Project is designed to provide 45,000 Dekatherms per day (Dth/d) of firm transportation service for Calpine Energy Services, L.P. Eastern Shore proposes to construct approximately 7.2 miles of 16-inch diameter pipeline looping in Chester County, PA and 3,550 horsepower (hp) of additional compression at Eastern Shore's existing Delaware City Compressor Station in New Castle County, DE. Eastern Shore requests a predetermination for rolled-in rate treatment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to William Rice, King & Spalding LLP, 1700 Pennsylvania Avenue NW., Suite 200, Washington, DC 20006, by phone 202–626–9602, by fax 202–626–3737, or by email *wrice@kslaw.com*.

Specifically, the pipeline loop will be constructed in two segments: (1) Approximately 3.9 miles in Kemblesville, PA and (2) approximately 3.3 miles near Cochranville, PA, just north of Eastern Shore's existing Daleville Compressor Station. Eastern Shore states that the new compressor facilities required at the Delaware Compressor Station will consist of two new natural-gas fired reciprocating internal combustion engines with state of the art air pollution control equipment and silencers with an oxygen catalyst to reduce air emissions. Eastern Shore also states that they are negotiating with landowners regarding two different parcels for Delaware City Compressor Station expansion. Eastern Shore requests that the Commission issue the requested authorizations on or before May 1, 2015, in order to allow Eastern Shore sufficient time to meet the October 1, 2015 in-service date set forth in the precedent agreement. The estimated cost of the project is $29,750,000.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 29, 2014.

Dated: December 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29704 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

	Docket Nos.
Origin Wind Energy, LLC	EG14–92–000
Beech Ridge Energy LLC	EG14–93–000
Beech Ridge Energy II LLC	EG14–94–000
Beech Ridge Energy Storage LLC	EG14–95–000
Tonopah Solar Energy, LLC	EG14–96–000
Spring Canyon Interconnection LLC	EG14–97–000
Spring Canyon Energy III LLC	EG14–98–000
Spring Canyon Energy II LLC	EG14–99–000
Spring Canyon Energy LLC	EG14–100–000
Seiling Wind Interconnection Services, LLC	EG14–101–000
Hoopeston Wind LLC	EG14–102–000
Calpine Fore River Energy Center, LLC	EG14–103–000
Solar Star California XIII, LLC	EG14–104–000
Indeck Wharton, LLC	EG14–105–000
Palo Duro Wind Interconnection Services, LLC	EG14–106–000
Rattlesnake Wind I LLC	EG14–107–000
Roundtop Energy LLC	EG14–108–000
Bornish Wind, LP	FC14–16–000
Kerwood Wind, LP	FC14–17–000

Take notice that during the month of November 2014, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: December 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29705 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–499–000; Docket No. CP13–502–000]

Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.; Notice Establishing Comment Due Date

On November 13, 2014, Stop the Pipeline (STP) filed a motion (motion) requesting that the Commission compel the Constitution Pipeline Company, LLC (Constitution) to provide STP with the precedent agreements entered into by and between Constitution and specific shippers for firm transportation service on certain proposed projects. Constitution filed the precedent agreements and requested privileged treatment for these documents pursuant to section 388.112(b) of the Commission's regulations. On November 24, 2014, STP withdrew its motion, stating that it received a copy of the precedent agreements from Constitution on November 21, 2014.

Notice is hereby given that STP may file additional comments in response to Constitution's filed precedent agreements until and including January 2, 2015.[1]

Dated: December 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29703 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

[1] On December 2, 2014, the Commission issued an order in these proceedings authorizing the proposed projects, subject to conditions. 149 FERC ¶ 61,199 (2014). Requests for rehearing are due January 2, 2015. *See* 18 CFR 385.713 and 385.2007(a)(2) (2014).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ15–4–000]

Orlando Utilities Commission; Notice of Filing

Take notice that on December 2, 2014, Orlando Utilities Commission submits tariff filing 35.28(e): Refile Order No. 1000 Compliance with Order on Rehearing to be effective 1/1/2015.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* 136 FERC ¶ 61,051 (2011), *order on reh'g and clarification,* 139 FERC ¶ 61,132 (2012) (Order No. 1000–A), order on reh'g and clarification, 141 FERC ¶ 61,044 (2012) (Order No. 1000–B).

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 29, 2014.

Dated: December 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29707 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–595–000]

Covanta Fairfax, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Covanta Fairfax, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 29, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29706 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–612–000]

Moore Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Moore Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 2, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 12, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29700 Filed 12–18–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9018–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 12/08/2014 Through 12/12/2014

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://*

www.epa.gov/compliance/nepa/eisdata.html.

EIS No. 20140358, Draft EIS, HUD, CA, Sunnydale-Velasco HOPE SF Master Plan Project, Comment Period Ends: 02/17/2015, Contact: Eugene Flannery 415–701–5598.

EIS No. 20140359, Draft Supplement, FHWA, DC, South Capitol Street, Comment Period Ends: 02/02/2015, Contact: Michael Hicks 202–219–3513.

EIS No. 20140360, Draft EIS, USFWS, TX, Southern Edwards Plateau Habitat Conservation Plan, Comment Period Ends: 03/fxsp0;20/2015, Contact: Vanessa Burge 505–248–6420.

EIS No. 20140361, Final EIS, USFS, CO, White River National Forest Oil and Gas Leasing, Review Period Ends: 02/10/ 2015, Contact: Sarah Hankens 970–625–6840.

EIS No. 20140362, Final EIS, USFS, VA, Revised Land and Resource Management Plan for the George Washington National Forest, Review Period Ends: 01/20/2015, Contact: Karen Overcash 540–265–5175.

EIS No. 20140363, Draft EIS, FHWA, MN, US Highway 53 from Virginia to Eveleth, Comment Period Ends: 02/02/2015, Contact: Philip Forst 651–291–6100.

EIS No. 20140364, Draft EIS, APHIS, 00, Feral Swine Damage Management: A National Approach, Comment Period Ends: 02/02/2015, Contact: Kimberly K. Wagner 608–837–2727.

EIS No. 20140365, Final EIS, USACE, TX, Dallas Floodway Project, Review Period Ends: 01/20/2015, Contact: Marcia Hackett 817–886–1373.

EIS No. 20140366, Final EIS, NPS, DC, Anacostia Park Wetlands and Resident Canada Goose Management Plan, Review Period Ends: 01/20/2015, Contact: Robert Mocko 202–690–5170.

EIS No. 20140367, Draft EIS, USFS, OR, Antelope Grazing Allotments, Comment Period Ends: 02/02/2015, Contact: Lucas Phillips 541–947–2151.

EIS No. 20140368, Draft EIS, BLM, OR, Land use Plan Amendments for the Boardman to Hemingway Transmission Line Project, Comment Period Ends: 03/19/2015, Contact: Tamara Gertsch 307–775–6115.

EIS No. 20140369, Final EIS, NOAA, CA, Cordell Bank and Gulf of the Farallones National Marine Sanctuaries Expansion, Review Period Ends: 01/20/2015, Contact: Helene Scalliet 301–713–7281.

EIS No. 20140370, Draft Supplement, USN, WA, Northwest Training and Testing, Comment Period Ends: 02/02/2015, Contact: John Mosher 360–257–3234.

EIS No. 20140371, Draft EIS, USACE, CA, South San Francisco Bay Shoreline Phase I, Comment Period Ends: 02/02/2015, Contact: William DeJager 415–503–6866.

EIS No. 20140372, Draft EIS, DOE, 00, Plains and Eastern Clean Line Transmission Project, Comment Period Ends: 02/02/2015, Contact: Jane Summerson 505–845–4091.

Amended Notices

EIS No. 20140306, Draft EIS, USACE, CA, River Islands at Lathrop, Phase 2B, Comment Period Ends: 01/23/2015, Contact: William Guthrie 916–557–5269.

Revision to the FR Notice Published 10/24/2014; Extending Comment Period from 12/08/2014 to 01/23/2015.

Dated: December 16, 2014.

Dawn Roberts

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–29784 Filed 12–18–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0763; FRL–9918–44]

Registration Review; Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this notice, EPA is opening the public comment period for several registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. For flufenpyr-ethyl, EPA is seeking comment on the preliminary work plan, the ecological problem formulation, and the human health draft risk assessment. For Sodium Fluoride, Yellow Mustard Seed and Sulfonic Acid, EPA is seeking comment on the Combined Work Plan, Summary Document, and Proposed Interim Registration Review Decision, which includes the human health and ecological risk assessments. This notice also announces a registration review case closure for thiacloprid.

DATES: Comments must be received on or before February 17, 2015.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in the table in Unit III.A.

For general information contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; fax number: (703) 308–8005; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific

entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this notice, compared to the general population.

II. Authority

EPA is initiating its review of the pesticides identified in this notice pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE 1—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	Chemical review manager or regulatory action leader, telephone No., email address
3-methyl-cyclohexen-1-one (Case 6074).	EPA–HQ–OPP–2014–0671	Gina Burnett, (703) 605–0513, *burnett.gina@epa.gov*.
Alkyl trimethylenediamines (ATMD) (Case 3014).	EPA–HQ–OPP–2014–0656	Donna Kamarei, (703) 347–0443 *kamarei.donna@epa.gov*.
Boscalid (Case 7039)	EPA–HQ–OPP–2014–0199	Maria Piansay, (703) 308–8063 *piansay.maria@epa.gov*.
Dikegulac sodium (Case 3061)	EPA–HQ–OPP–2014–0771	Matthew Manupella, (703) 347–0411 *manupella.matthew@epa.gov*.
Ethoxyquin (Case 0003)	EPA–HQ–OPP–2014–0780	Khue Nguyen, (703) 347–0248, *nguyen.khue@epa.gov*.
Fenpyroximate (Case 7432)	EPA–HQ–OPP–2014–0572	Miguel Zavala, (703) 347–0504 *zavala.miguel@epa.gov*.
Flonicamid (Case 7436)	EPA–HQ–OPP–2014–0777	Ricardo Jones, (703) 347–0493, *jones.ricardo@epa.gov*.
Fluazifop butyl, isomers (Case 2285)	EPA–HQ–OPP–2014–0779	Matthew Manupella, (703) 347–0411 *manupella.matthew@epa.gov*.
Flufenpyr-ethyl (Case 7262)	EPA–HQ–OPP–2014–0768	Steven Snyderman, (703) 347–0249 *snyderman.steven@epa.gov*.
HHT (Grotan) (Case 3074)	EPA–HQ–OPP–2014–0654	Tina Pham, (703) 308–0125, *pham.thao@epa.gov*.
Metolachlor & s-Metolachlor (Case 0001).	EPA–HQ–OPP–2014–0772	Steven Snyderman, (703) 347–0249 *snyderman.steven@epa.gov*.
Napthaleneacetic acid (Case 0379)	EPA–HQ–OPP–2014–0773	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov*.
Oxadiazon (Case 2485)	EPA–HQ–OPP–2014–0782	Katherine St. Clair, (703) 347–8778 *stclair.katherine@epa.gov*.
Oxyfluorfen (Case 2490)	EPA–HQ–OPP–2014–0778	Benjamin Askin, (703) 347–0503, *askin.benjamin@epa.gov*.
Pentachlorophenol (Case 2505)	EPA–HQ–OPP–2014–0653	Sandra O'Neill, (703) 347–0141 *oneill.sandra@epa.gov*.
Sodium fluoride (Case 3132)	EPA–HQ–OPP–2014–0655	SanYvette Williams, (703) 305–7702, *williams.sanyvette@epa.gov*.
Sulfonic acid salts (Case 7619)	EPA–HQ–OPP–2014–0762	Roy Johnson, (703) 347–0492, *johnson.roy@epa.gov*.
Triclopyr (Case 2710)	EPA–HQ–OPP–2014–0576	Brittany Pruitt, (703) 347–0289, *pruitt.brittany@epa.gov*.
Yellow mustard seed (Case 7618)	EPA–HQ–OPP–2014–0762	Roy Johnson, (703) 347–0492, *johnson.roy@epa.gov*.

For flufenpyr-ethyl (Case 7262), EPA is seeking comment on the preliminary work plan, the ecological problem formulation, and the human health draft risk assessment. For Sodium Fluoride (Case 3132), Yellow Mustard Seed (Case 7618) and Sulfonic Acid (Case 7619), EPA is seeking comment on the Combined Work Plan, Summary Document, and Proposed Interim Registration Review Decision, which includes the human health and ecological risk assessments. This notice also announces 1 case closure. On August 6, 2014, the Agency issued a product cancellation order in the **Federal Register** (79 FR 45798; FRL–9914–09) for all thiacloprid product registrations. Due to the cancellation of all registered thiacloprid products in the United States, the Agency closed the registration review case for thiacloprid. The ''Notice of Registration Review Case Closure for Thiacloprid'' is available in docket EPA–HQ–OPP–2012–0218 at *http://www.regulations.gov*.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 10, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–29578 Filed 12–18–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0633]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 17, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0633.

Title: 73.1230, 74.165, 74.432, 74,564, 74.664, 74.765, 74.832, 74.1265, Posting or Filing of Station License.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit Institutions; Federal Government and State, local or tribal government.

Number of Respondents and Responses: 2,784 respondents and 2,784 responses.

Estimated Time per Response: 0.083 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 231 hours.

Total Annual Cost: $24,860.

Privacy Act Impact Assessment: No impact(s)

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On June 2, 2014, the Commission released a Second Report

and Order, FCC 14–62, WT Docket Nos. 08–166 and 08–167 and ET Docket No. 10–24, ''Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band.'' This order expanded eligibility for low power auxiliary station licenses under Part 74 by adding two new categories of eligible entities: ''large venue owner or operator'' and ''professional sound company.'' To be eligible for a Part 74 license, a large venue owner or operator and a professional sound company must routinely use 50 or more low power auxiliary station devices, where the use of such devices is an integral part of major events or productions

The Commission seeks OMB approval for a revision of this currently approved information collection to increase the number of respondents by 200 and the number of responses by 200 to reflect the estimated increase in licensed low power auxiliary station operators who will be subject to the requirement at section 74.832(j) to retain the station license in the licensee's files or post it at the transmitter or control point of the stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–29754 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1155]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 17, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1155.

Title: Sections 15.713, 15.714, 15.715 and 15.717, TV White Space Broadcast Bands.

Form No.: Not Applicable.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; Federal government; and state, local or tribal government.

Number of Respondents and Responses: 2,000 respondents and 2,000 responses.

Estimated Time per Response: 2.0 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154(1), 302, 303(c), 303(f), and 307.

Total Annual Burden: 4,000 hours.

Total Annual Cost: $100,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. Respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On June 2, 2014, the Commission released a Second Report and Order, FCC 14–62, WT Docket Nos. 08–166 and 08–167 and ET Docket No. 10–24, ''Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band.'' This order expanded eligibility for low power auxiliary station licenses under Part 74 by adding two new categories of eligible entities: ''large venue owner or operator'' and ''professional sound company.'' The Commission is now requesting OMB approval for a revision of this information collection to increase by 200 the number of licensed low power auxiliary station operators who will be able to register in the database under 47 CFR 15.713(h)(8) to reflect the estimated of number of entities that will become eligible for a license under the Second Report and Order and which will register in the database. Because these newly-eligible licensees would likely have been able to register on an unlicensed basis under 47 CFR 15.713(h)(9) (and now will register as licensees instead), the Commission is also decreasing by 200 the number of unlicensed low power auxiliary station operators who will register in the database on an unlicensed basis under 47 CFR 15.713 (h)(9).

The Commission seeks Office of Management and Budget (OMB) approval for a revised information collection for an increase in the number of LPAS licensees that will register under 47 CFR 15.713(h)(8) and a decrease in the number of unlicensed wireless microphone users that will register on an unlicensed basis under 47 CFR 15.713(h)(9).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–29755 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0512]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before February 17, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0512.

Title: ARMIS Annual Summary Report.

Report Number: FCC Report 43–01.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 53 respondents; 53 responses.

Estimated Time per Response: 88 hours for those that have not applied for conditional forbearance; 16 hours for those that have received conditional forbearance.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 219 and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,928 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not involved in the ARMIS Report 43–01. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The information contained in FCC Report 43–01 has helped the Commission fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data provided in the reports. Automating and organizing data submitted to the Commission facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps, and provide an improved basis for auditing and other oversight functions. Automated reporting also enhances the Commission's ability to quantify the effects of policy proposals. The Commission has granted all carriers conditional forbearance from ARMIS 43–01. To obtain this forbearance, carriers must have a data retention compliance plan approved by the Commission and continue to file certain ARMIS 43–01 data related to pole attachments. Of the nine holding companies/affiliated carrier groups currently subject to ARMIS 43–01, four have requested and received conditional forbearance. The remaining five holding companies/affiliated carrier groups have not requested conditional forbearance, but we anticipate that they may do so in the future.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–29692 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Consent Agenda Items From December 11, 2014 Open Meeting

The following consent agenda items have been deleted from the list of items scheduled for consideration at the Thursday, December 11, 2014, Open Meeting and previously listed in the Commission's Notice of December 4, 2014.

Item No.	Bureau	Subject
1	ENFORCEMENT	TITLE: AERCO Broadcasting Corporation, Licensee of Station WSJU–TV, San Juan, Puerto Rico. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by AERCO Broadcasting Corporation seeking review of a Forfeiture Order issued by the Enforcement Bureau.
2	MEDIA	TITLE: Educational Media Foundation, Application for a Construction Permit for a Minor Change to a Licensed Facility, Station W267AT, Sherburne, New York, MO&O. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Educational Media Foundation seeking review of an application dismissal by the Media Bureau.
3	MEDIA	TITLE: Silver Fish Broadcasting, Inc., License Status of Silent Station DWTTT(FM), Stratford, NH. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Silver Fish Broadcasting, Inc. seeking review of a Media Bureau decision.

Item No.	Bureau	Subject
4	MEDIA	TITLE: JNE Investments, Inc., Application for New AM Station at Bethel, MN and Langer Broadcasting Group, LLC, Application for New AM Station at Chanhassen, MN. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by JNE Investments, Inc. seeking review of a decision by the Media Bureau.
5	MEDIA	TITLE: Application of Radio One Licenses, LLC for a License to Cover the Modified Facilities of WOLB(AM), Baltimore, Maryland and Application of WIOO Radio, Inc. for a Minor Change to the Licensed Facilities of WIOO(AM), Carlisle, Pennsylvania. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning two Applications for Review filed by Radio One Licenses seeking review of decisions by the Media Bureau.
6	MEDIA	TITLE: Estate of Linda Ware, Cynthia Ramage, Executor, Application to Assign the License of Broadcast Station KZPO(FM), Lindsay, California, Estate of H.L. Charles, Robert Willing, Executor, Application to Assign the Construction Permit of Broadcast Station KZPE(FM), Ford City, California, William L. Zawila, Application to Assign the Construction Permit of Broadcast Station KNGS(FM), Coalinga, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review jointly filed by jointly by the Estate of Linda Ware, Cynthia Ramage, Executor; the Estate of H.L. Charles, Robert Willing, Executor and William L. Zawila seeking review of assignment application dismissals by the Media Bureau.
7	MEDIA	TITLE: People of Progress, Inc. Application for a New LPFM Station at Redding, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by People of Progress, Inc. seeking review of an application dismissal by the Media Bureau.
8	MEDIA	TITLE: Roman Catholic Diocese of Portland, Maine, Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Scarborough, Maine; New Hampshire Public Radio, Inc., Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Holderness, New Hampshire; University of Massachusetts, Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Gloucester, Massachusetts and Plus Charities, Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Coggon, Iowa. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning four Applications for Review seeking review of Media Bureau decisions dismissing applications for new noncommercial educational FM radio stations.
9	MEDIA	TITLE: Channel 23 Limited Partnership, Applications for a Minor Change in Facilities and a License to Cover Construction Permit for Class A Television Broadcast Station WWME–CA, Chicago, Illinois. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review jointly filed by KM LPTV of Chicago-13, L.L.C. and KM LPTV of Chicago-28, L.L.C. seeking review of a Media Bureau decision.
10	MEDIA	TITLE: Gray Television Licensee, LLC, Licensee of Station WAHU–CD. SUMMARY: The Commission will consider a Memorandum Opinion and Order and Adopting Order concerning a renewal and consent decree between the Media Bureau and Gray Television.
11	MEDIA	TITLE: Christopher Falletti, Application for Construction Permit for New FM Station Medina, North Dakota. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Two Rivers Broadcasting, Inc. seeking review of a Media Bureau decision.
12	MEDIA	TITLE: Anniston Seventh-Day Adventist Church For a New Noncommercial Educational FM Station at Anniston, Alabama and Board of Trustees of Jacksonville State University For a New Noncommercial Educational FM Station at Anniston, Alabama. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by the Board of Trustees of Jacksonville State University seeking review of a Media Bureau decision.
13	MEDIA	TITLE: Airen Broadcasting Company for a Minor Change to KZCC(FM), McCloud, California, The State or Oregon Acting By and Through the State Board of Higher Education on Behalf of Southern Oregon University for a Minor Change to KNHT(FM), Rio Dell, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by the State of Oregon seeking review of a Media Bureau decision.
14	MEDIA	TITLE: Aerco Broadcasting Corporation, Licensee of Station WSJU–TV, San Juan, Puerto Rico.

Item No.	Bureau	Subject
		SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Aerco Broadcasting Corporation seeking review of a Forfeiture Order issued by the Media Bureau's Video Division.

Federal Communications Commission.

Dated: December 10, 2014.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–29694 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, December 11, 2014

December 4, 2014.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 11, 2014. The meeting is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	WIRELINE COMPETITION	TITLE: Modernizing the E-rate Program for Schools and Libraries (WC Docket No. 13–184); Connect America Fund (WC Docket No. 10–90). SUMMARY: The Commission will consider a Second Report and Order and Order on Reconsideration in WC Docket No. 13–184 and a Report and Order in WC Docket No. 10–90 to close the school and library connectivity gap by adjusting program rules and support levels in order to meet long-term program goals for high-speed connectivity to and within all eligible schools and libraries.
2	WIRELINE COMPETITION	TITLE: Connect America Fund (WC Docket No. 10–90); ETC Annual Reports and Certifications (WC Docket No. 14–58); Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks (WC Docket No. 14–192). SUMMARY: The Commission will consider a Report and Order finalizing decisions necessary to proceed to Phase II of the Connect America Fund.
3	WIRELESS TELECOMMUNICATIONS	TITLE: Broadcast Incentive Auction Public Notice Auction 1000, 1001 and 1222 (GN Docket No. 12–268). SUMMARY: The Commission will consider a Public Notice that asks for comment on the detailed procedures necessary to carry out the Broadcast Incentive Auction. The Public Notice includes specific proposals on auction design issues such as determination of the initial clearing target, opening bid prices, and the final television channel assignment process.
*	* *	* * * *

Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	ENFORCEMENT	TITLE: AERCO Broadcasting Corporation, Licensee of Station WSJU–TV, San Juan, Puerto Rico. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by AERCO Broadcasting Corporation seeking review of a Forfeiture Order issued by the Enforcement Bureau.
2	MEDIA	TITLE: Educational Media Foundation, Application for a Construction Permit for a Minor Change to a Licensed Facility, Station W267AT, Sherburne, New York, MO&O, CLAS 140194. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Educational Media Foundation seeking review of an application dismissal by the Media Bureau.
3	MEDIA	TITLE: Silver Fish Broadcasting, Inc., License Status of Silent Station DWTTT(FM), Stratford, NH. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Silver Fish Broadcasting, Inc. seeking review of a Media Bureau decision.
4	MEDIA	TITLE: JNE Investments, Inc., Application for New AM Station at Bethel, MN and Langer Broadcasting Group, LLC, Application for New AM Station at Chanhassen, MN. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by JNE Investments, Inc. seeking review of a decision by the Media Bureau.
5	MEDIA	TITLE: Application of Radio One Licenses, LLC for a License to Cover the Modified Facilities of WOLB(AM), Baltimore, Maryland and Application of WIOO Radio, Inc. for a Minor Change to the Licensed Facilities of WIOO(AM), Carlisle, Pennsylvania.

		SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning two Applications for Review filed by Radio One Licenses seeking review of decisions by the Media Bureau.
6	MEDIA	TITLE: Estate of Linda Ware, Cynthia Ramage, Executor, Application to Assign the License of Broadcast Station KZPO(FM), Lindsay, California, Estate of H.L. Charles, Robert Willing, Executor, Application to Assign the Construction Permit of Broadcast Station KZPE(FM), Ford City, California, William L. Zawila, Application to Assign the Construction Permit of Broadcast Station KNGS(FM), Coalinga, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review jointly filed by the Estate of Linda Ware, Cynthia Ramage, Executor; the Estate of H.L. Charles, Robert Willing, Executor and William L. Zawila seeking review of assignment application dismissals by the Media Bureau.
7	MEDIA	TITLE: People of Progress, Inc. Application for a New LPFM Station at Redding, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by People of Progress, Inc. seeking review of an application dismissal by the Media Bureau.
8	MEDIA	TITLE: Roman Catholic Diocese of Portland, Maine, Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Scarborough, Maine; New Hampshire Public Radio, Inc., Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Holderness, New Hampshire; University of Massachusetts, Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Gloucester, Massachusetts and Plus Charities, Application for Construction Permit for a New Noncommercial Educational FM Radio Station, Coggon, Iowa. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning four Applications for Review seeking review of Media Bureau decisions dismissing applications for new noncommercial educational FM radio stations.
9	MEDIA	TITLE: Channel 23 Limited Partnership, Applications for a Minor Change in Facilities and a License to Cover Construction Permit for Class A Television Broadcast Station WWME–CA, Chicago, Illinois. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review jointly filed by KM LPTV of Chicago-13, L.L.C. and KM LPTV of Chicago-28, L.L.C. seeking review of a Media Bureau decision.
10	MEDIA	TITLE: Gray Television Licensee, LLC, Licensee of Station WAHU–CD. SUMMARY: The Commission will consider a Memorandum Opinion and Order and Adopting Order concerning a renewal and consent decree between the Media Bureau and Gray Television.
11	MEDIA	TITLE: Christopher Falletti, Application for Construction Permit for New FM Station Medina, North Dakota. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Two Rivers Broadcasting, Inc. seeking review of a Media Bureau decision.
12	MEDIA	TITLE: Anniston Seventh-Day Adventist Church For a New Noncommercial Educational FM Station at Anniston, Alabama and Board of Trustees of Jacksonville State University For a New Noncommercial Educational FM Station at Anniston, Alabama. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by the Board of Trustees of Jacksonville State University seeking review of a Media Bureau decision.
13	MEDIA	TITLE: Airen Broadcasting Company for a Minor Change to KZCC(FM), McCloud, California, The State of Oregon Acting By and Through the State Board of Higher Education on Behalf of Southern Oregon University for a Minor Change to KNHT(FM), Rio Dell, California. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by the State of Oregon seeking review of a Media Bureau decision.
14	MEDIA	TITLE: Aerco Broadcasting Corporation, Licensee of Station WSJU–TV, San Juan, Puerto Rico. SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Aerco Broadcasting Corporation seeking review of a Forfeiture Order issued by the Media Bureau's Video Division.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Meribeth McCarrick, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with

open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–29693 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Downloadable Security Technical Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; intent to establish.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that a Federal Advisory Committee, known as the ''Downloadable Security Technology Advisory Committee,'' is being established. This committee will report to the Commission about downloadable security for devices that access multichannel video programming services, as required by the STELA Reauthorization Act of 2014.

DATES: The first meeting of the Downloadable Security Technology Advisory Committee will take place no later than Wednesday, March 4, 2015.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–1573 or Nancy Murphy, *Nancy.Murphy@fcc.gov,* of the Media Bureau, 202–418–1043.

SUPPLEMENTARY INFORMATION: Section 629 of the Communications Act, 47 U.S.C. 549, directs the Commission to adopt regulations that will allow consumers to buy set-top boxes and other equipment that can access cable, satellite, and other multichannel video programming services (which the Commission refers to as ''navigation devices'') in lieu of leasing them from their providers. Section 629 also requires that these regulations respect the ''legal rights of a provider of such services to prevent theft of service.'' 47 U.S.C. 549(b). Pursuant to the regulations adopted under section 629, the cable industry has supported the hardware-based CableCARD standard to support consumer-owned equipment and prevent theft of service over the course of the past ten years.

Section 106 of the STELA Reauthorization Act of 2014, Public Law 113–200 (2014), directs the Commission to establish an advisory committee ''of technical experts that represent the viewpoints of a wide range of stakeholders to identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system to promote the competitive availability of navigation devices in furtherance of Section 629 of the Communications Act.''

The duties of the advisory committee will be to study and report findings and recommendations regarding a ''uniform, and technology- and platform-neutral software-based downloadable security system.'' STELA Reauthorization Act of 2014, Public Law 113–200, § 106 (2014). The Committee Management Secretariat, General Services Administration concurs with the establishment of the advisory committee.

This Downloadable Security Technical Advisory Committee will present its report to the Commission no later than September 4, 2015.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–29756 Filed 12–18–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10361, First Choice Community Bank Dallas, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First Choice Community Bank, Dallas, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First Choice Community Bank on April 29, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: December 16, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–29758 Filed 12–18–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Home Bancorp, Inc.,* Lafayette, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Home Bank, N.A., Lafayette, Louisiana, after its conversion from a federal savings bank to a national bank.

In connection with this application, Applicant also has applied to engage in making, acquiring, brokering, or servicing loans, or other extensions of credit, pursuant to section 225.28(b)(1).

B. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Peoples Bancorp Inc.,* Marietta, Ohio; to acquire 100 percent of the voting shares of NB&T Financial Group, Inc., and thereby indirectly acquire voting shares of National Bank and Trust Company, both in Wilmington, Ohio.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Olney Bancshares of Texas, Inc.,* Olney, Texas; to acquire 100 percent of the voting shares of Waukomis Bancshares, Inc., and thereby indirectly acquire voting shares of First State Bank, both in Yukon, Oklahoma.

Board of Governors of the Federal Reserve System, December 15, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–29689 Filed 12–18–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CIB–2014–04; Docket No. 2014–0002; Sequence No. 37]

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority.

DATES: January 20, 2015.

ADDRESSES: GSA Privacy Act Officer (ISP), General Services Administration, 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer telephone 202–208–1317; email *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: GSA is creating a new system of record notice. This system collects the information required to control physical access to GSA-managed facilities and restricted areas within the facilities in all regions across the United States. Refer to the system notice regarding what information is collected and where it will be stored. Nothing in the notice will impact individuals' rights to access or amend their records in the systems of records.

Dated: December 11, 2014.

James L. Atwater,

Director, Policy and Compliance Division, Office of the Chief Information Officer.

GSA/OMA–1

SYSTEM NAME:

E–PACS

SYSTEM LOCATION:

GSA Enterprise Service Center (ESC), 14426 Albemarle Point, Suite 120, Chantilly, VA 20151; GSA Headquarters, 1800 F Street NW., Washington, DC 20405; and other Federal facilities with electronic identification card access controls (Enterprise Physical Access Control System, E–PACS).

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

This system covers individual with electronic facility access credentials including GSA employees, contractor employees, building occupants, interns, and volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Photo, Full Cardholder Unique Identifier (CHUID), Public Key Infrastructure (PKI) Certificate—(X509), Card Authentication Key (CAK) Certificate, Full Name, Person Classification, Badge Expiration Date, Card State, User Principal Name (UPN), Federal Agency Smart Card Number (FASC–N), and Globally Unique Identifier (GUID).

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 40 U.S.C. 582, 40 U.S.C. 585, 40 U.S.C. 3101, 40 U.S.C. 11315, and HSPD–12.

PURPOSE:

This system (E–PACS) collects the information required for and related to physical access to GSA-managed facilities and restricted areas within facilities in all regions across the United States.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information may be accessed and used by authorized GSA employees and contractors to conduct official duties associated with Federal government building security and access responsibilities. Information from this system may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To duly authorized officials engaged in investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO) or other Federal agency when the information is required for program evaluation purposes.

e. To another Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; clarifying a job; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

f. To a Member of Congress or his or her staff on behalf of and at the request

of the individual who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

h. To the National Archives and Records Administration (NARA) for records management purposes.

i. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

j. To the workspace and room scheduling system. When an individual swipes their card the information automatically checks them into previously reserved workspace. This is done as a convenience so the individual won't lose a seat assignment or conference room.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

System records and documents are electronically stored on servers and/or compact discs.

RETRIEVABILITY:

Records may be retrieved by name and/or other personal identifier or appropriate type of designation.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and the System Security Plan. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the data. Security measures include password protections, assigned roles, and transaction tracking.

RETENTION AND DISPOSAL:

Disposition of records will be according to the National Archives and Records Administration (NARA) guidelines, set forth in the GSA Records Maintenance and Disposition System (OAD P 1820.2A) handbook.

SYSTEM MANAGER AND ADDRESS:

Office of Mission Assurance (OMA), Identity, Credential and Access Management, 1800 F Street, NW., Washington DC 20405.

NOTIFICATION PROCEDURES:

Individuals may obtain information about their records from the E–PACS Program Manager at the above address.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the E–PACS Program Manager. GSA rules for individuals requesting access to their records are published in 41 CFR part 105–64.

CONTESTING RECORD PROCEDURES:

Individuals may contest their records' contents and appeal determinations according to GSA rules published in 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who are receiving credentials to enter a federal facility and the Government credentialing authorities.

[FR Doc. 2014–29719 Filed 12–18–14; 8:45 am]

BILLING CODE 6820–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–0990-New-30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before January 20, 2015.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0990–New—30D for reference.

Information Collection Request Title: National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care: Evaluation of Awareness, Adoption, and Implementation

Abstract: The Office of Minority Health (OMH), Office of the Secretary (OS), Department of Health and Human Services (HHS) is requesting a new approval from OMB for data collection on an evaluation project entitled ''National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care: Evaluation of Awareness, Adoption, and Implementation.'' The purpose of this assessment is to systematically describe and examine the awareness, knowledge, adoption, and implementation of the HHS OMH's National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (hereafter referred to as the National CLAS Standards) in a sample of health and health care organizations, and to use the resultant data to develop a preliminary, model of implementation to guide organizational adoption and implementation of the National CLAS Standards. Originally released in 2001, the HHS OMH's National CLAS Standards are a set of recommended action steps intended to advance health equity, improve quality, and help eliminate health care disparities. The National CLAS Standards, revised in 2013, are comprised of 15 Standards that provide health and health care organizations with a blueprint for successfully implementing and maintaining culturally and linguistically appropriate services.

Despite increased recognition of the National CLAS Standards as a fundamental tool for health and health care organizations to use in their efforts to become more culturally and linguistically competent, neither the original nor the enhanced National CLAS Standards have been systematically evaluated in terms of public awareness, organizational

adoption and implementation, or impact on health services outcomes. There is a need, then, to collect information from health and health care organizations to understand how and to what extent the *National CLAS Standards* have been utilized by its intended audiences.

Likely Respondents: The information to be collected as part of this assessment will come from five categories of respondents: Training and Development Specialists and Managers; Other Management; Health and Health Care Organization Executives and Managers; Health and Health Care Providers, Managers, and Support Staff; Health Care Practitioners; and Technical Staff.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Type of respondent	Number of respondent	Number responses per respondent	Average burden per response (hours)	Total burden (hours)
National CLAS Standards Stakeholder Interview.	Training and Development Specialists and Managers; Other Management Occupations (that contributed to development of National CLAS Standards).	21	1	45/60	16
CLAS Stakeholder Interview	Training and Development Specialists and Managers; Other Management Occupations (with subject matter expertise in cultural competence or cultural and linguistic appropriate services).	21	1	1	21
Health and Health Care Organization Leadership Interview.	Health and Health Care Organization Executives and Managers.	140	1	1	140
Health and Health Care Organization Staff Survey.	Health and Health Care Providers, Managers, and Support Staff.	2,500	1	15/60	625
Health and Health Care Organization Screener Survey.	Health and Health Care Organization Executives.	50,000	1	5/60	4,167
National CLAS Standards Experience Form.	Health Care Practitioners and Technical Occupations.	240,000	1	10/60	40,000
Total	.....	.....	.....	.....	44,969

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2014–29740 Filed 12–18–14; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of a Workshop and a Request for Public Comment on Questions Regarding Dietary Reference Intakes and Chronic Disease Endpoints

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Dietary Reference Intakes (DRI) Committees of the U.S. and Canadian governments will hold a workshop entitled ''Options for Consideration of Chronic Disease Endpoints for Dietary Reference Intakes.'' The objective of the workshop is to critically evaluate key scientific issues involved in using chronic disease endpoints for setting DRIs and, in this context, to provide information for future decisions as to whether and/or how chronic disease endpoints can be incorporated into the setting of DRI values. In preparation for this meeting, the DRI Committees are asking for public comment on the set of questions that the meeting panelists will discuss.

DATES: This meeting will be held on March 10, 2015 from 8:30 a.m. to 5:00 p.m. E.D.T. and on March 11, 2015 from 8:30 a.m. to 12:30 p.m. E.D.T.

ADDRESSES: The workshop will be held at the Lister Hill Auditorium, National Institutes of Health, in Bethesda, Maryland, USA. The workshop will be open to the public either in-person (seating is limited) or by videocast on the Internet.

FOR FURTHER INFORMATION CONTACT: Additional information about this workshop and the agenda will be made available on the Internet at *http://www.health.gov/dri/as the meeting approaches.* You may also send emails to *DRI@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background Information

The current DRI approaches for selecting indicators of adequacy and toxicity and for estimating dose-response relationships between nutrient intakes and selected outcomes derive from several Food and Nutrition Board committee reports published by the Institute of Medicine (IOM) in 1994 [1] and 1998.[2] These committees recommended that DRIs for adequacy be expressed as Estimated Average Requirements (EARs) and Recommended Dietary Allowances (RDAs, representing 97.5% of population requirements). They also recommended that reference values for Tolerable Upper Intake Levels (ULs) be included in future DRI evaluations. Additionally, the 1994 IOM committee concluded that future RDA processes (now called DRIs) should include the concept of chronic disease risk reduction in addition to the classical nutrient deficiency endpoints. The approaches recommended by the 1994 and 1998 committees were applied, with a few additions (*e.g.,* Adequate Intakes, Acceptable Macronutrient Distribution Ranges), for all seven of the DRI reviews published from 1997 to 2011. These reports can be accessed at the following Web site: *http://*

[1] Food and Nutrition Board, Institute of Medicine. 1994. *How Should the Recommended Dietary Allowances Be Revised?* National Academy Press, Washington, DC.

[2] *Dietary Reference Intakes: A Risk Assessment Model for Establishing Upper Intake Levels for Nutrients.* National Academy Press, Washington, DC.

fnic.nal.usda.gov/dietary-guidance/dietary-reference-intakes/dri-reports.

It has become apparent that a number of unanticipated challenges were encountered when chronic disease endpoints were considered as indicators for setting DRI reference values. Many of these challenges were discussed in a 2007 ''lessons learned'' workshop conducted by the IOM after the first six DRI reports were published.[3] Other scientific publications have also discussed the challenges, but approaches for addressing the identified challenges have not yet been adequately explored.

Recently, the DRI Committees of the U.S. and Canadian governments called for nominations for nutrients to be considered for future DRI reviews. Many of the nominated nutrients cited new data on chronic disease relationships as the justification for new DRI reviews, including three of the four nutrients selected by the DRI Committees for further consideration based on the availability of sufficient new and relevant evidence. Given the clear need for more in-depth evaluation of the challenges involved in incorporating chronic disease endpoints into DRI processes prior to initiating a new DRI review, the two government committees announced plans to sponsor a workshop to be held in 2015 to address whether, and how, chronic disease outcomes can be incorporated into the process of setting DRI values.

The limited time available for the workshop may preclude consideration of all issues relevant to the incorporation of chronic disease endpoints into DRI processes. As warranted, subsequent activities will address issues that arise in the workshop or that have been identified in other activities but not covered in workshop discussions.

Written Public Comments

The key questions for the workshop, on which the committees would like public comments, are derived from prior discussions of the major challenges in incorporating chronic disease endpoints into DRI considerations:

1. What dose-response models can be considered for future DRI reviews when chronic disease endpoints are used?

a. What are the scientific issues?

b. What are the options for addressing these issues?

c. What are the advantages and disadvantages of the various options?

2. What are the evidentiary challenges important in selecting and using chronic disease endpoints in future DRI reviews?

a. What are the scientific issues?

b. What are the options for addressing these issues?

c. What are the advantages and disadvantages of the various options?

3. What arguments can be made for and against continuing to include chronic disease endpoints in future DRI reviews?

a. What are the scientific issues?

b. What are the options for addressing these issues?

c. What are the advantages and disadvantages of the various options?

Public comments are to be submitted via email to *DRI@hhs.gov*. Provide a brief summary (approx. 250 words) of the points or issues. If providing literature or other resources, one of the following forms is preferred:

- Complete citation, as in a bibliographic entry
- Abstract
- Electronic link to full article or report

Please provide comments as early as possible in order to increase the likelihood of having a meaningful impact, as the workshop panelists will be considering them prior to the workshop. The deadline for comment submission is Friday, January 30, 2015. Comments received later than January 30, 2015 will not be considered.

Meeting Registration: The meeting will be publicly accessible both in-person and by videocast on the Internet. Due to limited seating capacity, registration will be required for in-person attendance. Notice of registration will be available on *http://www.health.gov/dri/*prior to the workshop; registration is expected to open on or about February 15, 2015.

Dated: December 16, 2014.

Don Wright,

Deputy Assistant Secretary for Health,

Office of Disease Prevention and Health Promotion,

Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

[FR Doc. 2014–29766 Filed 12–18–14; 8:45 am]

BILLING CODE 4150–32–P

[3] The Development of DRIs 1994–2004: Lessons Learned and New Challenges, Workshop Summary, November 30, 2007. Available from: *http://www.iom.edu/Reports/2007/The-Development-of-DRIs-1994-2004-Lessons-Learned-and-New-Challenges-Workshop-Summary.aspx.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–14AQA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Enhanced STD Surveillance Network (eSSuN)—NEW—Division of STD Prevention (DSTDP), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Enhanced STD surveillance network Project is an active STD sentinel surveillance network comprised of 10 surveillance sites including Baltimore City Health Department, California Department of Public Health, Florida Department of Health, Massachusetts Department of Public Health, Minnesota Department of Health, Multnomah County Health Department, New York City Department of Health & Mental Hygiene, Philadelphia Department of Public Health, San Francisco Department of Public Health, and Washington State Department of Health.

The purpose of eSSuN is to be a robust platform for the identification of STD trends, monitor STD epidemiology and evaluate the effectiveness of public health interventions through active surveillance collection, reporting, analysis, visualization (*e.g.,* mapping) and interpretation of disease information.

The objectives of the eSSuN project are (1) provide a dataset of supplemental information on gonorrhea case reports of STDs of interest; (2) provide geographic information on case reports of STDs of interest for investigating social determinants of STDs; (3) monitor screening coverage for chlamydial infection among young women in sentinel clinical settings; (4) monitor STD screening, incidence, prevalence, epidemiologic and health care access trends in populations of interest such as men-who-have-sex-with men (MSM), young people and persons diagnosed with gonorrhea; (5) monitor STD treatment and prevention service practices; (6) monitor selected adverse health outcomes of STDs; (7) evaluate and enhance local and state STD surveillance capacity; (8) enhance local STD-specific health information technology and epidemiologic capacity, and, (9) establish a core of exemplary state, tribal, territorial, county and/or city health department STD surveillance approaches to STD surveillance.

This project will utilize two distinct surveillance strategies to collect information. The first strategy employs facility-based sentinel surveillance, which will abstract standardized data from existing electronic medical records for all patient visits to participating STD clinics and female patients aged 15–44 years of age visiting participating family planning/reproductive health clinics and other facilities (school-based clinics and federally qualified healthcare centers) during the project period. The second strategy is population-based STD surveillance among a random sample of reported gonorrhea cases. Sampled cases will be contacted for standardized interview and the sample fraction will be 250 completed enhanced investigations or up to 2.5% of total morbidity if annual cases exceed 10,000 cases. Enhanced investigations will also include verification of treatment and an internal health department record review (performed on either all cases or on the sampled cases).

For the facility-based component of eSSuN, participating sites have developed common protocols stipulating data elements to be collected, including patient demographics, clinical, risk and sexual behaviors. The specified data elements are abstracted by clinic staff from existing electronic medical records for; (1) all patient visits to participating STD clinics, (2) female patients aged 15—24 at participating family planning/reproductive health clinics and, (3) visits of female patients aged 15–44 at school-based clinics and those attending federally qualified health centers (FQHCs) specifically for family planning services.

Some of the participating facilities are satellites clinics of large network providers where clinical data systems are centralized. Hence, there are a total of 22 unique clinic data managers that will be abstracting the facility data. Each of the 22 clinic data managers will spend 3 hours to extract and transmit data to local/state health departments. Individual patient records are de-identified (all patient-specific identifiers are removed) by clinic staff before being transmitted to health departments, who recode the data into standardized formats before being transmitted to CDC through secure file transport mechanisms. Data transmission will occur on a monthly basis. Each eSSuN site will spend 16 hours to recode and transmit the data to CDC every month. At CDC, data will be aggregated across all participating sites in a common data structures and formatted for analysis.

For the population-based surveillance component, a random sample of individuals residing within participating jurisdictions and reported with gonorrhea will be interviewed using locally designed interview templates following standardized data protocols. Enhanced data collection includes detailed information on demographic characteristics, behavioral risk factors and clinical history of persons with gonorrhea. Each of the 10 sites will interview a minimum of 250 persons (or up to 2.5% of total morbidity if annual GC cases exceed 10,000 cases) and each interview is expected to take 10 minutes per person. Interview data for the population-based component will be collected through telephone administered or in-person interviews conducted by trained interviewers in the 10 eSSuN sites. These data will be directly entered into existing STD surveillance information systems at each health department. Data will be locally extracted, de-identified and recoded into standardized formats prior to being transmitted to CDC through secure file transport mechanisms on a monthly basis.

Patient participation in the interview is voluntary and refusal to participate has no impact on other STD services the local health provides to persons diagnosed with gonorrhea. There is no cost to the respondents beyond their time and no compensation for participation.

Both components of eSSuN are designed to (1) integrate traditional surveillance methods with innovative data management technologies to produce high-quality, timely surveillance and epidemiologic data, (2) provide valuable information to direct public health STD prevention and control efforts, (3) enhance understanding of the community burden of disease, (4) identify syndemic patterns and population at greatest risk, and, (5) monitor long-term health consequences of STDs. The eSSuN surveillance platform allows CDC to establish and maintain common standards for data collection, transmission, and analysis, and to build and maintain STD surveillance expertise in 10 state or city health departments. Such common systems, established mechanisms of communication, and in-place expertise are all critical components for timely, flexible, and high quality surveillance.

The total estimated annual burden is 2,854 hours of effort.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Clinic Data manager at clinic	Data Manager electronic Transmission	22	6	3
	Record Abstraction (No Form)			
Health Department Data Manager	Case Reports (No Form)	10	12	16
Gonorrhea Patients sampled and interviewed	Patient Interview	3,225	1	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–29715 Filed 12–18–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10536 and CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 20, 2015.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Medicaid Eligibility and Enrollment (EE) Implementation Advanced Planning Document (IAPD) Template; *Use:* To assess the appropriateness of states' requests for enhanced federal financial participation for expenditures related to Medicaid eligibility determination systems, we will review the submitted information and documentation to make an approval determination for the advanced planning document. The package has been revised subsequent to the publication of the 60-day **Federal Register** notice (79 FR 51571). *Form Number:* CMS–10536 (OMB control number: 0938–New); *Frequency:* Yearly, once, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 168; *Total Annual Hours:* 1,344. (For policy questions regarding this collection contact Christine Gerhardt at 410–786–0693).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2016 Plan Benefit Package (PBP) Software and Formulary Submission; *Use:* We require that Medicare Advantage and Prescription Drug Plan organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to us for review and approval. We publish beneficiary education information using a variety of formats. The specific education initiatives that utilize PBP and formulary data include web application tools on *www.medicare.gov* and the plan benefit insert in the Medicare & You handbook. In addition, organizations utilize the PBP data to generate their Summary of Benefits marketing information. Please note that the package has been revised subsequent to the publication of the 60-day **Federal Register** notice (79 FR 57931). *Form Number:* CMS–R–262 (OMB control

number 0938–0763); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 598; *Total Annual Responses:* 5,872; *Total Annual Hours:* 56,411. (For policy questions regarding this collection contact Kristy Holtje at 410–786–2209).

Dated: December 16, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–29739 Filed 12–18–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10241, CMS–R–305 and CMS–224–14]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 17, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10241 Survey of Retail Prices: Payment and Utilization Rates, and Performance Rankings

CMS–R–305 External Quality Review (EQR) of Medicaid Managed Care Organizations (MCOs) and Supporting Regulations

CMS–224–14 Federally Qualified Health Center Cost Report Form

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey of Retail Prices: Payment and Utilization Rates, and Performance Rankings; *Use:* This study is divided into two parts. Part I focuses on the retail community pharmacy consumer prices. It also includes reporting by the states of payment and utilization rates for the 50 most widely prescribed drugs, and comparing state drug payment rates with the national retail survey prices. (Effective July 1, 2013, CMS has suspended Part I of the survey, pending funding decisions.) Part II focuses on the retail community pharmacy ingredient costs. This segment surveys the average acquisition costs of all covered outpatient drugs purchased by retail community pharmacies. The prices will be updated on at least a monthly basis. *Form Number:* CMS–10241 (OMB control number 0938–1041); *Frequency:* Yearly and Occasionally; *Affected Public:* Private sector—Business or other for-profits and State, Local, or Tribal Governments; *Number of Respondents:* 30,051; *Total Annual Responses:* 30,051; *Total Annual Hours:* 15,765. (For policy questions regarding this collection contact: Lisa Ferrandi at 410–786–5445).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* External Quality Review (EQR) of Medicaid Managed Care Organizations (MCOs) and Supporting Regulations; *Use:* State agencies must provide to the EQR organization (EQRO) information obtained through methods consistent with the protocols specified by CMS. This information is used by the EQRO to determine the quality of care furnished by an MCO. Since the EQR results are made available to the general public, this allows Medicaid/CHIP enrollees and potential enrollees to make informed choices regarding the selection of their providers. It also allows advocacy organizations, researchers, and other interested parties access to information on the quality of

care provided to Medicaid beneficiaries enrolled in Medicaid/CHIP MCOs. States use the information during their oversight of these organizations. *Form Number:* CMS–R–305 (OMB control number 0938–0786); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 43; *Total Annual Responses:* 76; *Total Annual Hours:* 451,288. (For policy questions regarding this collection contact Barbara Dailey at 410–786–9012).

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Federally Qualified Health Center Cost Report Form; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis. The form CMS–224–14 cost report is needed to determine a provider's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from a provider. *Form Number:* CMS–224–14 (OMB control number 0938-New); *Frequency:* Yearly; *Affected Public:* Private sector—For-profit and Not-for-profit institutions; *Number of Respondents:* 1,296; *Total Annual Responses:* 1,296; *Total Annual Hours:* 75,168. (For policy questions regarding this collection contact Julie Stankivic at 410–786–5725).

Dated: December 16, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–29741 Filed 12–18–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare &Medicaid Services

[CMS–3307–PN]

Medicare and Medicaid Programs: Application from the Joint Commission for Continued CMS-Approval of its Hospice Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Proposed Notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an application from the Joint Commission for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs. A hospice that participates in Medicaid must also meet the Medicare conditions for participation as required under 42 CFR 488.6(b). The statute requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 19, 2015.

ADDRESSES: In commenting, please refer to file code CMS–3307–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways:

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the ''submit a comment'' instructions.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3307–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3307–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to the following addresses:

a. For delivery in Washington, DC-Centers for Medicare & Medicaid Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the HHS Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Lillian Williams, (410) 786–8636
Cindy Melanson, (410) 786–0310
Patricia Chmielewski, (410) 786–6899

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met by the hospice. Sections 1861(dd) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The

regulations at 42 CFR part 418, specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospices.

Generally, to enter into an agreement, a hospice must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed the Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every 6 years or sooner as determined by CMS.

The Joint Commission's current term of approval for its hospice accreditation program expires June 18, 2015.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Joint Commission's request for continued CMS approval of its hospice accreditation program. This notice also solicits public comment on whether the Joint Commission's requirements meet or exceed the Medicare conditions for participation for hospices.

III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospice accreditation program. This application was determined to be complete on September 25, 2014. Under Section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of the Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the Joint Commission's standards for hospices as compared with CMS' hospice conditions of participation.
- The Joint Commission's survey process to determine the following:

++ The Joint Commission's composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The Joint Commission's processes compared to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ The Joint Commission's processes and procedures for monitoring a hospice found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

++ The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ The Joint Commission's capacity to provide CMS with electronic data, and reports necessary for effective validation and assessment of the organization's survey process.

++ The Joint Commission's staff adequacy and other resources, and its financial viability.

++ The Joint Commission's capacity to adequately fund required surveys.

++ The Joint Commission's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ The Joint Commission's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Dated: December 3, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–29757 Filed 12–18–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0144]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Certification to Accompany Drug, Biological Product, and Device Applications or Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 20, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0616. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Certification To Accompany Drug, Biological Product, and Device Applications or Submissions (Form FDA 3674)—(OMB Control Number 0910–0616)—Extension

The information required under section 402(j)(5)(B) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)(5)(B)) is submitted in the form of a certification, Form FDA 3674, which accompanies applications and submissions currently submitted to FDA and is already approved by OMB. The OMB control numbers and expiration dates for submitting FDA 3674 under the following parts are: 21 CFR parts 312 and 314 (human drugs) are 0910–0014, expiring April 30, 2015, and 0910–0001, expiring September 30, 2014; 21 CFR parts 312 and 601 (biological products) are 0910–0014 and 0910–0338, expiring January 31, 2017; 21 CFR parts 807 and 814 (devices) are 0910–0120, expiring January 31, 2017, and 0910–0231, expiring January 31, 2017.

Title VIII of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) amended the PHS Act by adding section 402(j). The provisions require additional information to be submitted to the clinical trials data bank, *http://www.clinicaltrials.gov/* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**), previously established by the National Institutes of Health/National Library of Medicine, including expanded information on clinical trials and information on the results of clinical trials. The provisions include responsibilities for FDA as well as several amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

One provision, section 402(j)(5)(B) of the PHS Act, requires that a certification accompany human drug, biological, and device product submissions made to FDA. Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification, Form FDA 3674, that all applicable requirements of section 402(j) of the PHS Act have been met. Where available, such certification must include the appropriate National Clinical Trial (NCT) numbers.

The proposed extension of the collection of information is necessary to satisfy the previously mentioned statutory requirement. The importance of obtaining these data relates to adherence to the legal requirements for submissions to the clinical trials registry and results data bank and ensuring that individuals and organizations submitting applications or reports to FDA under the listed provisions of the FD&C Act or the PHS Act adhere to the appropriate legal and regulatory requirements for certifying to having complied with those requirements. The failure to submit the certification required by section 402(j)(5)(B) of the PHS Act, and the knowing submission of a false certification are both prohibited acts under section 301 of the FD&C Act (21 U.S.C. 331). Violations are subject to civil money penalties.

In January 2009, FDA issued ''Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff—Certifications to Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance With Section 402(j) of The Public Health Service Act, Added By Title VIII of the Food and Drug Administration Amendments Act of 2007'' available at *http://www.fda.gov/regulatoryInformation/guidances/ucm125335.htm.* This guidance identified the applications and submissions that FDA considered should be accompanied by the certification form, Form FDA 3674. The applications and submissions noted in the guidance are reflected in the burden analysis.

Investigational New Drug Applications

FDA's Center for Drug Evaluation and Research (CDER) received 1,564 investigational new drug applications (INDs) and 14,328 clinical protocol IND amendments in calendar year (CY) 2013. CDER anticipates that IND and clinical protocol amendment submission rates will remain at or near this level in the near future.

FDA's Center for Biologics Evaluation and Research (CBER) received 451 new INDs and 492 clinical protocol IND amendments in CY 2013. CBER anticipates that IND and clinical protocol amendment submission rates will remain at or near this level in the near future. The estimated total number of submissions (new INDs and new protocol submissions) subject to mandatory certification requirements under section 402(j)(5)(B) of the PHS Act, is 15,892 for CDER plus 943 for CBER, or 16,835 submissions per year. The minutes per response is the estimated number of minutes that a respondent would spend preparing the information to be submitted to FDA under section 402(j)(5)(B) of the PHS Act, including the time it takes to enter the necessary information on the form.

Based on its experience with current submissions, FDA estimates that approximately 15 minutes on average would be needed per response for certifications which accompany IND applications and clinical protocol amendment submissions. It is assumed that most submissions to investigational applications will reference only a few protocols for which the sponsor/applicant/submitter has obtained a NCT

number from *http://www.clinicaltrials.gov/* prior to making the submission to FDA. It is also assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

Marketing Applications/Submissions

In CY 2013, CDER and CBER received 226 new drug applications (NDA)/biologics license applications (BLA)/resubmissions and 932 NDA/BLA amendments for which certifications are needed. CDER and CBER received 198 efficacy supplements/resubmissions to previously approved NDAs/BLAs in CY 2013. CDER and CBER anticipate that new drug/biologic applications/resubmissions and efficacy supplement submission rates will remain at or near this level in the near future.

FDA's Center for Devices and Radiological Health (CDRH) received a total of 530 new applications for premarket approvals (PMA), 510(k) submissions containing clinical information, PMA supplements, applications for humanitarian device exemptions (HDE) and amendments in CY 2013. CDRH anticipates that application, amendment, supplement, and annual report submission rates will remain at or near this level in the near future.

FDA's Office of Generic Drugs (OGD) received 1,001 abbreviated new drug applications (ANDAs) in 2013. OGD received 989 bioequivalence amendments/supplements in 2013. OGD anticipates that application, amendment, and supplement submission rates will remain at or near this level in the near future.

Based on its experience reviewing NDAs, BLAs, PMAs, HDEs, 510(k)s, and ANDAs and experience with current submissions of Form FDA 3674, FDA estimates that approximately 45 minutes on average would be needed per response for certifications which accompany NDA, BLA, PMA, HDE, 510(k), and ANDA marketing applications and submissions. It is assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

In the **Federal Register** of July 9, 2014 (79 FR 38905), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center activity	Number of respondents (investigational applications)	Number of respondents (marketing applications)	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER						
New Applications (IND)	1,564		1	1,546	0.25 (15 minutes)	387
Clinical Protocol Amendments (IND).	14,328		1	14,328	0.25 (15 minutes)	3,582
New Marketing Applications/Resubmissions (NDA/BLA).		191	1	191	0.75 (45 minutes)	143
Clinical Amendments to Marketing Applications.		932	1	932	0.75 (45 minutes)	699
Efficacy Supplements/Resubmissions.		173	1	173	0.75 (45 minutes)	130
CBER						
New Applications (IND)	451		1	451	0.25 (15 minutes)	113
Clinical Protocol Amendments (IND).	492		1	492	0.25 (15 minutes)	123
New Marketing Applications/Resubmissions (NDA/BLA).		35	1	35	0.75 (45 minutes)	26
Clinical Amendments to Marketing Applications.		0	1	0	0.75 (45 minutes)	1
Efficacy Supplements/Resubmissions (BLA only).		25	1	25	0.75 (45 minutes)	19
CDRH						
New Marketing Applications (includes PMAs, HDEs, Supplements and 510(k)s expected to contain clinical data).		530	1	530	0.75 (45 minutes)	398
OGD						
Original Applications		1,001	1	1,001	0.75 (45 minutes)	751
BE Supplements/Amendments		989	1	989	0.75 (45 minutes)	742
Total						7,114

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 15, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29752 Filed 12–18–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1092]

Minimizing Risk for Children's Toy Laser Products; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Minimizing Risk for Children's Toy Laser Products.'' This guidance is intended to inform manufacturers of laser products, FDA headquarters and field personnel, and the public of the Center for Devices and Radiological Health's (CDRH) current thinking on the safety of children's toy laser products and to provide specific safety recommendations for the manufacture and labeling of children's toy laser products.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Minimizing Risk for Children's Toy Laser Products'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Hewett, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4250, Silver Spring, MD 20993–0002, 301–796–5864.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance is intended to inform manufacturers of laser products, FDA headquarters and field personnel, and the public of CDRH's current thinking on the safety of children's toy laser products. Lasers with outputs above certain levels that are operated in an unsafe and uncontrolled manner may cause injury to the user and/or others within range of the laser beam. This is a particular concern for lasers intended for entertainment purposes, especially when intended to be used as toys by children.

Federal law requires that, other than for certain exceptions, laser products manufactured or assembled after August 1, 1976, must be in compliance with the federal performance standards for laser products (21 CFR 1040.10 and 1040.11). At present FDA regulations do not specifically identify what constitutes children's toy laser products. In the **Federal Register** of June 24, 2013, FDA issued a proposed rule that proposed to define children's toy laser products and require them to be within the International Electrotechnical Commission (IEC) Class 1 emission limit (see proposed 21 CFR 1040.10(b)(1), (2) and 1040.11(d) at 78 FR 37723 (June 24, 2013)). While this rulemaking process is ongoing, CDRH recommends that manufacturers keep children's toy laser products within the FDA Class I or IEC Class 1 emission limits in order to minimize the risk they pose to users and/or others in range of the laser beam, including the vulnerable population for whom they are intended. For those children's toy laser products that meet the definition of a ''demonstration laser product'' or ''surveying, leveling, or alignment laser product,'' CDRH will not object to compliance with the International Electrotechnical Commission Class I emission limit (set forth in IEC 60825–1:2007). To that end, this guidance supersedes in part the policy set forth in the Guidance on Laser Products—Conformance with IEC 60825–1 and IEC 60601–2–22 (Laser Notice No. 50), which will cease to be effective by its own terms upon the effective date of amendments to the regulations applicable to laser products. (Ref. #1). However, because IEC Classes 1M and 2M do not have comparable analogs in FDA's classification system, manufacturers should not conform to the parameters for IEC Classes 1M or 2M unless they also comply with FDA's performance standards for laser products.

In the **Federal Register** of August 7, 2013 (78 FR 48172), the Agency issued the draft guidance entitled ''Minimizing Risk for Children's Toy Laser Products—Draft Guidance for Industry and Food and Drug Administration Staff.'' The Agency received two comments on the 2013 draft guidance and has incorporated most of the recommendations in this final guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on children's toy laser products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Minimizing Risk for Children's Toy Laser Products'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1810 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to a previously approved collection of information found in FDA regulations. This collection of information is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in part 1040 is approved under OMB control number 0910–0025.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and

will be posted to the docket at *http://www.regulations.gov.*

VI. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. FDA Guidance on Laser Products—Conformance with IEC 60825–1 and IEC 60601–2–22 (Laser Notice No. 50) (June 2007), available at *http://www.fda.gov/downloads/Medical Devices/.../ucm094366.pdf.*

Dated: December 15, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29725 Filed 12–18–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0128] (Formerly Docket No. 2007D–0396)

Serious Drug-Induced Liver Injury: The Importance of Getting It Right: How To Measure and Interpret Drug-Induced Liver Injury Information and Make Correct Diagnoses; Public Conference; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference entitled ''Serious Drug-Induced Liver Injury (DILI): The Importance of Getting It Right: How to Measure and Interpret DILI Information and Make Correct Diagnoses.'' This conference will be cosponsored with the Critical Path Institute (C-Path) and the Pharmaceutical Research and Manufacturers of America. The purpose of the public conference is to discuss, debate, and share views among stakeholders in the pharmaceutical industry, academia, health care providers, patient groups, and regulatory bodies on how best to detect and assess the severity, extent, and likelihood of drug causation of liver injury and dysfunction in people using drugs for any medical purpose.

DATES: The public conference will be held on March 18, 2015, from 8 a.m. to 6 p.m. and on March 19, 2015, from 8 a.m. to 4 p.m.

ADDRESSES: The public conference will be held at the College Park Marriott Hotel & Conference Center, 3501 University Blvd., Hyattsville, MD 20783. The hotel's phone number is 301–985–7300.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4478, Silver Spring, MD 20993–0002, 301–796–0518, email: *lana.pauls@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2009, FDA announced the availability of a guidance for industry entitled ''Drug-Induced Liver Injury: Premarketing Clinical Evaluation'' (74 FR 38035, July 30, 2009). This guidance explains that DILI has been the most frequent cause of safety-related drug marketing withdrawals over the past 50 years and that hepatotoxicity has limited the use of many drugs that have been approved and has prevented the approval of others. It discusses methods of detecting DILI by periodic tests of serum enzyme activities and bilirubin concentration and how changes in the results of those laboratory tests over time, along with symptoms and physical findings, may be used to estimate severity of the injury. The guidance suggests some ''stopping rules'' for interrupting drug treatment and the need to obtain sufficient clinical information to assess causation. FDA published a draft of this guidance in 2006, and comments on the draft were taken into consideration when issuing the final guidance in July 2009. FDA is now interested in obtaining stakeholder input on the issues addressed in this guidance, including comments regarding potential revisions to the guidance.

II. Conference Information

The purpose of the 2015 conference is to invite participants to present their data and views, and to hold open discussion.

A. Registration

A registration fee ($600 for industry registrants and $300 for Federal government and academic registrants) will be charged to help defray the cost of renting the meeting space, providing meals and snacks, covering the travel fees incurred by invited academic (but not government or industry) speakers, and other expenses. The registration process will be handled by C-Path, an independent, nonprofit organization established in 2005 with public and private philanthropic support from the southern Arizona community, Science Foundation Arizona, and FDA.

Additional information on the conference, program, and registration procedures may be obtained on the Internet at *http://www.c-path.org* and *http://www.fda.gov* by typing ''liver toxicity'' into the search box. (FDA has verified the C-Path Web site address but is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

B. Transcripts

Please be advised that as soon as a transcript is available of the public conference, it can be obtained in either hardcopy or on CD–ROM after submission of a Freedom of Information Act (FOIA) request. Written FOIA requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Material presented at past programs (from 1999 to 2014) may be accessed at *www.aasld.org.* Click on ''Events and Professional Development'' and then scroll down to ''Drug-Induced Liver Injury Conference.''

Dated: December 15, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29720 Filed 12–18–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2137]

Public Meeting on Patient-Focused Drug Development for Breast Cancer; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public meeting and an opportunity for public comment on patient-focused drug development for breast cancer. Patient-focused drug development is part of FDA's

performance commitments made as part of the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). The public meeting is intended to allow FDA to obtain patient perspectives on the impact of breast cancer on daily life and patient views on treatment approaches.

DATES: The public meeting will be held on April 2, 2015, from 1 p.m. to 5 p.m. Registration to attend the meeting must be received by March 23, 2015 (see **SUPPLEMENTARY INFORMATION** for instructions). Submit electronic or written comments to the public docket by June 2, 2015.

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Participants must enter through Building 1 and undergo security screening. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit electronic comments to *www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FDA will post the agenda approximately 5 days before the meeting at: *http://www.fda.gov/Drugs/NewsEvents/ucm421313.htm.*

FOR FURTHER INFORMATION CONTACT: Pegah Mariani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993, 240–402–4513, FAX: 301–847–8443, *Sayyedeh.Mariani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Patient-Focused Drug Development

FDA has selected breast cancer as the focus of a public meeting under patient-focused drug development, an initiative that involves obtaining a better understanding of patient perspectives on the severity of a disease and the available therapies for that condition. Patient-focused drug development is being conducted to fulfill FDA performance commitments that are part of the reauthorization of the PDUFA under Title I of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Public Law 112–144). The full set of performance commitments is available at *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf.*

FDA committed to obtaining the patient perspective on 20 disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefit that matter most to patients, and patients' perspectives on the adequacy of the available therapies. These meetings will include participation of FDA review divisions, the relevant patient communities, and other interested stakeholders.

On April 11, 2013, FDA published a document in the **Federal Register** (78 FR 21613) announcing the disease areas for meetings in fiscal years (FYs) 2013–2015, the first 3 years of the 5-year PDUFA V timeframe. The Agency used several criteria outlined in that notice to develop the list of disease areas. FDA obtained public comment on the Agency's proposed criteria and potential disease areas through a public docket and a public meeting that was convened on October 25, 2012. In selecting the set of disease areas, FDA carefully considered the public comments received and the perspectives of review divisions at FDA. By the end of FY 2015, FDA will initiate a second public process for determining the disease areas for FY 2016–2017. More information, including the list of disease areas and a general schedule of meetings, is posted at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.*

II. Public Meeting Information

A. Purpose and Scope of the Meeting

The purpose of this patient-focused drug development meeting is to obtain input on the symptoms and other impacts of breast cancer that matter most to patients, as well as perspectives on current approaches to treating breast cancer. FDA expects that this information will come directly from patients, caregivers, and patient advocates. Breast cancer is a disease that can occur in both men and women, caused by an uncontrolled growth of cells in breast tissue. Most breast cancers arise from cells lining the ducts or lobules of the breast. The cancer may spread locally to lymph nodes or distantly to various organs (*i.e.,* bone, liver, brain). Treatment for breast cancer differs depending on the extent of disease and may include a combination of surgery, radiation therapy, conventional chemotherapy, hormonal therapy and/or targeted drug therapy. In addition to prescription medicines, complementary and alternative therapies are available to help manage the side effects of breast cancer treatments.

The questions that will be asked of patients and patient stakeholders at the meeting are listed in this section, organized by topic. For each topic, a brief initial patient panel discussion will begin the dialogue. This will be followed by a facilitated discussion inviting comments from other patient and patient stakeholder participants. In addition to input generated through this public meeting, FDA is interested in receiving patient input addressing these questions through written comments, which can be submitted to the public docket (see **ADDRESSES**).

Topic 1: Symptoms and Daily Impacts That Matter Most to Patients

1. For context, how long ago was your diagnosis of breast cancer? Is your cancer currently in only one area or has it spread to other parts of the breast or lymph nodes or outside of the breast?

2. Of all the symptoms that you experience because of your breast cancer, which one to three symptoms have the most significant impact on your daily life? (Examples may include breast pain, swelling, bone pain, and fatigue.)

3. Are there specific activities that are important to you but that you cannot do at all, or as fully as you would like, because of breast cancer? (Examples may include exercise, sexual activity/intimacy, etc.)

Topic 2: Patient Perspectives on Current Approaches To Treating Breast Cancer

1. Are you currently undergoing any cancer treatments to help reduce or control the spread of your breast cancer? Please describe.

1.1 What do you consider to be the most significant downsides of these treatments? (Examples of downsides may include side effects, going to the hospital for treatment, frequent blood tests, etc.)

1.2 How do these downsides affect your daily life?

2. What supportive care treatments, if any, are you taking to help improve or manage the symptoms you experience because of your breast cancer? Please include any prescription medicines, over-the-counter products, and other therapies including non-drug therapies (such as pain medication, acupuncture, massage therapy, and dietary supplements).

2.1 What specific symptoms do your treatments address?

2.2 How well do these treatments manage these symptoms?

2.3 Are there symptoms that your current treatment regimen does not address at all, or does not treat as well as you would like?

3. When thinking about your overall goals for treatment, how do you weigh the importance of prolonging your life versus improving the symptoms you experience because of your breast cancer?

4. What factors do you take into account when making decisions about using treatments to help reduce or control the spread of your breast cancer? In particular:

4.1 What information on the potential benefits of these treatments factors most into your decision? (Examples of potential benefits from treatments may include shrinking the tumor, delaying the growth of the tumor, prolonging life, etc.)

4.2 How do you weigh the potential benefits of these treatments versus the common side effects of the treatments? (Common side effects could include nausea, loss of appetite, fatigue, diarrhea, rash.)

4.3 How do you weigh the potential benefits of these treatments versus the less common but serious risks associated with the treatments? (Examples of less common but serious risks are developing a hole in the stomach or intestine, liver failure, kidney failure, lung inflammation, blood clot, stroke, heart attack, serious infections, etc.)

B. Meeting Attendance and Participation

If you wish to attend this meeting, visit *http://breastcancerpatientfocused.eventbrite.com.* Please register by March 23. 2015. If you are unable to attend the meeting in person, you can register to view a live Webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of a disability, please contact Pegah Mariani (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

Patients who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. These patients also must send to *PatientFocused@fda.hhs.gov* a brief summary of responses to the topic questions by March 16, 2015. Panelists will be notified of their selection approximately 7 days before the public meeting. We will try to accommodate all patients and patient stakeholders who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Docket Comments: Regardless of whether you attend the public meeting, you can submit electronic or written responses to the questions pertaining to Topics 1 and 2 to the public docket (see **ADDRESSES**) by June 2, 2015. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: As soon as a transcript is available, FDA will post it at *http://www.fda.gov/Drugs/NewsEvents/ucm421313.htm.*

Dated: December 15, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29721 Filed 12–18–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0045]

Department of Homeland Security (DHS) Cybersecurity Education and Awareness (CE&A) National Initiative for Cybersecurity Careers and Studies (NICCS) Cybersecurity Scholarships, Internships, Camps, Clubs, and Competitions Collection

AGENCY: Cybersecurity Education & Awareness Office, DHS.

ACTION: 60-day Notice and request for comments; new collection (request for a new OMB Control No.), 1601—NEW

SUMMARY: The Department of Homeland Security, Cybersecurity Education & Awareness Office, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until February 17, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number 2013–0045, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: dhs.pra@hq.dhs.gov* Please include docket number DHS- 2013–0045 in the subject line of the message.

SUPPLEMENTARY INFORMATION: Title II, Homeland Security Act, 6 U.S.C. 121(d)(1) To access, receive, and analyze law enforcement information, intelligence information and other information from agencies of the Federal Government, State and local government agencies . . . and Private sector entities and to integrate such information in support of the mission responsibilities of the Department. The following authorities also permit DHS to collect information of the type contemplated: Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3546; Homeland Security Presidential Directive (HSPD) 7, ''Critical Infrastructure Identification, Prioritization, and Protection'' (2003); and NSPD–54/HSPD–23, ''Cybersecurity Policy'' (2008). In May 2009, the President ordered a Cyberspace Policy Review to develop a comprehensive approach to secure and defend America's infrastructure. The review built upon the Comprehensive National Cybersecurity Initiative (CNCI).

In response to increased cyber threats across the Nation, the National Initiative for Cybersecurity Education (NICE) expanded from a previous effort, the CNCI Initiative #8. NICE formed in 2010, and is a nationally coordinated effort comprised of over 20 federal departments and agencies, and numerous partners in academia and industry. NICE focuses on cybersecurity awareness, education, training and professional development. NICE seeks to encourage and build cybersecurity awareness and competency across the Nation and to develop an agile, highly skilled cybersecurity workforce.

The National Initiative for Cybersecurity Careers & Studies (NICCS) Portal is a national online resource for cybersecurity awareness, education, talent management, and professional development and training. NICCS Portal is an implementation tool for NICE. Its mission is to provide comprehensive cybersecurity resources to the public.

Any information received from the public in support of the NICCS Portal is completely voluntary. Organizations

and individuals who do not provide information can still utilize the NICCS Portal without restriction or penalty. An organization or individual who wants their information removed from the NICCS Portal can email the NICCS Supervisory Office (SO). The NICCS SO email address, *niccs@hq.dhs.gov,* is provided in many places throughout the Web site. The organization or individual can send the SO a brief email stating their desire to remove their data.

Department of Homeland Security (DHS) Cybersecurity Education and Awareness (CE&A) intends for a portion of the collected information from the NICCS Cybersecurity Scholarships, Internships, Camps & Clubs, and Competitions Web Form to be displayed on a publicly accessible Web site called the National Initiative for Cybersecurity Careers and Studies (NICCS) Portal (*http://niccs.us-cert.gov/*). Information will be made available to the public to support the National Initiative for Cybersecurity Education (NICE) mission.

The information will be completely collected via electronic means using the Web form collection instruments. Once data is inputted into the web form collection instruments it will be automatically formatted and emailed to the NICCS Supervisory Office (SO) for review and processing. Correspondence between the public and DHS CE&A will be via the NICCS SO official email address (*niccs@hq.dhs.gov*). Correspondence could include a confirmation to the public confirming the receipt and acceptance of their data entry. After this confirmation, correspondence will be limited to conversations initiated by the public.

All information collected from the NICCS Cybersecurity Scholarships, Internships, Camps & Clubs, and Competitions Web Form will be stored on the publicly accessible NICCS Portal. The following privacy documents address this collection request: DHS/ALL/PIA–006—DHS General Contacts List Privacy Impact Assessments (PIA) and DHS/ALL/SORN–002—Department of Homeland Security (DHS) Mailing and Other Lists Systems System Of Records Notice (SORN). All information, excluding Points of Contacts (POC) names and email addresses, will be made available on the public-facing NICCS Web Portal. There is no assurance of confidentiality provided to the respondents for this collection of information.

This is a new collection; therefore, there has been no increase or decrease in the estimated annual burden hours previously reported for this information collection.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

AGENCY: Cybersecurity Education & Awareness Office, DHS.

Title: Department of Homeland Security (DHS) Cybersecurity Education and Awareness (CE&A) National Initiative for Cybersecurity Careers and Studies (NICCS) Cybersecurity Scholarships, Internships, Camps, Clubs, and Competitions Collection.

OMB Number: 1601–NEW.

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 75 hours.

Dated: December 10, 2014.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2014–29778 Filed 12–18–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: DHS OIG Audit of FEMA's Assistance to Firefighters Grant Program, DHS Form 530, DHS Form 531, DHS Form 532

AGENCY: Office of Inspector General, Office of Audits, DHS.

ACTION: 30-Day Notice and request for comments; New Collection, 1601–NEW.

SUMMARY: The Department of Homeland Security, Office of Inspector General, Office of Audits, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on Thursday, October 2, 2014 at 79 FR 59500 for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until January 20, 2015. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: This information collection is mandatory for grantees selected in a random sample of fiscal year 2010 to fiscal year 2012 Assistance to Firefighter (AFG) grants and Staffing for Adequate Fire and Emergency Response (SAFER) grants.

The Department of Homeland Security's (DHS) Office of Inspector General (OIG) is conducting an audit to determine whether the Federal Emergency Management Agency's (FEMA) oversight and monitoring of Assistance to Firefighter Grant Program recipients ensures that grantees comply with grant requirements and guidance precluding waste, fraud, and abuse of grant funds. The DHS OIG will use the data collected to determine whether FEMA's current monitoring and grant management efforts comply with Federal regulations, as well as FEMA's Assistance to Firefighter Grant Program requirements. The DHS OIG will make recommendations to FEMA to address any programmatic challenges identified during the audit.

The *Inspector General Act of 1978,* as amended, stipulates that Inspectors General conduct and supervise audits to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action. In addition, as such, they have access to all records, reports, audits, reviews, documents, papers, recommendations,

or other material that relate to programs and operations with respect to which that Inspector General has responsibilities under this Act.

Additionally, financial and programmatic monitoring requirements are set forth in 44 CFR part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government* or 2 CFR part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.* Per FEMA grant guidance and grant award letters, grant recipients are required to conform to either 44 CFR part 13 or 2 CFR part 215. Both regulations stipulate that records must be retained for three years after submission of the final expenditure report for the grant.

Finally, both 44 CFR 13.43 and 2 CFR 215.53 provide the Inspector General the right of timely and unrestricted access to any records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. The collection information will be used by the DHS OIG to conduct an audit of FEMA's oversight and management of the Assistance to Firefighters Grant Program—specifically the Assistance to Firefighters (AFG) and Staffing for Adequate Fire and Emergency Response (SAFER) sub-programs. This information will be used to respond to the audit's objective, which is to determine the extent to which Assistance to Firefighter grant recipients comply with grant requirements and guidance precluding waste, fraud, and abuse of grant funds.

The information will be requested in an email sent to each grantee's point of contact information in FEMA's eGrant database. DHS Forms 530, 531, and 532 detail the information being collected from each grantee. Each attachment is specific to the type of grant awarded. The email will have one attachment specific to the grant awarded.

A cover email (Grantee Email from OIG) provides guidance for submitting the requested information.

Once the information is collected from the grantee, the DHS OIG will analyze this information based on established criteria to determine if grantees complied with these criteria to preclude waste, fraud, and abuse of grant funds. The information will also be used to determine if FEMA provided adequate oversight and monitoring of these grant programs.

This results of this analysis will be presented in two audit reports—one for AFG grants and one for SAFER grants. These reports will include recommendations to FEMA based on the results of the analysis.

The preferred submission method for collection of this information will be via electronic mail. However, regular mail options for hard copies or scanned copies on electronic media will be available should the grantee not have access to the internet.

An email will be sent to the grantee with the appropriate form for the type of grant attached. The email (Grantee Email from OIG) provides guidance to the grantee on how to respond to this request.

A specific form will be sent for each the three types of grants in the sample—AFG (DHS Form 532), SAFER Hiring (DHS Form 530), or SAFER Recruitment and Retention (DHS Form 531). Each form has questions and document requests specific to that type of grant.

Each form requests documents that may be available on the internet. If information is available on the internet (for example, grantee procurement policies) and the grantee provides this location of this information, the DHS OIG will download this information from the Web site.

The burden has been reduced on the grantee because the DHS OIG is only requesting information the grantee is required to retain and does not normally submit to FEMA including items such as invoices for items/services purchased, written procurement policies and proof of payment to vendors for items/services purchased.

Grantees are required to maintain grant records for three years after the submission of their final expenditure report. It is estimated that no more than 28 respondents (five percent) will mail their records to the DHS Office of Inspector General. The cost to mail a five pound box of records to the Office of Inspector General's Denver Field Office using the United States Postal Service's Standard Post is $14.33. The estimated total annual cost burden is $401.24. The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Inspector General, Office of Audits, DHS.

Title: DHS OIG Audit of FEMA's Assistance to Firefighters Grant Program.

OMB Number: 1601—NEW.

Frequency: State, Local, or Tribal Government.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 556.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 1112.

Estimated Annual Cost: $401.24.

Dated: December 10, 2104.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2014–29775 Filed 12–18–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Notice of Availability for the Patient Decontamination in a Mass Chemical Exposure Incident: National Planning Guidance for Communities

AGENCY: Office of Health Affairs, DHS.

ACTION: Notice of availability.

SUMMARY: The Chemical Defense Program (CDP), under the Department of Homeland Security Office of Health Affairs (OHA), and the Office of the Assistant Secretary for Preparedness and Response (ASPR), under the Department of Health and Human Services (HHS), have published the document titled ''Patient Decontamination in a Mass Chemical Exposure Incident: National Planning Guidance for Communities.'' The document is available on the following website: *http://www.phe.gov/Preparedness/responders/Pages/patientdecon.aspx*

SUPPLEMENTARY INFORMATION: This guidance document is developed for senior leaders, planners, incident commanders, emergency managers, and trainers of local response organizations and health care facilities; it contains strategic-level, evidence-based best practices for use when planning and

conducting patient decontamination in a mass chemical casualty incident. The subject matter is focused on external decontamination of living people exposed to toxic industrial chemicals (TICs), toxic industrial materials (TIMs) or chemical warfare agents (CWAs) resulting from either an intentional or accidental release. The guidance document provides an approach that is flexible and scalable according to the resource and capability limitations of the organization. The recommendations, therefore, are adaptable to each unique community as it sees fit. The principles set forth in this guidance document are strategic-level and designed to guide communities' planning efforts rather than specify operational practices. The guidance is evidence-based using currently available scientific research to the extent possible, and the supporting evidence is documented and briefly discussed.

This document was released for public comment on April 2, 2014 under Docket Number DHS–2014–0012. Approximately 200 comments were received during the 45-day comment period. The comments were then adjudicated by a working group comprising the primary authors from DHS/OHA and HHS/ASPR.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Kirk at *mark.kirk@hq.dhs.gov* or Dr. Susan Cibulsky at *susan.cibulsky@hhs.gov.*

Dated: December 12, 2014.

Mark A. Kirk,

Director, Chemical Defense Program.

[FR Doc. 2014–29779 Filed 12–18–14; 8:45 am]

BILLING CODE 9110–9K–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0073]

Homeland Security Advisory Council—New Tasking

AGENCY: The Office of Policy, DHS.

ACTION: Notice of task assignment for the Homeland Security Advisory Council.

SUMMARY: The Secretary of the Department of Homeland Security (DHS), Jeh Johnson, tasked his Homeland Security Advisory Council (HSAC) to establish a subcommittee entitled the CBP Integrity Advisory Panel on December 9, 2014. The CBP Integrity Advisory Panel will provide findings and recommendations to the Homeland Security Advisory Council on best practices sourced from Federal, state, and local law enforcement integrity leaders. This notice is not a solicitation for membership.

FOR FURTHER INFORMATION CONTACT: Ben Haiman, Deputy Executive Director of the Homeland Security Advisory Council, Office of Policy, U.S. Department of Homeland Security at (202) 380–8615.

SUPPLEMENTARY INFORMATION: The Homeland Security Advisory

Council provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of

Homeland Security on matters related to homeland security.

The Homeland Security Advisory Council is comprised of leaders of local law enforcement, first responders, state and local government, the private sector, and academia.

Tasking: The DHS Integrity Advisory Panel will develop findings and recommendations that address, among other closely related topics, best practices and recommendations for U.S. Customs and Border Protection. This panel should:

(1) Benchmark CBP's progress in response to Use of Force reviews; (2) Identify best practices from federal, state, local, and tribal law enforcement on integrity incident prevention—both mission compromising and off-duty conduct; (3) Identify best practices from federal, state, local, and tribal law enforcement on transparency pertaining to incident response and discipline as well as stakeholder outreach; (4) Obtain recommendations to ensure CBP develops an effective capability for investigating criminal misconduct within its ranks given CBP's high-risk environment and its expanding workforce;(5)Obtain recommendations for CBP to facilitate enhanced participation among law enforcement and intelligence agencies within an interagency task force environment, combining federal, state, local, and tribal resources to more effectively address the significant threat of public corruption by leveraging resources, capabilities, and reducing duplication of effort; (6) Evaluate CBP's efforts to become an intelligence-driven organization.

Schedule: The DHS CBP Integrity Advisory Panel's findings and recommendations will be submitted to the Homeland

Security Advisory Council for their deliberation and vote during a public meeting. Once the report is voted on by the Homeland Security Advisory Council, it will be sent to the Secretary for his review and acceptance. DHS CBP Integrity Task Force findings and recommendations should be submitted to the Homeland Security Advisory Council by June 2015.

Dated: December 15, 2014.

Mike Miron,

Director,

Homeland Security Advisory Council, DHS.

[FR Doc. 2014–29773 Filed 12–18–14; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies,

and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)-443–6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202)- 720–8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL. 33021; (443) 223–4639; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202)-685–9426 (These are not toll-free numbers).

Dated: December 11, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 12/19/2014

Suitable/Available Properties

Building

Arizona

San Carlos Irrigation Project
BIA Old Main Office Bldg.
255 W. Roosevelt
Coolidge AZ 85128
Landholding Agency: GSA
Property Number: 54201440008
Status: Surplus
GSA Number: 9–I–AZ–1706–AA
Directions: Disposal Agency; GSA; Landholding Agency: Bureau of Indian Affairs.
Comments: 83+ yrs. old; 6,745 sq. ft. ; 36mos. vacant; residential and commercial; brick structure; fair condition; asbestos & lead based paint; contact GSA for more information.

Nevada

2 Buildings
Nellis AFB
Nellis NV 89191
Landholding Agency: Air Force
Property Number: 18201440019
Status: Unutilized
Directions: 727 (15,803 sq. ft.); 729 (19,137 sq. ft.).
Comments: Fair to moderate conditions; dorm; 38+ yrs.-old; asbestos; escort/base pass required to access; contact Air Force for more information.

7 Buildings
Nellis AFB
Nellis NV 89191
Landholding Agency: Air Force
Property Number: 18201440020
Status: Underutilized
Directions: 432; 10237; 10236; 10235; 589; 258; 415
Comments: Sq. ft. varies; fair to moderate conditions; asbestos; escort/base pass required to access; contact Air Force for more information.

Texas

Naval Air Station Corpus Christi
Doct. Storage, Bldg. 145
Corpus Christi TX 78419–5021
Landholding Agency: Navy
Property Number: 77201440023
Status: Excess
Comments: 30+ yrs. old; 6,000 sq. ft.; storage; poor condition; contact Navy for more information & accessibility.

Washington

Fruit Handling Bldg. 1
1104 N. Western Ave. Asset ID 535000B001/ RPUID 03.54625
Wenatchee WA 98801
Landholding Agency: Agriculture
Property Number: 15201440006
Status: Underutilized
Comments: 47+ yrs. old; 3,200 sq. ft.; storage; fair condition; steel; located on WSU campus; contact Agriculture of more information & accessibility.

Chinook Pass WC 3 Br Res
1107.00551 0767200
171137 Washington 410
Naches WA 98937
Landholding Agency: Agriculture
Property Number: 15201440008
Status: Excess
Comments: 54+ yrs.-old; 1,300 sq. ft.; stick built; residential; 128+ months vacant; roof need repairs; contact Agriculture for more information.

Land

Nevada

Ditchrider Sorensen Road
2105 Sorensen Road
Fallon NV 89406
Landholding Agency: GSA
Property Number: 54201440006
Status: Surplus
GSA Number: 9–I–NV–0572–AB
Directions: Disposal Agency; GSA; Landholding Agency; Interior.
Comments: 2.73 acres; formerly used us contractor/employee housing structure removal from the land 02/2011. Contact GSA for more information.

Ditchrider South East Street
207 South East St.
Fallon NV 89406
Landholding Agency: GSA
Property Number: 54201440007
Status: Surplus
GSA Number: 9–I–NV–0572–AA
Directions: Disposal Agency; GSA; Land Holding Agency; Interior.
Comments: 0.32 acres; formerly used us contractor/employee housing structure

demolished on land 02/2011. Contact GSA for more information.

Unsuitable Properties

Building

California

8 Buildings
Beale AFB
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201440022
Status: Unutilized
Directions: 5109; 5110; 5111; 5112; 5113; 5116; 1152; 1226
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

3 Buildings
6425 & 4790 B St., 17430 Dolittle
Beale CA 95903
Landholding Agency: Air Force
Property Number: 18201440023
Status: Excess
Directions: 2539; 2538; 2540
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

7 Buildings
Air Force Plant 42
Palmdale CA
Landholding Agency: Air Force
Property Number: 18201440025
Status: Unutilized
Directions: 326; 322; 321; 318; 317; 313; 311A
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Colorado

Bldg. 161
Peterson AFB
Peterson CO 80914
Landholding Agency: Air Force
Property Number: 18201440014
Status: Unutilized
Comments: Entire property located w/in airfield runway clear zone; public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Within airport runway clear zone; Secured Area

Florida

561
Patrick AFB
Patrick FL 32925
Landholding Agency: Air Force
Property Number: 18201440016
Status: Unutilized
Comments: Entire property located w/in airfield runway clear zone; public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Within airport runway clear zone; Secured Area

Georgia

4 Buildings
Robins AFB
Robins GA 31098
Landholding Agency: Air Force
Property Number: 18201440017
Status: Unutilized
Directions: 272; 273; 312; 614
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

2 Buildings
Robins AFB
Robins GA 31098
Landholding Agency: Air Force
Property Number: 18201440018
Status: Underutilized
Directions: 327; 262
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Kansas

1129
McConnell AFB
Wichita KS 67221
Landholding Agency: Air Force
Property Number: 18201440015
Status: Underutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Louisiana

B–9402
100 Warrior Center Rd.
Barksdale LA
Landholding Agency: Air Force
Property Number: 18201440021
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Maryland

3602
Joint Base Andrews
JBA MD 20762
Landholding Agency: Air Force
Property Number: 18201440024
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Michigan

Building 970
44370 N. Jefferson Ave.
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201440028
Status: Unutilized
Comments: Public Access denied & no alternative method to gain access w/out compromising Nat'l Security.
Reasons: Secured Area

Building 826—Bowling Alley
43467 N. Jefferson Ave.
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201440029
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising Nat'l Security.
Reasons: Secured Area

Building 1540
Selfridge ANGB
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201440030
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising Nat'l Security.
Reasons: Secured Area

Building 699
Selfridge ANGB
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201440031
Status: Unutilized
Comments: Public access denied & no alternative method to gain access w/out compromising Nat'l Security.
Reasons: Secured Area

Nevada

Bldg. 400
Creech AFB
Creech NV 89018
Landholding Agency: Air Force
Property Number: 18201440013
Status: Underutilized
Comments: Entire property located in floodway; not corrected or contained.
Reasons: Floodway

New Jersey

3 Buildings
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201440012
Status: Unutilized
Directions: 5201; 5202; 5203
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

South Dakota

7806
Ellsworth AFB
Ellsworth SD 57706
Landholding Agency: Air Force
Property Number: 18201440009
Status: Underutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

601
Ellsworth AFB
Ellsworth SD 57706
Landholding Agency: Air Force
Property Number: 18201440010
Status: Underutilized
Comments: Entire property located w/in airfield runway; public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area; Within airport runway clear zone

5 Buildings
Ellsworth AFB
Ellsworth SD 57706
Landholding Agency: Air Force
Property Number: 18201440011
Status: Unutilized
Directions: 3008; 3009; 3006; 3010; 3014
Comments: Entire property located in floodway; not corrected or contained;

public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Floodway; Secured Area

Tennessee

Wears Valley Quarters/
Ranger Station
3443 Wears Valley Road
Sevierville TN 37862
Landholding Agency: Interior
Property Number: 61201440014
Status: Unutilized
Comments: Documented deficiencies structurally unsound; extensive deterioration; severe mold infestation; represents a clear threat to personal physical safety.
Reasons: Extensive deterioration

Texas

87
Air Force Plant 4
Ft. Worth TX
Landholding Agency: Air Force
Property Number: 18201440026
Status: Underutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

127
Air Force Plant 4
Ft. Worth TX
Landholding Agency: Air Force
Property Number: 18201440027
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Land

Indiana

Bryant Creek Access Site
State Road 156
Patriot IN 47038
Landholding Agency: GSA
Property Number: 54201440009
Status: Excess
GSA Number: 1–D–IN–608
Directions: Disposal Agency: GSA; Landholding Agency: COE
Comments: Entire property located within floodway which has not been corrected or contained.
Reasons: Floodway

North Carolina

Photovoltaic (PV) Building
Site 45
Marine Corps Base Camp Lejeune
Camp Lejeune NC
Landholding Agency: Navy
Property Number: 77201440024
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising Nat'l Security.
Reasons: Secured Area

[FR Doc. 2014–29458 Filed 12–18–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–0053; 20124–1112–0000–F2]

Southern Edwards Plateau Environmental Impact Statement and Habitat Conservation Plan; City of San Antonio and Bexar County; Regional Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and announcement of public hearings.

SUMMARY: Bexar County and the City of San Antonio (applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP, TE–48571B–0) under the Endangered Species Act of 1973, as amended (Act). The requested permit would authorize incidental take of nine federally listed species in Bexar County and the City of San Antonio. The applicants have completed a draft Habitat Conservation Plan, referred to as the Southern Edwards Plateau (SEP dHCP), as part of the application package. The Service also announces the availability of a draft Environmental Impact Statement (dEIS), which has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act (NEPA). We are making the permit application package, including the SEP dHCP and dEIS, available for public review and comment.

DATES: *Submission of Comments:* We will accept comments received or postmarked on or before March 19, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on these actions.

Public Meetings: The Service will hold public meetings during the public comment period. The dates, times, and locations of these meetings will be noticed in local newspapers at least 2 weeks before each meeting and will also be posted on the Web sites *http://www.fws.gov/southwest/es/AustinTexas/* and *http://www.sephcp.com.*

ADDRESSES: *Obtaining SEP dHCP and dEIS for Review:* You may obtain copies of the dEIS and dHCP by going to the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/*, the SEP's Web site at *http://www.sephcp.com*, or at the Federal eRulemaking Portal at *http://www.regulations.gov* (Docket Number FWS–R2–ES–2014–0053). Alternatively, you may obtain compact disks with electronic copies of these documents by writing to Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling (512) 490–0057; or faxing (512) 490–0974. A limited number of printed copies of the SEP dHCP and dEIS are also available, by request, from the Field Supervisor. Copies of the SEP dHCP and dEIS are also available for public inspection and review at the following locations, by appointment only:

- Department of the Interior, Natural Resources Library, 1849 C St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Obtaining Incidental Take Permit Application for Review

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103.

Submitting Comments

To submit written comments, please use one of the following methods, and note that your comment is in reference to the SEP dHCP and dEIS:

- *Electronically*: Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R2–ES–2014–0053.
- *U.S. Mail*: Public Comments Processing, Attn: FWS–R2–ES–2014–0053; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.
- *Public Meetings*: We will also accept written or oral comments at the public meetings (see **DATES**).

We request that you submit comments by only the methods described above. We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Availability of Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Adam Zerrener, Field Supervisor, U.S.

Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; (512) 490–0057 (telephone).

SUPPLEMENTARY INFORMATION: Bexar County and the City of San Antonio (applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP, TE–48571B–0) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act). The requested permit, which would be in effect for a period of 30 years, if granted, would authorize incidental take of the following federally listed species: Golden-cheeked warbler (*Setophaga* [=*Dendroica*] *chrysoparia*) (GCWA), black-capped vireo (*Vireo atricapilla*) (BCVI), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Madla Cave meshweaver (*Cicurina madla*), Braken Cave meshweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), *Rhadine exilis* (no common name), *Rhadine infernalis* (no common name), and Helotes mold beetle (*Batrisodes venyivi*) (collectively, covered species).

Incidental take would be covered in Bexar County and the City of San Antonio, including current and future portions of the City's extra-territorial jurisdiction (ETJ), which currently extends outside of Bexar County into Comal, Medina, and Kendall Counties. However, the City is projected to expand into Bandera County in the future. Therefore, the permit area—*i.e.*, where incidental take will be permitted—includes Bexar County and those portions of the City's ETJ that do/will expand into Medina, Kendall, and Bandera Counties over the life of the permit. While the ETJ currently extends into Comal County, incidental take will not be covered other than on preserves, since Comal County has its own habitat conservation plan (HCP).

Covered activities include construction, use, and/or maintenance of land development projects; farm and ranch improvements; commercial or industrial projects; construction, maintenance, or improvement of public infrastructure; installation and/or maintenance of utility infrastructure; construction, use, maintenance and/or expansion of quarries, gravel mining, or other similar extraction projects; and any activities necessary to manage habitat for the covered species that could temporarily result in incidental take. The applicants have completed a draft Habitat Conservation Plan, referred to as the Southern Edwards Plateau (SEP dHCP), as part of the application package.

The Service also announces the availability of a draft Environmental Impact Statement (dEIS), which has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*; NEPA). We are making the permit application package, including the dHCP and dEA, available for public review and comment.

Background

We initially prepared a notice of intent (NOI) to prepare an EIS, which was published in the **Federal Register** on April 27, 2011 (76 FR 23619). We also held public scoping meetings in connection with the applicants' requested permit. A summary of comments provided during the 2011 scoping period, which included public meetings held June 6, 2011, in Bandera, Texas; June 7, 2011, Boerne, Texas; June 9, 2011, Blanco, Texas; June 13, 2011, Kerrville, Texas; and June 14, 2011, Helotes, Texas, are available on the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/* and on the applicants' Web site at *http://www.sephcp.com* (Appendix F of the dEIS).

Proposed Action

The proposed action, involves the issuance of an ITP by the Service for the covered activities in the permit area, pursuant to section 10(a)(1)(B) of the Act. The ITP would cover ''take'' of the covered species associated with public and private projects occurring within the permit area.

The requested term of the ITP is 30 years. To meet the requirements of a section 10(a)(1)(B) ITP, the applicants developed and propose to implement the SEP dHCP, which describes the conservation measures the applicants have agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the covered species to the maximum extent practicable, and ensure that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

Section 9 of the Act and its implementing regulations prohibit ''take'' of fish and wildlife species listed as threatened or endangered under section 4 of the Act. However, section 10(a)(1)(B) of the Act authorizes us to issue permits to take listed wildlife species where such take is incidental to, and not the purpose of, otherwise lawful activities and where the applicant meets certain statutory requirements.

Alternatives

Four alternatives to the proposed action we are considering as part of this process are:

1. *No Action Alternative.* Under the No Action Alternative, Bexar County and the City of San Antonio would not seek, and the Service would not issue, an ITP. Under this alternative, compliance with the Act would continue to occur only on an individual basis through project-specific consultations with the Service. Local governments, business entities, private landowners, and others would independently determine whether or not ESA compliance is necessary for a particular project and, if needed, would work with the Service to obtain authorization for incidental take. Each independent consultation would require an analysis of the incidental take and impacts to listed species, the identification and implementation of appropriate and practicable mitigation measures, and the preparation of appropriate documentation to support the permitting action.

Mitigation requirements would be individually negotiated with the Service on the basis of the level of impact to listed species and the conservation value of the mitigation options and opportunities available to the individual applicant. Possible forms of mitigation could include on-site preservation of habitat, acquisition of off-site preserve lands, or purchase of conservation credits from an independent conservation bank. With the exception of conservation bank credit purchases, it is likely that many preserve lands offered as mitigation for individual projects would be relatively small, isolated, and/or widely distributed across the region.

2. *Ten-Percent Participation Alternative.* The 10-Percent Participation Alternative would be a regional HCP that is sized to address only 10 percent of the anticipated future habitat losses for the covered species over the next 30 years within the permit area. Therefore, this alternative would request substantially less incidental take authorization for the covered species and would (at full implementation) result in proportionately less conservation within the plan area. With a smaller plan, the overall estimated costs for implementation would be less than one-half of the estimated cost to implement the proposed SEP dHCP. However, since there would be fewer participants paying fees to use the plan, a larger portion of the revenue needed for implementation of this alternative would require more public funding.

3. *Single-County Alternative.* The Single-County Alternative would essentially be limited to the extent of the permittees' jurisdictions. This would include both incidental take coverage and mitigation. It is assumed that the plan area for the Single-County Alternative would include Bexar County and the area within 10 miles outside of Bexar County (which would be generally sufficient to accommodate the City of San Antonio's current extra-territorial jurisdiction and possible future expansions). As habitat for the covered species within Bexar County only occurs in the northwest half of the county, the plan area for this alternative is still roughly equivalent to the geographic area of a single central Texas county.

Since all mitigation would occur in the vicinity of San Antonio, the price of land is substantially higher compared to more rural parts of the plan area. This alternative assumes that approximately 75 percent of the GCWA and BCVI preserve lands would be acquired in relatively ''suburban'' areas, and approximately 25 percent of the land would be acquired in relatively rural areas. This distribution of preserve lands would have a significant impact on the method of acquisition (fee simple vs. easement), the anticipated cost for acquisition, and the costs to manage suburban preserves compared to rural preserves. This alternative could cost nearly twice as much overall to implement over 30 years compared to the proposed alternative.

4. *Increased Mitigation Alternative.* The Increased Mitigation Alternative would implement recommendations passed by the SEP HCP's Biological Advisory Team (BAT) pertaining to mitigation for the GCWA and the karst invertebrates (BCVI mitigation would be the same as the Proposed Alternative). These recommendations were also strongly favored by many members of the Citizens Advisory Committee (CAC).

The BAT passed a recommendation calling for impacts to GCWA habitat within Bexar County to be mitigated at a 3:1 ratio (*i.e.*, 3 acres of habitat protected for each acre of direct habitat loss) and that at least 60 percent of that mitigation be placed within Bexar County or within 5 miles outside of Bexar County. The BAT also passed a recommendation that the karst preserve system be sized to achieve roughly twice the level of conservation specified by the Service's downlisting criteria for the karst invertebrates. For the purpose of modeling this alternative, it is assumed that all of the incidental take of the GCWA requested by the Permittees would be mitigated at a 3:1 ratio and that 60 percent of the GCWA preserve system would be acquired in relatively suburban parts of the Plan Area, with the remaining preserve lands acquired in rural areas. This recommendation is modeled as a requirement to acquire approximately 2,000 acres of recovery-quality karst preserves over 30 years, with at least two high-quality (100 acres each) and four medium-quality preserves (50 acres each) created in each of the five regions where the karst invertebrates occur.

Similar to the Single-County Alternative, this Increased Mitigation Alternative requires the acquisition of a large portion of the preserve system in relatively high-cost suburban or (for the karst preserves) urban areas, which would disproportionately increase the expected preserve acquisition and management costs. This alternative would achieve a higher level of conservation for the GCWA and karst invertebrates, but at a financial cost that would be approximately 275 percent higher than the proposed SEP HCP.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2014–29525 Filed 12–18–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2014–0051; FXES111205000000–156–FF05E00000]

Receipt of an Application for an Incidental Take Permit for Piping Plover, From the Town of Orleans, MA, and Availability of Proposed Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or ''we''), announce the availability of an application for an Incidental Take Permit (ITP) and a proposed Habitat Conservation Plan (HCP) from the Town of Orleans (Town) for public review and comment. We received the permit application from the Town for incidental take of the threatened piping plover (*Charadrius melodus*) resulting from the Town's authorization and management of over-sand vehicle (OSV) activities over the next 3 years. Our preliminary determination is that the proposed HCP qualifies as low-effect under our final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process. To make this determination, we used our Low-Effect HCP Screening Form/Environmental Action Statement (EAS), the preliminary version of which is also available for review.

We provide this notice to (1) seek public comments on the proposed HCP and application; (2) seek public comments on our preliminary determination that the HCP qualifies as low-effect and is therefore eligible for a categorical exclusion under the National Environmental Policy Act (NEPA); and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to issue an ITP.

DATES: To ensure consideration, we must receive your written comments by January 20, 2015.

ADDRESSES: Written comments may be submitted electronically by any one of the following methods:

Electronically: www.regulations.gov. Follow the instructions for submitting comments on Docket No. FWS–R5–ES–2014–0051.

U.S. mail: Public Comments Processing, Attn: FWS–R5–ES–2014–0051; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, Virginia 22041–3803.

FOR FURTHER INFORMATION CONTACT: Susi vonOettingen, by U.S. mail at U.S. Fish

and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301; or via phone at 603–223–2541.

SUPPLEMENTARY INFORMATION: We received an application from the Town of Orleans for an ITP for take of the federally listed threatened piping plover (*Charadrius melodus*) resulting from the Town's authorization and management of OSV activities over the next 3 years. To minimize and mitigate for the incidental take, the Town will implement a conservation program as described in its proposed HCP.

We prepared a preliminary EAS to comply with NEPA. The Service will evaluate whether the proposed action, issuance of an ITP to the Town of Orleans, is adequate to support a categorical exclusion.

This notice is provided pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321, *et seq.*).

We are requesting comments on the proposed HCP and our preliminary determination that the plan qualifies as low effect under NEPA.

Availability of Documents

The proposed HCP and preliminary EAS are available on the New England Field Office's Web site at *http://www.fws.gov/newengland/,* or at *http://www.regulations.gov* under Docket Number FWS–R5–ES–2014–0051. Copies of the proposed HCP, subsequently filed addendum to the HCP, and preliminary EAS will also be available for public review during regular business hours at the New England Field Office (see **FOR FURTHER INFORMATION CONTACT**). Those who do not have access to the Web site or cannot visit our office may request copies by telephone at 603–223–2541, or by letter to the New England Field Office.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The Town of Orleans is seeking a permit for the incidental take of piping plover for a term of 3 years. Incidental take of this species may occur as a result of the Town's authorization and management of OSV activities along Nauset Beach South.

Proposed covered activities include authorization and implementation of the Town of Orleans OSV use program. The Town's proposed management of OSV activities would in one limited respect deviate from established State and Federal guidelines for managing recreational beaches to avoid the take of piping plovers. The Town proposes to add a late-breeding season OSV escort program across limited areas where OSVs would otherwise not be allowed due to nesting plovers' presence. The HCP and addendum explain how the escort program has been designed to minimize the potential to take unfledged plover chicks. It also contains a variety of on-site and off-site predator management measures developed to mitigate for the impact of the anticipated taking, and improve piping plover productivity.

The proposed action consists of the issuance of an ITP and implementation of the proposed HCP. One alternative to the proposed action was considered in the HCP: No action (*i.e.,* operation of the project without an ITP and without avoidance, minimization, or mitigation of piping plover impacts). This alternative was deemed not practicable by the Town because the project would not have the important protections of the ITP and would not have the conservation benefits proposed by the Town.

National Environmental Policy Act

We have made a preliminary determination that the Town of Orleans proposed HCP, including the proposed minimization and mitigation measures, will have a minor or negligible effect on the species covered in the plan, and that the plan qualifies as a ''low-effect'' HCP as described in the Service's HCP Handbook (61 FR 63854, December 2, 1996).

As further explained in the preliminary EAS, included for public review, our preliminary determination that the plan qualifies as a low-effect HCP is based on the following three criteria:

(1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Implementation of the plan would result in minor or negligible effects on other environmental values or resources prior to implementation of the mitigation measures; and

(3) Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Therefore, we initially conclude that the proposed ITP would qualify for a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 8). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

The Service invites the public to comment on the proposed HCP and preliminary EAS during a 30-day public comment period (see **DATES**). You may submit written comments by one of the methods in the **ADDRESSES** section.

We will post all public comments and information received electronically or via hard copy on *http://www.regulations.gov.* All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available.

If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Martin Miller,

Acting Assistant Regional Director.

[FR Doc. 2014–29751 Filed 12–18–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV000.51010000.ER0000. LVRWH09H0480; OROR065375; IDI036029 HAG 14–0196]

Notice of Availability of the Draft Environmental Impact Statement and Land-use Plan Amendments for the Boardman to Hemingway Transmission Line Project

AGENCIES: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Vale District Office announces the availability of the Draft Environmental Impact Statement (EIS) and Land-Use Plan Amendments (LUPAs) for the Boardman to Hemingway Transmission Line Project (Project) and by this notice is announcing the opening of the public comment period.

DATES: The Draft EIS is now available for public review. To be considered in the Final EIS, written comments on the Draft EIS must be received within 90 days after the Environmental Protection Agency's publication in the **Federal Register** of a Notice of Availability (NOA) of this Draft EIS.

All public meetings or other opportunities for public involvement related to the Project will be announced to the public by the BLM at least 15 days in advance through the public Web site at: *http://www.boardmanto hemingway.com,* project mailings, and local media news releases.

ADDRESSES: Copies of the Draft EIS have been sent to affected Federal agencies, state and local governments and public libraries in the Project area. The Draft EIS and supporting documents will be available electronically on the project Web site at: *http://www.boardmantohemingway.com.* Compact Disc copies of the document are available through request on this project Web site address. A list of locations where copies of the Draft EIS are available for public inspection can be found in the **SUPPLEMENTARY INFORMATION** section below.

Written comments may be submitted by the following methods:

- email: *comment@boardmantohemingway.com*
- mail: Boardman to Hemingway Transmission Line Project, P.O. Box 655, Vale, OR 97918
- courier or hand delivery: Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, OR 97918
- no faxed or anonymous comments will be accepted

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM National Project Manager, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, OR 97918, or by telephone at 307–775–6115. Any persons wishing to be added to the project mailing list of interested parties may write or call Ms. Gertsch at the address and phone number above.

Persons who use telecommunication devices for the deaf may call the Federal Information Relay Service (FIRS) at 307–775–6115 to contact Ms. Gertsch during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or questions with the above individual regarding the project. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Idaho Power Company submitted applications to the BLM for a right-of-way (ROW) grant, the United States Forest Service (USFS) for a special use authorization, and the U.S. Bureau of Reclamation (Reclamation) for an authorization/permit, to use federal lands for portions of a proposed 300 mile 500-kilovolt (kV) single-circuit, alternating-current transmission line and ancillary facilities between a new or existing substation near Boardman, Oregon, and the Hemingway Substation, near Melba, Idaho. Idaho Power Company filed its applications in December 2007 and then filed revised applications in November 2011 and May 2012 to reflect changes to the proposed action. Idaho Power Company's objective for the Project is to provide additional capacity to connect transmission between the Pacific Northwest and Intermountain Regions in order to alleviate existing transmission constraints and to ensure sufficient capacity that will enable Idaho Power Company to meet present and forecasted load requirements. The Project description includes a rebuild of two separate 138 and 69-kV lines into double circuit monopole structures for short distances. Electrical equipment to connect the 500 kV transmission line would be installed at the endpoint substations. The proposed ROW width is 250 feet for the 500 kV portion of the line and 100 feet for two 138/69 kV rebuild sections of the line. The BLM's purpose and need for action is to respond to Idaho Power Company's ROW application.

The BLM published a Notice of Intent (NOI) to Prepare an EIS on September 12, 2008 (73 FR 52944), and held public scoping meetings in October 2008. On July 27, 2010 (75 FR 44008), the BLM published a revised NOI to Prepare an EIS in response to substantive changes in Idaho Power Company's proposal as submitted in the revised application, and sought public input on the issues associated with the project. The issues brought forward from the scoping comments for analysis in the Draft EIS include:

- Use of Federal versus private property;
- Potential impacts to private agricultural operations and irrigated lands and other existing land use;
- Potential impacts to Greater Sage-grouse;
- Proximity to other protected wildlife and habitats (*e.g.,* fish and water resources, plants, Washington ground squirrel);
- Potential impacts to Department of Defense operations;
- Potential impacts to lands with wilderness characteristics;
- Potential impacts to visual resources, including visual impacts to cultural resources;
- Potential impacts to historic properties (*e.g.,* Oregon Trail) and paleontological resources;
- Native American concerns;
- Potential impacts to air quality;
- Potential impacts of noxious weeds and invasive species;
- Potential Socio-economic impacts;
- Potential health effects from electro-magnetic fields; and
- Noise and potential line interference with electronic devices.

The scoping comments and preliminary alternatives, some of which were eliminated from further consideration are documented and discussed in the Boardman to Hemingway Transmission Project Siting Study Report available online at: *http://www.boardmantohemingway.com/documents/B2H_Siting_Study_8–17–10.pdf.* The Draft EIS analyzes the environmental consequences of granting a ROW to Idaho Power Company to construct, operate, and maintain, the transmission project. The Draft EIS also analyzes: (1) The consequences of the

USFS issuing a special use authorization to construct, operate, and maintain those portions of the transmission line and ancillary facilities located on lands administered by the USFS; and (2) the consequences of amending the USFS's 1990 Land and Resource Management Plan (Forest Plan) necessary to implement the proposed Project (36 CFR 219.13). Depending on the alternative selected, Reclamation and the U.S. Department of the Navy (Navy) may also need to issue authorizations for any route which may cross lands, easements or facilities administered by those agencies. The Draft EIS analyzes the environmental impacts associated with the alternatives that would require Reclamation and Navy authorizations. Additionally, the proposed Project may require BLM and USFS amendments to Resource Management Plans and Forest Plans. As required by 43 CFR 1610.2(c) and 36 CFR 219.8, the BLM and USFS have provided public notices regarding the potential plan amendments through the two NOIs, and this notice. The BLM and USFS analyzed the impacts of the potential plan amendments in the Draft EIS alternatives.

To the extent practicable, the proposed routes were located to within existing West Wide Energy corridors designated pursuant to Section 368 of the Energy Policy Act of 2005 and other federally-designated utility corridors, or were located in parallel existing linear infrastructure, unless precluded by resource or routing constraints or technical infeasibility. Due primarily to private land ownership patterns, particularly in the northern half of the project area, the average land ownership pattern for all the routes is approximately 67 percent private/state land and 33 percent Federal land. A total of 23 Federal, state, and local governmental agencies participated with the BLM in the preparation of this Draft EIS.

The Cooperating agencies include: Bonneville Power Administration; U.S. Army Corps of Engineers; U.S. Bureau of Reclamation; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Forest Service; U.S. Air Force; U.S. Navy; Idaho Office of Energy Resources; Oregon Department of Energy; Oregon Department of Fish and Wildlife; Morrow, Umatilla, Union, Baker and Malheur Counties, Oregon; Canyon, Payette, and Washington Counties, Idaho; the cities of Boardman, Oregon and Parma, Idaho; Owyhee Irrigation District; and the Joint Committee of the Owyhee Project. The transmission line and ancillary facilities would affect lands in Morrow, Umatilla, Union, Baker, and Malheur Counties in Oregon, and Owyhee County in Idaho.

In addition to the Proposed Action Alternative, the Draft EIS analyzes a No Action Alternative and 12 alternative routes (including a route variation) totaling approximately 550 miles for all routes. For this Draft EIS, the No Action Alternative means that the BLM and other Federal decision-making agencies would not grant or authorize the transmission line and ancillary facilities.

The Proposed Action Alternative for the project extends from the Grassland substation in northeastern Oregon and initially heads west to the Horn Butte Substation and then continues to the south, before turning east on the south side of the Naval Weapons System Training Facility at Boardman, and continuing on a southeasterly path through Morrow, Umatilla, and Union Counties, east of La Grande. The route would continue on a southeasterly path to the northeast of North Powder, before entering Baker County. In Baker County, the route would continue southeast, passing east of Highway 30 and east of Baker City, towards Durkee and staying west of Weatherby. Within Malheur County, the route would then move back to the west towards Brogan and then resume southeasterly heading west of Vale, crossing Highway 20. Continuing to the southeast, the route would leave Oregon and move into southwestern Idaho, Owyhee County, ending at the Hemingway Substation, near Melba, Idaho.

In addition to the Proposed Action, the following alternative routes are identified in the DEIS. The alternatives within Morrow County include two alternative substations Horn Butte (Portland General Electric, under construction) and the Longhorn Substation (Bonneville Power Administration), as well as two route alternatives and a route variation (Horn Butte, Longhorn and the Longhorn Variation). The Horn Butte Alternative provides an opportunity to connect to the Horn Butte Substation and combines with the Proposed Action Alternative. The Longhorn Alternative and Longhorn Variation Route provide an opportunity to connect to the Longhorn Substation and were developed to reduce impacts to the U.S. Department of the Navy military operations areas, the Oregon National Guard, and impacts to irrigated agriculture. Alternatives considered in Union County include the Glass Hill Alternative as well as the Proposed Action (however the Proposed Action more closely follows existing infrastructure). The Baker County alternatives include the Flagstaff, Burnt River Mountain and the Timber Canyon Alternatives, each of which combine with the Proposed Action into five separate alternatives; (all routes with the exception of Timber Canyon are approximately the same length, however the Timber Canyon route is approximately 15 miles longer than the other alternatives). These alternative routes were developed to address visual impacts to Baker City as well as impacts to Greater Sage-Grouse, to parallel existing infrastructure, and to reduce impacts to the National Historic Oregon Trail Interpretative Center as well as to agriculture. At the south end of Baker County and the northern section of Malheur County there are two alternatives in addition to the Proposed Action Alternative. The Willow Creek Alternative was developed to reduce impacts to Greater Sage-Grouse habitat and the Tub Mountain South Alternative was developed to use portions of the West Wide Energy Corridors (WWEC) and further reduce impacts to Greater Sage-Grouse habitat. The Proposed Action then travels southeasterly and connects with three additional alternatives, including the Double Mountain Alternative, a small alternative connected to the Proposed Action that was developed to reduce impacts to agriculture.

The Malheur A Alternative was developed to address use of the existing WWEC and Resource Management Plan corridors and Malheur S was developed to reduce potential impacts to lands with wilderness characteristics and the Owyhee Below the Dam ACEC.

The Agency Preferred Alternative (APA) starts at the north end of the project and includes the Longhorn Substation, the Longhorn Variation, and the Proposed Action route in Morrow County. The APA continues along the Proposed Action route through Umatilla and Union Counties, while within Baker County it includes sections of the Proposed Action route, and the Flagstaff and Burnt River Mountain Alternatives. In Malheur County, the APA route is comprised of the Tub Mountain South Alternative and the Proposed Action. Lastly, within Owyhee County, Idaho, the APA follows the Proposed Action route to the Hemingway Substation. Approximately 47 percent of the APA is within or adjacent to designated corridors (25% of which are West Wide Energy Corridors (WWEC) and 22% non-WWEC designated corridors).

The BLM, in coordination with the other Federal, state, and local government agencies, developed the agency preferred alternative through a comparative evaluation of routing

opportunities and constraints and the relative potential impacts among the various alternate routes and route variations.

The BLM, USFS, and other agencies worked together to develop alternative routes that would conform to existing Federal land-use plans. However, this objective was not reached for several of the alternative routes analyzed in the Draft EIS. The agencies identify and analyze proposed plan amendments alternatives in the Draft EIS. Decisions by the USFS to amend land management plans and to authorize special use authorizations are also subject to administrative review (36 CFR part 218 Subparts A and B). In accordance with 36 CFR 219.59, the USFS has elected to use the administrative review procedures of the BLM as described above.

The following land-use plan amendments may be needed to bring the Project into conformance with the applicable Resource Management Plans (RMP) for BLM-managed land and Land and Resource Management Plans (LRMP) for National Forest System land crossed by the Project, depending on Project approval and on the final route selected.

- USFS's Wallowa-Whitman National Forest LRMP: Amendments related to Regional Forester Amendment #2 (*i.e.,* ''Eastside Screens'') including removing trees larger than or equal to 21'' in diameter. Amendment to allow the Project to exceed prescribed visual quality objectives.
- BLM's Baker RMP: Amendments to Visual Resource Management (VRM) III classification near the National Historic Oregon Trail Interpretative Center.
- BLM's Southeast Oregon RMP: Amendments to VRM II segments across the Owyhee River Canyon (below the Owyhee Dam) and VRM III in limited areas.
- BLM's Owyhee RMP: No required plan amendments.

The BLM will utilize and coordinate the National Environmental Policy Act comment process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)), as provided for in 36 CFR 800.2(d)(3). Ongoing consultations with Native American Tribes will continue in accordance with policy and Tribal concerns (including impacts on Indian trust assets) will be given due consideration. Federal, state, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this Project, are invited to participate. Copies of the Draft EIS are available for public inspection during normal business hours at the following locations:

- BLM—Idaho State Office, 1387 South Vinnell Way, Boise, ID
- BLM-Boise District Office, 3948 Development Avenue, Boise, ID
- Boise Public Library, 715 South Capitol Boulevard, Boise, ID,
- BLM-Owyhee Field Office, 201st Avenue West, Marsing, ID
- Owyhee County Planning Department, 17069 Basey Street, Murphy, ID
- Nampa Public Library, 101 11th Avenue South, Nampa, ID
- Baker County Planning Department, 1995 3rd Street, Baker City, OR
- Baker County Library, 2400 Resort Street, Baker City, OR
- BLM-Baker Field Office, 3285 11th Street, Baker City, OR
- Boardman City Library, 200 South Main Street, Boardman, OR
- Harney County Public Library, 80 West D Street, Burns, OR
- Hermiston Public Library, 235 East Gladys Avenue, Hermiston, OR
- Morrow County Planning Department, 205 N.E 3rd Street, Irrigon, OR
- Grant County Library, 507 South Canyon Boulevard, John Day, OR
- La Grande Public Library, 2006 4th Street, La Grande, OR
- Union County Planning Department, 1001 4th Street, Suite C, La Grande, OR
- USFS-Wallowa-Whitman National Forest Office, 3502 Highway 30, La Grande, OR
- USFS-Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, OR
- Pendleton Public Library, 502 SW. Dorion Avenue, Pendleton, OR
- Umatilla County Planning Department, 216 SE. 4th Street, Pendleton, OR
- BLM-Prineville District Office, 3050 NE. 3rd Street, Prineville, OR
- Ontario Library, 388 SW. 2nd Avenue, Ontario, OR
- BLM-Vale District Office, 100 Oregon Street, Vale, OR
- Malheur County Planning Department, 251 B Street, West Vale, OR
- Oregon Dept. of Energy, 625 Marion Street, NE., Salem, OR
- BLM-Oregon State Office, 1220 SW Third Avenue, Portland, OR
- North Powder City Library, 290 East Street, North Powder

Your input is important and will be considered in the environmental and land-use planning analysis processes. The BLM and USFS request that comments be structured to contain sufficient detail to allow the agencies to address them in the Final EIS. The BLM, USFS, and Reclamation will consider all timely filed comments and respond to them in the Final EIS. All comment submissions must include the commenter's name and street address. Comments, including the names and addresses of the commenter, will be available for public inspection at the locations listed above during normal business hours (8:00 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays.

Before including your address, phone number, email address, or any other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be publicly available at any time. While you may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Jerome E. Perez,

State Director, Oregon/Washington.

[FR Doc. 2014–29770 Filed 12–18–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM950000 L13110000.BX0000 15XL1109PF]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *mmontoya@blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, in three sheets, representing the dependent resurvey and survey in Township 20 and 21 North, Range 8 East, of the New Mexico Principal Meridian, accepted December 11, 2014, for Group 1117 NM.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed. A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Timothy J. Moore,

Acting Branch Chief, Cadastral Survey.

[FR Doc. 2014–29765 Filed 12–18–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0312]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2014 Survey of State Criminal History Information Systems

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day Notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 17, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Devon Adams, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531 (email: *Devon.Adams@usdoj.gov*; telephone: 202–514–9157).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection: Survey of State Criminal History Information Systems.*

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no form number. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Government. This information collection is a survey of State record repositories to estimate the percentage of total state records that are immediately available through the FBI's Interstate Identification Index and the percentage of records that are complete and fingerprint-supported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 56 respondents will expend approximately 6.2 hours to complete the survey once every two years.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 347 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: December 16, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–29743 Filed 12–18–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Enhanced Transitional Jobs Demonstration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Enhanced Transitional Jobs Demonstration,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 20, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201409-1205-005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Enhanced Transitional Jobs Demonstration information collection that consists of reporting and recordkeeping requirements. This reporting structure features standardized data collection for program participants and quarterly narrative, performance, and management information system report formats. Grantee organizations (*e.g.,* State or local governments and faith-based and community organizations) or their sub-grantees obtain and record needed information from program participants and report information quarterly to the ETA. Workforce Investment Act section 136(f)(1) authorizes this information collection. *See* 29 U.S.C. 2871(f)(1).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0485.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 25, 2014 (79 FR 36100).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0485. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Enhanced Transitional Jobs Demonstration.

OMB Control Number: 1205–0485.

Affected Public: Individuals or Households; State, Local, and Tribal Governments; and Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 3,007.

Total Estimated Number of Responses: 6,028.

Total Estimated Annual Time Burden: 8,340 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 15, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–29685 Filed 12–18–14; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for the American Apprenticeship Initiative

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–15–02.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of approximately $100 million in grant funds authorized by Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended (codified at 29 U.S.C. 2916a), for the American Apprenticeship Initiative.

These grants are financed by a user fee paid by employers to hire foreign workers into the United States under the H–1B nonimmigrant visa program. This initiative is intended to provide a catalyst in supporting a uniquely American Apprenticeship system that meets our country's particular economic, industry and workforce needs. American Apprenticeships (also referred to as Registered Apprenticeships) are innovative work-based learning and post-secondary earn-and-learn models that meet national standards for registration with the U.S. Department of Labor (or federally recognized State Apprenticeship Agencies). Grants funded by this initiative will support dynamic and sustainable public-private partnerships that:

- Support the expansion of quality and innovative American Apprenticeship programs into high-growth occupation(s) and industry(s), particularly those for which employers are using H–1B visas to hire foreign workers, and the related activities necessary to support such programs (see Appendix A or visit the Foreign Labor Certification Data Center);
- Create career pathways that encompass American Apprenticeship and align with other post-secondary educational offerings;
- Use strategies to significantly increase apprenticeship opportunities for job seekers and workers (particularly for women and other underrepresented populations in apprenticeship, including young men and women of

color, people with disabilities; low-skilled populations; and veterans, including transitioning service members); and

• Leverage and develop public policies that increase demand for American Apprenticeship and support sustainability.

The complete FOA and any subsequent FOA amendments in connection with this funding opportunity are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this funding opportunity.

DATES: The closing date for receipt of applications under this announcement is April 30, 2015. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Jeannette Flowers, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3322. Sara Gallagher Williams is the Grant Officer for this FOA.

Signed December 12, 2014 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer/Division Chief, Employment and Training Administration.

[FR Doc. 2014–29682 Filed 12–18–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2015 Adverse Effect Wage Rates

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2015 Adverse Effect Wage Rates (AEWRs) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services.

AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers to H–2A workers and workers in corresponding employment for a particular occupation and area so that the wages of similarly employed U.S. workers will not be adversely affected. 20 CFR 655.100(b). In this notice, the Department announces the annual update of the AEWRs.

DATES: *Effective Date:* This notice is effective *December 19, 2014.*

FOR FURTHER INFORMATION CONTACT: William W. Thompson, Acting Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department an H–2A labor certification. The labor certification provides that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

Adverse Effect Wage Rates for 2015

The Department's H–2A regulations at 20 CFR 655.120(l) provide that employers must pay their H–2A workers and workers in corresponding employment at least the highest of: (i) The AEWR; (ii) the prevailing hourly wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage rate, if applicable; or (v) the Federal or State minimum wage rate, in effect at the time the work is performed.

Except as otherwise provided in 20 CFR part 655, subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special procedure provisions of 20 CFR 655.102) for which temporary H–2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the State or region as published annually by the United States Department of Agriculture (USDA). 20 CFR 655.120(c) requires that the Administrator of the Office of Foreign Labor Certification publish the USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 2015 AEWRs to be paid for agricultural work performed by H–2A and U.S. workers on or after the effective date of this notice are set forth in the table below:

TABLE—2015 ADVERSE EFFECT WAGE RATES

State	2015 AEWRs
Alabama	$10.00
Arizona	10.54
Arkansas	10.18
California	11.33
Colorado	11.37
Connecticut	11.26
Delaware	11.29
Florida	10.19
Georgia	10.00
Hawaii	12.98
Idaho	11.14
Illinois	11.61
Indiana	11.61
Iowa	12.62
Kansas	13.59
Kentucky	10.28
Louisiana	10.18
Maine	11.26
Maryland	11.29
Massachusetts	11.26
Michigan	11.56
Minnesota	11.56
Mississippi	10.18
Missouri	12.62
Montana	11.14
Nebraska	13.59
Nevada	11.37
New Hampshire	11.26
New Jersey	11.29
New Mexico	10.54
New York	11.26
North Carolina	10.32
North Dakota	13.59
Ohio	11.61
Oklahoma	10.35
Oregon	12.42
Pennsylvania	11.29
Rhode Island	11.26
South Carolina	10.00
South Dakota	13.59
Tennessee	10.28
Texas	10.35
Utah	11.37
Vermont	11.26
Virginia	10.32
Washington	12.42
West Virginia	10.28
Wisconsin	11.56
Wyoming	11.14

Pursuant to the H–2A regulations at 20 CFR 655.173, the Department will publish a separate **Federal Register** notice in early 2015 to announce (1) the allowable charges for 2015 that employers seeking H–2A workers may charge their workers for providing them three meals a day; and (2) the maximum travel subsistence reimbursement which

a worker with receipts may claim in 2015.

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2014–29746 Filed 12–18–14; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,253]

Cardinal Health, Financial Shared Services West and Customer Care Pricing and Contracts, Including On-Site Leased Workers From Aerotek, Excel Staffing, Experis Finance (Manpower), Ricoh, USA, Dawson Creative, Mergis Group and Tailored Management Albuquerque, New Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 21, 2012, applicable to workers of Cardinal Health, Financial Shared Services West, including on-site leased workers from Aerotek, eXcel Staffing, and Experis Finance (Manpower), Albuquerque, New Mexico. The workers are engaged in activities related to back office financial services. The Department's Notice was published in the **Federal Register** on January 10, 2013 (78 FR 2289). The certification was amended on February 8, 2013 to include on-site leased from Ricoh, USA, Dawson Creative, Mergis Group, and Tailored Management were employed on-site at the Albuquerque, New Mexico location of the subject firm. The Department's Notice was published in the **Federal Register** on February 22, 2013 (78 FR 12358).

The Department reviewed the certification applicable to the workers and former workers of the subject firm. New information shows that worker separations in Customer Care Pricing and Contracts (C&P), at the Albuquerque, New Mexico location are attributable to the acquisition of services from a foreign country that was the basis for the original certification. Based on these findings, the Department is amending this certification to include workers of Customer Care Pricing and Contracts (C&P) at the Albuquerque, New Mexico location of the subject firm.

The amended notice applicable to TA–W–82,253 is hereby issued as follows:

All workers from Cardinal Health, Financial Shared Services West and Customer Care Pricing and Contracts, including Aerotek, eXcel Staffing, Experis Finance (Manpower), Ricoh, USA, Dawson Creative, Mergis Group, and Tailored Management, Albuquerque, New Mexico, who became totally or partially separated from employment on or after December 13, 2011 through December 21, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through December 21, 2014, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 1st day of December 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–29683 Filed 12–18–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. Kevin Robinson, Acting Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov*. OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of SGS North America, Inc. (SGS), as an NRTL. SGS's expansion covers the addition of four test standards to its scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

SGS submitted an application, dated May 28, 2014 (OSHA–2006–0040–0014, Exhibit 14–3—SGS Request for Expansion), to expand its recognition to include four [1] additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing SGS's expansion application in the **Federal Register** on

[1] In its application, SGS initially requested expansion for 5 standards. However, documentation for the fifth standard, UL 859, was submitted late and the review of SGS's capabilities for that standard will be handled separately.

August 29, 2014 (79 FR 51615). The Agency requested comments by September 15, 2014, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of SGS's scope of recognition.

To obtain or review copies of all public documents pertaining to SGS's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition.

II. Final Decision and Order

OSHA staff examined SGS's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant SGS's scope of recognition. OSHA limits the expansion of SGS's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 982	Motor-Operated Household Food Preparing Machines.
UL 1026 ..	Electric Household Cooking and Food Serving Appliances.
UL 1028 ..	Hair Clipping and Shaving Appliances.
UL 1431 ..	Personal Hygiene and Health Care Appliances.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, SGS must abide by the following conditions of the recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. SGS must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of SGS, subject to the limitation and conditions specified above.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 15, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–29732 Filed 12–18–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0017]

QAI Laboratories, LTD.: Grant of Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to grant recognition to QAI Laboratories, LTD., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Recognition as an NRTL becomes effective on December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. Kevin Robinson, Acting Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov*. OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Background

Many of OSHA's workplace standards require that an NRTL test and certify certain types of equipment as safe for use in the workplace. NRTLs are independent laboratories that meet OSHA's requirements for performing safety testing and certification of products used in the workplace. To obtain and retain OSHA recognition, NRTLs must meet the requirements in the NRTL Program regulations at 29 CFR 1910.7. More specifically, to be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of employers subject to the tested equipment requirements, and

manufacturers and vendors of products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures. Recognition is an acknowledgement by OSHA that the NRTL has the capability to perform independent safety testing and certification of the specific products covered within the NRTL's scope of recognition, and is not a delegation or grant of government authority. Recognition of an NRTL by OSHA also allows employers to use products certified by that NRTL to meet those OSHA standards that require product testing and certification.

The Agency processes applications for initial recognition following requirements in Appendix A of 29 CFR 1910.7. This appendix requires OSHA to publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application, provides its preliminary finding, and solicits comments on its preliminary findings. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition.

II. Notice of Final Decision

OSHA hereby gives notice of the Agency's decision to grant recognition to QAI Laboratories, LTD. (QAI), as an NRTL. According to public information (see *http://qai.org/about-us/*), QAI states that it was founded in 1994 by a group of certification and testing experts, and it is an independent third-party testing, inspection and certification organization which serves the building industry, government and individuals with solutions through its in-house capabilities/services, and a world-wide network of qualified affiliates. In its application, QAI lists the current address of its headquarters as: QAI Laboratories, LTD., #16—211 Schoolhouse Street, Coquitlam, British Columbia, Canada V3K 4X9.

Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that have the technical capability to perform the product-testing and product-certification activities for the applicable test standards within the NRTL's scope of recognition; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for testing and certification. QAI applied for initial recognition as an NRTL on May 28, 2013. In its application, QAI requested recognition for three test standards, two sites, and one supplemental program (OSHA—2013–0017–0002, Exhibit 14–1—QAI Initial Application for Recognition). OSHA published the preliminary notice announcing QAI's application for recognition in the **Federal Register** on August 29, 2014 (79 FR 51621). The Agency requested comments by September 29, 2014.

OSHA received one anonymous comment in response to this notice (OSHA–2013–0017–0003). The comment (OSHA–2013–0017–0003) asked how OSHA ensures the applicant maintains its technical qualifications as well as the financial resources necessary to ensure only compliant products are certified. OSHA's NRTL regulations (29 CFR 1910.7(b)(1)) require OSHA to verify that the applicant ''has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs)'' to perform testing and certification activities. As part of the application process, OSHA reviewed QAI's procedures and conducted on-site assessments at both of its sites. OSHA determined that QAI had the necessary capabilities and resources to perform testing and certification activities. OSHA will conduct periodic on-site assessments, just as it does with all NRTLs, to ensure that QAI maintains the capability to perform testing and certification activities in accordance with OSHA NRTL regulations and policies.

To obtain or review copies of all public documents pertaining to QAI's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2013–0017 contains all materials in the record concerning QAI's recognition.

III. Final Decision and Order

OSHA staff performed a detailed analysis of QAI's application packet and reviewed other pertinent information. OSHA staff also performed comprehensive on-site assessments of QAI's testing facilities from February 24, 2014 through February 26, 2014. Based on its review of this evidence, OSHA finds that QAI meets the requirements of 29 CFR 1910.7 for recognition as an NRTL, subject to the limitations and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant recognition to QAI as an NRTL. The following sections set forth the scope of recognition included in QAI's grant of recognition.

A. Standards Requested for Recognition

OSHA limits QAI's scope of recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QAI'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 10B	Fire Tests of Door Assemblies.
UL 10C	Positive Pressure Fire Tests of Door Assemblies.
UL 1598 ...	Luminaires.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

B. Sites Requested for Recognition

OSHA limits QAI's scope of recognition to include the sites at:

1. QAI Coquitlam, #16—211 Schoolhouse Street, Coquitlam, British Columbia, CANADA V3K 4X9; and
2. QAI Los Angeles, 8385 White Oak Avenue, Rancho Cucamonga, California 91730.

OSHA's recognition of these sites limits QAI to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in QAI's scope of recognition. This limitation is consistent with the recognition that OSHA grants

to other NRTLs that operate multiple sites.

C. Supplemental Programs

OSHA limits QAI's scope of recognition to include the following supplemental program:

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents (for calibration services only).

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, QAI also must abide by the following conditions of the recognition:

1. QAI must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);

2. QAI must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. QAI must continue to meet the requirements for recognition, including all previously published conditions on QAI's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby grants recognition to QAI as an NRTL, subject to the limitations and conditions specified above.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 15, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–29731 Filed 12–18–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of Meeting.

SUMMARY: The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services in awarding national awards and medals, will meet by teleconference on February 23, 2015, to review nominations for the 2015 National Medal for Museum and Library Service.

DATE AND TIME: Monday, February 23, 2015, at 1 p.m. EST.

PLACE: The meeting will be held by teleconference originating at the Institute of Museum and Library Services. 1800 M Street NW., 9th Floor, Washington, DC, 20036. Telephone: (202) 653–4676.

STATUS: Closed. The meeting will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Program Specialist, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4798.

Signed: December 16, 2014.

Andrew Christopher,

Assistant General Counsel.

[FR Doc. 2014–29797 Filed 12–17–14; 11:15 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, 72–13, and 72–1014; NRC–2014–0270]

Independent Spent Fuel Storage Installation, Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Entergy Operations, Inc. (Entergy or the licensee), for the operation of the Arkansas Nuclear One (ANO), Units 1 and 2, Independent Spent Fuel Storage Installation (ISFSI). The request is for an exemption from the requirement to comply with the terms, conditions, and specifications in Section 2.1 of Appendix B of Certificate of Compliance (CoC) No. 1014, Amendment No. 5, for the Holtec International (Holtec) HI–STORM 100 dry cask storage system.

DATES: The environmental assessment and finding of no significant impact are available as of December 19, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0270 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0270. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, telephone: 301–287–9225, email: *William.Allen@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an exemption to Entergy, for operation of the ANO ISFSI, located in Russellville, Arkansas. Pursuant to § 72.7 of Title 10 of the *Code of Federal Regulations* (10 CFR), on October 2, 2014, as supplemented on October 14 and November 7, 2014 (ADAMS Accession

Nos. ML14279A246, ML14289A239, and ML14311A121, respectively), Entergy submitted its request for exemption from the requirements of 10 CFR 72.212(a)(2) and the portion of 10 CFR 72.212(b)(11) that requires compliance with the terms, conditions, and specifications of CoC No. 1014, Amendment No. 5, for the HI–STORM 100 dry cask storage system. In evaluating the request, the NRC also considered exemption from the requirements of 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), and 10 CFR 72.214 applicable to the request and has weighed these regulations in its review.

Entergy loaded spent nuclear fuel into a Model 24 Multi-Purpose Canister (MPC–24) under CoC No. 1014, Amendment No. 5. While performing drying operations on MPC–24–060, a radiation alarm actuated. In evaluating the cause of the alarm, the licensee subsequently determined that a fuel assembly loaded into MPC–24–060 may contain a fuel rod with cladding damage greater than a pinhole leak or hairline crack. Section 2.1 of Appendix B of the Technical Specifications (TS) for CoC No. 1014, Amendment No. 5, only authorizes storage of intact fuel assemblies, which is defined as fuel assemblies without known or suspected cladding defects greater than pinhole leaks or hairline cracks and which can be handled by normal means. Entergy requests an exemption to the 10 CFR part 72 requirements to store the affected MPC in its current condition at the ISFSI associated with the operation of ANO, Units 1 and 2.

II. Environmental Assessment (EA)

Identification of Proposed Action: The CoC is the NRC approved design for each dry cask storage system. The proposed action would grant Entergy an exemption from the requirements of 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), and the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC, and from 10 CFR 72.214 to the extent necessary for Entergy to store MPC–24–060 in its current condition at the ISFSI associated with ANO, Units 1 and 2. These regulations specifically require storage of spent nuclear fuel under a general license in dry storage casks approved under the provisions of 10 CFR part 72, and compliance with the terms and conditions set forth in the CoC for each dry storage spent fuel cask used by an ISFSI general licensee.

Section 2.1 of Appendix B of the TS for CoC No. 1014, Amendment No. 5, only authorizes storage of intact fuel, which is defined as fuel assemblies without known or suspected cladding defects greater than pinhole leaks or hairline cracks and which can be handled by normal means. Entergy performed tests on the fuel assemblies loaded into MPC–24–060 after their final operating cycle as well as visual examinations prior to loading. Nevertheless, a fuel assembly having defects greater than pinhole leaks and hairline cracks may have been inadvertently loaded into MPC–24–060.

The proposed action would grant Entergy an exemption from the requirements of 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), and the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC, and from 10 CFR 72.214, in order to allow storage of MPC–24–060 in its current condition. This exemption approval would only be valid for MPC–24–060 at the ANO ISFSI.

Need for the Proposed Action: The proposed action is necessary to avoid unloading the MPC. Entergy requested this exemption in order to store an MPC containing a fuel assembly which may have cladding damage greater than a pinhole leak or hairline crack. Entergy, with the assistance of Holtec, has provided an evaluation which shows that the affected MPC is bounded by the system's design basis limits and that storage of the fuel in the as-loaded configuration is safe.

Entergy has evaluated the consequences of not obtaining an exemption, which would occur if the NRC did not take the proposed action. In the absence of an exemption, Entergy would be required to correct the condition by reloading the affected MPC to comply with CoC No. 1014, Amendment No. 5. This would involve unloading the spent fuel assemblies from the MPC, performing inspections of various MPC components, reloading the spent fuel assemblies into the used MPC or a new MPC (if there was damage noted on the used MPC) in accordance with CoC No. 1014, Amendment No. 5, and performing the MPC closing procedures.

Based upon its previous experience with the loading process, Entergy estimates that unloading and reloading the MPC would result in additional personnel exposure of 600 mRem. In addition, Entergy states unloading and reloading the MPC would generate radioactive contaminated material and waste during loading and unloading operations. If the used MPC was damaged during the unloading process, it would also be disposed as radioactive waste. The licensee estimates that unloading and reloading operations would cost an estimated $300,000. If the used MPC was damaged during unloading, the licensee estimates an additional $750,000 for purchase of a new MPC and $200,000 for disposal of the used MPC. The licensee also states additional opportunities for design basis accidents such as a fuel handling accident would be introduced if the MPC were unloaded and reloaded.

Environmental Impacts of the Proposed Action: The potential impact of using the HI–STORM 100 dry cask storage system was initially presented in the Environmental Assessment (EA) for the rulemaking to add the HI–STORM 100 dry cask storage system for irradiated nuclear fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (64 FR 51271, September 22, 1999 (Proposed Rule); 65 FR 25241, May 1, 2000 (Final Rule)).

In support of their exemption request, the licensee submitted Holtec Report No. HI–2146265 which evaluated storage of fuel assemblies having greater than pinhole leaks and hairline cracks in the HI–STORM 100 system (ADAMS Accession No. ML14279A246). The analysis concluded that the as-loaded condition has no impact on internal temperature or pressure, that the site boundary dose is unaffected (should relocation of material occur inside the MPC), and that potential reactivity effects remain well within acceptable margins. The analysis also concluded that the damaged fuel rods have no impact on the ability either of the MPC, the HI–TRAC transfer cask, or the HI–STORM storage cask to withstand pressure loads due to tornado winds, flood, or explosions.

Based on its review of the licensee's application, the NRC staff concludes that there are no changes in either the types or the amounts of radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of the proposed activities. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The NRC staff concludes that the proposed action only affects the requirements associated with the fuel assemblies already loaded into the canister and does not affect non-radiological plant effluents, or any other aspects of the environment. Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Because there is no significant environmental impact associated with

the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the NRC staff considered denial of the requested exemption, which would require unloading and reloading the affected MPC as described above. Denying the exemption would result in an increase in radiological exposure to workers, a small increase in the potential for radioactive releases to the environment due to radioactive material handling accidents, and increased cost to the licensee. Therefore, the NRC staff has determined that approving the proposed action has a lesser environmental impact than the alternative.

Agencies and Persons Consulted: The environmental assessment associated with this exemption request was sent to Mr. Bernard Bevill Chief of the Radiation Control Section in the Arkansas Department of Health, by letter dated November 10, 2014. A response, which was received by electronic mail dated November 21, 2014 (ADAMS Accession No. ML14328A287), states that the Arkansas Department of Health has no concerns. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or a critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an exemption from the requirements of 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), and the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC, and from 10 CFR 72.214 in order to allow Entergy to store spent fuel assemblies in MPC–24–060 in the as-loaded configuration at the ISFSI associated with ANO, Units 1 and 2, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted and that a finding of no significant impact is appropriate.

Dated at Rockville, Maryland, this 11th day of December, 2014.

For the Nuclear Regulatory Commission.

Chris Allen,

Project Manager, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2014–29750 Filed 12–18–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0267]

Draft Emergency Preparedness Frequently Asked Questions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on emergency preparedness (EP) frequently asked question (EPFAQ) No. 2014–002, EPFAQ No. 2014–003, and EPFAQ No. 2014–007. These EPFAQs will be used to provide clarification of guidance documents related to the development and maintenance of EP program elements. The NRC is publishing these preliminary results to inform the public and solicit comments.

DATES: Submit comments by January 20, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0267. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Edward Robinson, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–3774, or email at: *edward.robinson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0267 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0267.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft EPFAQs are available electronically in ADAMS under Accession No. ML14261A054, and are available on the NRC's Web site at *http://www.nrc.gov/about-nrc/emerg-preparedness/faq/faq-contactus.html.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0267 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment

submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC is requesting comment on these draft EPFAQs. This process is intended to describe the manner in which the NRC may provide interested outside parties an opportunity to share their individual views with NRC staff regarding the appropriate response to questions raised on the interpretation or applicability of EP guidance issued or endorsed by the NRC, before the NRC issues an official response to such questions.

Dated at Rockville, Maryland on December 9, 2014.

For the U.S. Nuclear Regulatory Commission.

James Andersen,

Deputy Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2014–29749 Filed 12–18–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–19 and CP2015–23; Order No. 2289]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 104 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 22, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 104 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–19 and CP2015–23 to consider the Request pertaining to the proposed Priority Mail Contract 104 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 22, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–19 and CP2015–23 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 22, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29695 Filed 12–18–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 104 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2014 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31373; File No. 812–14097]

Garrison Capital, Inc., et al.; Notice of Application

December 15, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 57(a)(4) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit Garrison Capital Inc. to co-invest in portfolio companies with certain affiliated investment funds.

APPLICANTS: Garrison Capital Inc. (the ''Company''), Garrison Funding 2013–2 Ltd. (''GF 2013–2''), Garrison Capital SBIC LP (''Garrison SBIC''), Garrison Capital SBIC Holdco Inc., Garrison Capital SBIC General Partner LLC, Garrison Middle Market Funding LP, Garrison Middle Market Funding A LP, Garrison Opportunity Fund III B L.P., Garrison Opportunity Fund IV A LLC and Garrison Opportunity Fund IV B L.P. (collectively with Garrison Middle Market Funding LP, Garrison Middle Market Fund A LP, Garrison Opportunity Fund III B L.P. and Garrison Opportunity Fund IV A LLC, the ''Existing Funds''), Garrison Capital Advisers LLC (the ''Company Adviser''), Garrison Investment Management LLC (the ''Fund Adviser'') and Garrison Investment Group LP (collectively, the ''Applicants'').

DATES: *Filing Dates:* The application was filed on November 21, 2012, and amended on February 25, 2013, August 12, 2013, January 16, 2014, May 21, 2014, August 26, 2014 and December 11, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 9, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: Garrison Investment Group LP, 1290 Avenue of the Americas, Suite 914, New York, NY 10104.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6813 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company is a closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act. A majority of the directors of the Company are persons who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Directors''). The Company Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the investment adviser to the Company pursuant to an investment advisory agreement (the ''Company Advisory Agreement'').

2. The Company's Objectives and Strategies [1] are to generate current income and capital appreciation by making investments generally in the range of $5 million to $25 million primarily in debt securities of U.S.-based middle-market companies, which the Company defines as those having annual earnings before interest, taxes and depreciation of between $5 million and $30 million.

3. Garrison Middle Market Funding LP and Garrison Middle Market Funding A LP are Delaware limited partnerships and are excluded from the definition of investment company by section 3(c)(7) of the Act. Garrison Opportunity Fund III B L.P. and Garrison Opportunity Fund IV B L.P. are Cayman Islands limited partnerships and are excluded from the definition of investment company by section 3(c)(7) of the Act. Garrison Opportunity Fund IV A LLC is a Delaware limited liability company and is excluded from the definition of investment company by section 3(c)(7) of the Act. The Existing Funds seek to invest primarily in middle-market companies and institutions. Each of the Funds [2] has or will have investment objectives and strategies that are similar to or overlap with the Objectives and Strategies of the Company. To the extent there is an investment opportunity that falls within the Objectives and Strategies of the Company and the investment objectives and strategies of one or more of the Funds, the Advisers would expect the Company and such Funds to co-invest with each other, with certain exceptions based on available capital or diversification. The Company, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to it.

4. The Fund Adviser, a registered investment adviser under the Advisers Act, manages the investment activities of the Existing Funds pursuant to investment advisory agreement (together with the Company Advisory Agreement, the ''Advisory Agreements''). The Fund Adviser and the Company Adviser are indirectly controlled by Garrison Investment Group LP, a registered investment adviser under the Advisers Act, which is controlled by Steven Stuart and Joseph Tansey.

5. Applicants seek an order (''Order'') under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act to permit the Company, on the one hand, and one or more Funds, on the other hand, to participate in the same investment opportunities through a proposed co-investment program where such participation would otherwise be prohibited by section 57(a)(4) of the Act and rule 17d–1 under the Act.[3] ''Co-Investment Transaction'' means any transaction in which the Company (or a Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which the Company (or a Wholly-Owned Investment Subsidiary) could not participate together with one or more Funds without obtaining and relying on the Order.

6. The Company may, from time to time, form a special purpose subsidiary (a ''Wholly-Owned Investment Subsidiary'').[4] A Fund would be prohibited from investing in a Co-Investment Transaction with any Wholly-Owned Investment Subsidiary because the Wholly-Owned Investment Subsidiary would be a company controlled by the Company for purposes of section 57(a)(4) of the Act and rule 17d–1 under the Act. Applicants request that a Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of the Company and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the order, as

[1] ''Objectives and Strategies'' means the investment objectives and strategies of the Company, as described in the Company's registration statement on Form N–2, other filings the Company has made with the Commission under the Securities Act of 1933 (''1933 Act''), or under the Securities Exchange Act of 1934, or in reports to its shareholders.

[2] ''Fund'' means any (i) Existing Fund or (ii) Future Fund. ''Future Fund'' means an entity (i) whose investment adviser is an Adviser, and (ii) that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act. The term ''Adviser'' means the Company Adviser, the Fund Adviser and any future investment adviser controlling, controlled by or under common control with the Company Adviser that is registered as an investment adviser under the Advisers Act.

[3] All existing entities that currently intend to rely upon the Order have been named as applicants and any entity that may rely on the Order in the future will comply with the terms and conditions of the application.

[4] The term ''Wholly-Owned Investment Subsidiary'' means an entity (a) whose sole business purposes are to hold one or more investments and issue debt on behalf of the Company (and, in the case of an SBIC Subsidiary, maintain a license under the Small Business Investment Act of 1958, as amended (the ''SBA Act'') and issue debentures guaranteed by the Small Business Administration (the ''SBA'')); (b) that is wholly-owned by the Company (with the Company at all times beneficially holding, directly or indirectly, 100% of the voting and economic interests); (c) with respect to which the Company's board of directors (''Board'') has the sole authority to make all determinations with respect to the Wholly-Owned Investment Subsidiary's participation under the conditions to the application; and (d) that is an entity that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means a Wholly-Owned Investment Subsidiary that is licensed by the SBA to operate under the SBA Act as a small business investment company.

though the Company were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Company's investments and issuing debt on behalf of the Company and, therefore, no conflicts of interest could arise between the Company and the Wholly-Owned Investment Subsidiary. The Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Company's place. If the Company proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Company and the Wholly-Owned Investment Subsidiary. GF 2013–2 satisfies the definition of Wholly-Owned Investment Subsidiary and Garrison SBIC satisfies the definition of an SBIC Subsidiary.

7. Upon issuance of the Order investment opportunities that are presented to the Company are expected to be referred to the Funds, and vice versa, and such investment opportunities may result in a Co-Investment Transaction. For each such referral, the Company Adviser will consider only the Objectives and Strategies, investment restrictions, regulatory and tax requirements, capital available for investment (''Available Capital'') in the asset class being allocated, and other pertinent factors applicable to the Company. Available Capital consists solely of liquid assets not held for permanent investment, including cash, amounts that can currently be drawn down from lines of credit, and marketable securities held for short-term purposes. In addition, Available Capital would include bona fide uncalled capital commitments that can be called by the settlement date of the Co-Investment Transaction. Except as described below, each Potential Co-Investment Transaction and the proposed allocation of such Potential Co-Investment Transaction would be approved prior to the actual investment by the Required Majority.[5]

8. With respect to the pro rata dispositions and Follow-On Investments[6] provided in conditions 7 and 8, the Company may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Fund and the Company in such disposition or Follow-On Investment is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board has approved the Company's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Company. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Company's Eligible Directors. The Board may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

9. Applicants state that no Independent Director will have a financial interest in any Co-Investment Transaction or any interest in any issuer of securities, other than through an interest (if any) in the securities of the Company.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits any person who is related to a BDC in the manner described in section 57(b) from participating in joint transactions with the BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Under section 57(b)(1) of the Act, any person who is controlling, controlled by, or under common control with, a director, officer, employee, or member of an advisory board of a BDC is subject to section 57(a)(4). Applicants submit that each of the Existing Funds and any Future Funds could be deemed to be a person related to the Company in a manner described by section 57(b)(2) by virtue of being under common control with the Company. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with BDCs.

2. Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that in the absence of the requested relief, the Company would be, in some circumstances, limited in its ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of the Company's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Company's participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for a Fund that falls within the Company's then-current Objectives and Strategies, the Company Adviser will make an independent determination of the appropriateness of the investment for the Company in light of the Company's then-current circumstances.

2. (a) If the Company Adviser deems the Company's participation in any Potential Co-Investment Transaction to be appropriate for the Company, it will then determine an appropriate level of investment for the Company;

(b) If the aggregate amount recommended by the Company Adviser to be invested in the Potential Co-Investment Transaction by the Company and the Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount proposed to be invested by each party will be allocated among them pro rata based on each party's Available Capital in the asset class being allocated, up to

[5] ''Required Majority'' has the meaning provided in section 57(o) of the Act. ''Eligible Directors'' means the directors who are eligible to vote under section 57(o).

[6] ''Follow-On Investment'' means any additional investment in an existing portfolio company, including through the exercise of warrants, conversion privileges or other similar rights to acquire additional securities of the portfolio company.

the amount proposed to be invested by each party. The Company Adviser will provide the Eligible Directors with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Company's investments for compliance with these allocation procedures; and

(c) After making the determinations required in conditions 1 and 2(a), the Company Adviser will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by the Company and each participating Fund, to the Eligible Directors for their consideration. The Company will co-invest with the Funds only if, prior to participating in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Company and its stockholders and do not involve overreaching in respect of the Company or its stockholders on the part of any person concerned;

(ii) The Potential Co-Investment Transaction is consistent with:

(A) The interests of the stockholders of the Company; and

(B) The Company's then-current Objectives and Strategies;

(iii) The investment by the Funds would not disadvantage the Company, and participation by the Company would not be on a basis different from or less advantageous than that of the Funds; provided, that if any Fund, but not the Company, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event will not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) The applicable Adviser agrees to, and does, provide periodic reports to the Company's Board with respect to the actions of the director or the information received by the board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) Any fees or other compensation that the Funds or any affiliated person of the Funds receive in connection with the right of the Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Funds (which may, in turn, share their portion with their affiliated persons) and the Company in accordance with the amount of each party's investment; and

(iv) The proposed investment by the Company will not benefit the Advisers, any Fund or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (a) to the extent permitted by condition 13; (b) to the extent permitted by section 57(k) of the Act; (c) indirectly, as a result of an interest in securities issued by one of the parties to the Co-Investment Transaction; or (d) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. The Company has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Company Adviser will present to the Board, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the Funds during the preceding quarter that fell within the Company's then-current Objectives and Strategies that were not made available to the Company and an explanation of why the investment opportunities were not offered to the Company. All information presented to the Board pursuant to this condition will be kept for the life of the Company and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8, the Company will not invest in reliance on the Order in any issuer in which any Fund or any affiliated person thereof is an existing investor.

6. The Company will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date and registration rights will be the same for the Company and each participating Fund. The grant to a Fund, but not the Company, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by the Company in a Co-Investment Transaction, the applicable Adviser will:

(i) notify the Company of the proposed disposition at the earliest practical time; and

(ii) the Company Adviser will formulate a recommendation as to participation by the Company in the disposition.

(b) The Company will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Funds.

(c) The Company may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of the Company and each Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board has approved as being in the best interests of the Company the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Company Adviser shall provide its written recommendation as to the Company's participation to the Eligible Directors, and the Company will participate in such disposition solely to the extent that a Required Majority determines that it is in the Company's best interests.

(d) The Company and each Fund will bear their own expenses in connection with any such disposition.

8. (a) If a Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify the Company of the proposed Follow-On Investment at the earliest practical time; and

(ii) the Company Adviser will formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by the Company.

(b) The Company may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of the Company and each Fund in such investment is proportionate to its outstanding investments in the portfolio company

immediately preceding the Follow-On Investment; and (ii) the Board has approved as being in the best interests of the Company the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Company Adviser will provide its written recommendation as to the Company's participation to the Eligible Directors, and the Company will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Company's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Company's and the Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) The aggregate amount recommended by the Company Adviser to be invested by the Company in the Follow-On Investment, together with the amount proposed to be invested by the Funds in the same transaction, exceeds the amount of the opportunity, then the amount invested by each such party will be allocated among them pro rata based on each party's Available Capital in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Directors will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by the Funds that the Company considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Company considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually the continued appropriateness for the Company of participating in new and existing Co-Investment Transactions.

10. The Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Required Majority under section 57(f).

11. No Independent Director will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act), of any Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by an Adviser under any agreement with the Company or the Funds, be shared by the Company and the Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

13. Any transaction fee [7] (including break-up or commitment fees but excluding broker's fees contemplated by section 57(k) of the Act) received in connection with a Co-Investment Transaction will be distributed to the Company and the participating Funds on a pro rata basis, based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the Company and the participating Funds based on the amounts they invest in such Co-Investment Transaction. None of the Funds, the Advisers or any affiliated person of the Company or of the Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (i) in the case of the Company and the Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C) and (ii) in the case of the Advisers, investment advisory fees paid in accordance with the Advisory Agreements with the Company and the Funds).

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29697 Filed 12–18–14; 8:45 am]

BILLING CODE 8011–01–P

[7] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73837; File No. SR–CBOE–2014–091]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Credit Option Margin Pilot Program Through January 15, 2016

December 15, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 2, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 12.3 by extending the Credit Option Margin Pilot Program through January 15, 2016.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program (''Program'').[5] The proposal became effective on a pilot basis to run on a parallel track with Financial Industry Regulatory Authority (''FINRA'') Rule 4240 that similarly operates on an interim pilot basis.[6]

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.[7] The Program, however, continues to be substantially similar to the provisions of the FINRA program. Subsequently, the Exchange filed rule changes to extend the program until January 17, 2014 and January 16, 2015, respectively.[8] The Exchange believes that extending the expiration date of the Program further will allow for further analysis of the Program and a determination of how the Program should be structured in the future. Thus, the Exchange is now currently proposing to extend the duration of the Program for an additional year until January 15, 2016.

The Exchange notes that there are currently Credit Options listed for trading on the Exchange that have open interest. As a result, the Exchange believes that is in the public interest for the Program to continue uninterrupted. In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will further the purposes of the Act because, consistent with the goals of the Commission at the initial adoption of the Program, the margin requirements set forth by the proposed rule change will help to stabilize the financial markets. In addition, the proposed rule change is substantially similar to existing FINRA Rule 4240.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2014–091 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–091. This file number should be included on the subject line if email is used. To help the Commission process and review your

[5] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR–CBOE–2010–106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make CBOE's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority (''FINRA'') Rule 4240, *Margin Requirements for Credit Default Swaps.* CBOE's Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

[6] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR–FINRA–2009–012).

[7] *See* Securities and Exchange Act Release Nos. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR–CBOE–2012–007) and 71124 (December 18, 2013), 78 FR 77754 (December 24, 2013) (SR–CBOE–2013–123).

[8] *See* Securities and Exchange Act Release No. 68539 (December 27, 2012), 78 FR 138 (January 2, 2013) (SR–CBOE–2013–125).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–091 and should be submitted on or before January 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29699 Filed 12–18–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73836; File No. SR–BX–2014–059]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes to Amend Rule 7018 to establish Fees and Rebates in Connection with BX's Retail Price Improvement (''RPI'') Program

December 15, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing changes to amend BX Rule 7018 to establish fees and rebates in connection with BX's Retail Price Improvement (''RPI'') Program. The Exchange proposes to implement the proposed rule change on December 1, 2014, contemporaneously with the launch of the RPI Program.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend BX Rule 7018 to establish fees and rebates for execution of orders under BX's recently filed RPI Program.[4] Under the RPI Program, a member (or a division thereof) approved by the Exchange to participate in the program (a ''Retail Member Organization'' or ''RMO'') may submit designated ''Retail Orders'' [5] for the purpose of seeking price improvement. All BX members may enter retail price improvement orders (''RPI Orders''),[6] a form of non-displayed orders that are priced more aggressively than the Protected National Best Bid or Offer (''NBBO'') by at least $0.001 per share, for the purpose of offering such price improvement. RMOs may use two types of Retail Orders. A Type 1 Retail Order is eligible to execute only against RPI Orders and other orders (such as midpoint pegged orders) that will provide price improvement. Type 2 Retail Orders interact first with available RPI Orders and other price improving orders, and then are eligible to access non-price improving liquidity on the BX book and to route to other trading venues if so designated.

BX proposes to offer a rebate of $0.0025 per share executed to RMOs with respect to Retail Orders that execute against RPI Orders. RMO orders that execute against other orders providing price improvement with respect to the NBBO will receive a rebate otherwise applicable to executions of orders that access liquidity. For Type 2 Retail Orders that execute against non-price improving orders on the BX book, BX will offer a rebate otherwise applicable to execution of orders that access liquidity. Similarly, when Type 2 Retail Orders are routed and execute at another trading venue, BX will charge the fee otherwise applicable to execution of routed orders. For RPI orders that provide liquidity, BX will charge a fee of $0.0025 per share executed. Other orders that provide liquidity to Retail Orders will receive the credit or pay the fee otherwise applicable to orders that provide liquidity.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

[3] The Commission notes that the Exchange initially filed the proposed rule change on November 24, 2014 under File Number SR–BX–2014–058. On December 3, 2014, the Exchange withdrew SR–BX–2014–058 due to errors in the Form 19b–4 and Exhibit 1, and refiled the proposed rule change under SR–BX–2014–059.

[4] Securities Exchange Act Release No. 73410 (October 23, 2014), 79 FR 64447 (October 29, 2014) (SR–BX–2014–048) (proposing RPI program and exemption from SEC Rule 612 under Regulation NMS, 17 CFR 242.612, in connection therewith).

[5] A Retail Order is defined in BX Rule 4780(a)(2), in part, as ''an agency or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[6] A Retail Price Improvement Order is defined in BX Rule 4780(a)(3), in part, as consisting of ''non-displayed liquidity on the Exchange that is priced better than the Protected NBBO by at least $0.001 and that is identified as such.''

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4) and (5).

using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed fees with respect to the RPI program are reflective of BX's ongoing efforts to use pricing incentive programs to attract orders of retail customers to BX and improve market quality. The goal of this program and similar pricing incentives is to provide meaningful incentives for members that represent the orders of retail customers to increase their participation on BX.

The proposed credit of $0.0025 per share executed with respect to Retail Orders that access Retail Price Improvement Order liquidity offering price improvement is reasonable because it will result in a significant increase of rebates with respect to such orders, thereby reducing the costs of members that represent retail customers and that take advantage of the program, and potentially also reducing costs to the customers themselves. The change is consistent with an equitable allocation of fees because BX believes that it is reasonable to use rebate increases as a means to encourage greater retail participation in BX. Because retail orders are likely to reflect long-term investment intentions, they promote price discovery. Accordingly, their presence in the BX market has the potential to benefit all market participants. For this reason, BX believes that it is equitable to provide significant financial incentives to encourage greater retail participation in the market. BX further believes that the proposed program is not unreasonably discriminatory because it is offered to firms representing retail customers without regard to the firm's trading volumes, and is therefore complementary to existing programs, such as the Routable Order Program that already aim to encourage greater retail participation, but that have minimum volume requirements associated with them. The proposed fees and credits with respect to Retail Orders that execute against liquidity other than that provided by Retail Price Improvement Orders or by routing to other trading venues are reasonable, equitably allocated, and not unreasonably discriminatory because they do not reflect a change from the fees and credits currently in effect with respect to orders that access liquidity on BX or route.

The proposed fee with respect to a Retail Price Improvement Order that provides liquidity is reasonable because, as previously recognized by the Commission, it reflects the fact that markets often seek to distinguish between orders of individual retail investors and orders of professional traders.[9] In this instance, the RPI seeks to balance the consideration that ''retail investors may [sic] on average be less informed about short-term price movements . . . [than] professional traders'' [10] with a fee charged to liquidity providers and a program designed to provide retail investors with price improvement and favorable execution prices. BX further believes that the fee charged with respect to Retail Price Improvement Orders is equitable and not unreasonably discriminatory for this same reason, and also because the use of such orders by liquidity providers is voluntary. Firms that believe that potential advantages of interacting with Retail Orders outweigh the costs of price improvement and the fee charged by BX will employ this new order type. Those that do not are free to forego involvement in the program and pay a fee under BX's standard price schedule when providing liquidity.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it is designed to allow BX to compete with other exchanges and that offer similar price improvement programs for retail orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this instance, the introduction of the RPI program is designed to allow BX to compete more effectively with the New York Stock Exchange (''NYSE''), NYSE MKT LLC (''MKT''), NYSE Arca, Inc. (''Arca'''') and the BATS–Y Exchange, all of which offer similar programs designed to attract retail order flow. BX has structured its fees in a manner similar to these exchanges, but as a new ''entrant'' in the field of those exchanges offering such programs. Specifically, BX will offer a higher credit to Retail Orders than NYSE, MKT, or Arca and will offer the credit with respect to all securities priced above $1 that it trades. BX will, however, offset these higher credits for retail orders by charging a higher fee to liquidity providers than is the case with some of its competitors. BX believes that the proposed higher credits with respect to Retail Orders will enhance competition by drawing additional retail order flow to BX and possibly encouraging other trading venues to make competitive pricing changes.

With respect to the proposed fees for Retail Price Improvement Orders, because the market for order execution is extremely competitive, members that provide liquidity may readily opt to forego participation in the BX program if they believe that alternatives offer them better value. For these reasons and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40763 [sic], 40769–40680 [sic] (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2014–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2014–059 and should be submitted on or before January 9, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29698 Filed 12–18–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama. As described below, the level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) the United States-Chile Free Trade Agreement (Chile FTA); (ii) the United States-Morocco Free Trade Agreement (Morocco FTA); (iii) the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR); (iv) the United States-Peru Trade Promotion Agreement (Peru TPA); (v) the United States-Colombia Trade Promotion Agreement (Colombia TPA), and (vi) the United States-Panama Trade Promotion Agreement (Panama TPA).

DATES: *Effective Date:* January 1, 2015.

ADDRESSES: Inquiries may be mailed or delivered to Ronald Baumgarten, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ronald Baumgarten, Office of Agricultural Affairs, telephone: (202) 395–6127 or facsimile: (202) 395–4579.

SUPPLEMENTARY INFORMATION:

Chile: Pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Chile FTA.

Note 12(a) to subchapter XI of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus. (HS subheading 1701.11 was reclassified as 1701.13 and 1701.14 by Proclamation 8771 of December 29, 2011, 77 FR 413.)

Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in an amount equal to the lesser of Chile's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XI of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.10 through 9911.17.85 in an amount equal to the amount by which Chile's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2013, the most recent year for which data is available, *Chile's* imports of sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 413,505 metric tons according to data published by the *Servicio Nacional de Aduana (Chile Customs).* Based on this data, USTR determines that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 or at preferential tariff rates under subheading 9911.17.10 through 9911.17.85 in CY 2015.

Morocco: Pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Morocco FTA.

Note 12(a) to subchapter XII of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Morocco's trade surplus, by

volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus. (HS subheading 1701.11 was reclassified as 1701.13 and 1701.14 by Proclamation 8771 of December 29, 2011, 77 FR 413.)

Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that note for that calendar year.

Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During CY 2013, the most recent year for which data is available, *Morocco's* imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 917,485 metric tons according to data published by its customs authority, the *Office des Changes.* Based on this data, USTR determines that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY 2015.

CAFTA–DR: Pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025), Presidential Proclamation No. 8331 of December 23, 2008 (73 FR 79585), and Presidential Proclamation No. 8536 of June 12, 2010 (75 FR 34311) implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the CAFTA–DR.

Note 25(b)(i) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 and its imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus. (HS subheading 1701.11 was reclassified as 1701.13 and 1701.14 by Proclamation 8771 of December 29, 2011, 77 FR 413.)

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that calendar year.

During CY 2013, the most recent year for which data is available, *Costa Rica's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 185,982 metric tons according to data published by the *Costa Rican Customs Department, Ministry of Finance.* Based on this data, USTR determines that Costa Rica's trade surplus is 185,982 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Costa Rica for CY 2015 is 12,980 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Costa Rica that may be entered duty-free under subheading 9822.05.20 in CY 2015 is 12,980 metric tons (*i.e.,* the amount that is the lesser of Costa Rica's trade surplus and the specific quantity set out in that note for Costa Rica for CY 2015).

During CY 2013, the most recent year for which data is available, the *Dominican Republic's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 89,483 metric tons according to data published by the *INAZUCAR; National Statistics Office (ONE); National Direction of Customs (DGA).* Based on this data, USTR determines that the Dominican Republic's trade surplus is 89,483 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for the Dominican Republic for CY 2015 is 11,800 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of the Dominican Republic that may be entered duty-free under subheading 9822.05.20 in CY 2015 is 11,800 metric tons *i.e.,* the amount that is the lesser of the Dominican Republic's trade surplus and the specific quantity set out in that note for the Dominican Republic for CY 2015).

During CY 2013, the most recent year for which data is available, *El Salvador's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 347,942 metric tons according to data published by the *Central Bank of El Salvador.* Based on this data, USTR determines that El Salvador's trade surplus is 347,942 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for El Salvador for CY 2015 is 32,240 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY 2015 is 32,240 metric tons (*i.e.,* the amount that is the lesser of El Salvador's trade surplus and the specific quantity set out in that note for El Salvador for CY 2015).

During CY 2013, the most recent year for which data is available, *Guatemala's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 1,864,408 metric tons according to data published by the *Asociacio´n de Azucareros de Guatemala (ASAZGUA).* Based on this data, USTR determines that Guatemala's trade surplus is 1,864,408 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Guatemala for CY 2015 is 43,680 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY 2015 is 43,680 metric tons (*i.e.,* the amount that is the lesser of Guatemala's trade surplus and the specific quantity set out in that note for Guatemala for CY 2015).

During CY 2013, the most recent year for which data is available, *Honduras'* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 73,807 metric tons

according to data published by the *Central Bank of Honduras.* Based on this data, USTR determines that Honduras' trade surplus is 73,807 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Honduras for CY 2015 is 9,440 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY 2015 is 9,440 metric tons (*i.e.,* the amount that is the lesser of Honduras' trade surplus and the specific quantity set out in that note for Honduras for CY 2015).

During CY 2013, the most recent year for which data is available, *Nicaragua's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 318,531 metric tons according to data published by the *Ministry of Development, Industry and Trade (MIFIC).* Based on this data, USTR determines that Nicaragua's trade surplus is 318,531 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Nicaragua for CY 2015 is 25,960 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY 2015 is 25,960 metric tons (*i.e.,* the amount that is the lesser of Nicaragua's trade surplus and the specific quantity set out in that note for Nicaragua for CY 2015).

Peru: Pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Peru TPA.

Note 28(c) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus. (HS subheading 1701.11 was reclassified as 1701.13 and 1701.14 by Proclamation 8771 of December 29, 2011, 77 FR 413.)

Note 28(d) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2013, the most recent year for which data is available, *Peru's* imports of the sugar goods described above exceeded its exports of those goods by 80,808 metric tons according to data published by the *Superintendencia Nacional de Administracion Tributaria (SUNAT).* Based on this data, USTR determines that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY 2015.

Colombia: Pursuant to section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42; 19 U.S.C. 3805 note), Presidential Proclamation No. 8818 of May 14, 2012 (77 FR 29519) implemented the Colombia TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Colombia TPA.

Note 32(b) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Colombia's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Colombia's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Colombia TPA and Colombia's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Colombia's trade surplus. (HS subheading 1701.11 was reclassified as 1701.13 and 1701.14 by Proclamation 8771 of December 29, 2011, 77 F R 413.)

Note 32(c)(i) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Colombia entered under subheading 9822.08.01 in an amount equal to the lesser of Colombia's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2013, the most recent year for which data is available, *Colombia's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 296,515 metric tons according to data published by *Global Trade Atlas.* Based on this data, USTR determines that Colombia's trade surplus is 296,515 metric tons. The specific quantity set out in U.S. Note 32(c)(i) to subchapter XXII of HTS chapter 98 for Colombia for CY 2015 is 52,250 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Colombia that may be entered duty-free under subheading 9822.08.01 in CY 2015 is 52,250 metric tons (*i.e.,* the amount that is the lesser of Colombia's trade surplus and the specific quantity set out in that note for Colombia for CY 2015).

Panama: Pursuant to section 201 of the United States-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112–43; 19 U.S.C. 3805 note), Presidential Proclamation No. 8894 of October 29, 2012 (77 FR 66505) implemented the Panama TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Panama TPA.

Note 35(a) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Panama's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Panama's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Panama TPA and Panama's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Panama's trade surplus. (HS subheading 1701.11 was reclassified as 1701.13 and 1701.14 by Proclamation 8771 of December 29, 2011, 77 FR 413.)

Note 35(c) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Panama entered under subheading 9822.09.17 in an amount equal to the lesser of Panama's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2013, the most recent year for which data is available, *Panama's* imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 1,158 metric tons according to data published by *National Institute of Statistics and Census, Office of the General Comptroller of Panama.* Based on this data, USTR determines that Panama's trade surplus is negative. Therefore, in accordance with U.S. Note 35(c) to subchapter XII of HTS chapter 98, goods of Panama are not eligible to

enter the United States duty-free under subheading 9822.09.17 in CY 2015.

Darci L. Vetter,

Chief Agricultural Negotiator, Office of the U.S. Trade Representative.

[FR Doc. 2014–29786 Filed 12–18–14; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets DOT–OST–1997–3017 and DOT–OST–1997–3113]

Notice of Sky King, Inc. To Resume Operations

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2014–12–8).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Sky King, Inc., a U.S. citizen and fit, willing, and able to resume interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 19, 2014.

ADDRESSES: Objections and answers to objections should be filed in Dockets DOT–OST–1997–3017 and DOT–OST–1997–3113 and addressed to the Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division, (X–56, Office W86–469), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

Dated: December 12, 2014.

Susan L. Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2014–29735 Filed 12–18–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0025]

Notice of Proposed Buy America Waiver for Track Turnout Components

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) is providing notice of a request from the New York Metropolitan Transportation Authority's Long Island Rail Road (LIRR) to waive Buy America requirements for the purchase of components of high-speed track turnouts that do not meet FTA's Buy America requirements. The LIRR submitted the request in connection with three projects: (1) LIRR's 2015 State of Good Repair Program; (2) the East Side Access Project; and (3) LIRR's Jamaica Capacity Improvement Project. Pursuant to 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and is seeking public comment before deciding whether to grant the request. If granted, the waiver would apply only to the FTA-funded procurements in LIRR's 2015 State of Good Repair Program, the East Side Access Project, and LIRR's Jamaica Capacity Improvement Project, and only to the procurement of components—the turnouts will be manufactured in the United States.

This proposed Buy America waiver does not include the turnout components for the Northeast Corridor Congestion Relief Project at Harold Interlocking, which is being addressed in a separate waiver request published by the Federal Railroad Administration (FRA), as FRA funds are being used for that project.

DATES: Comments must be received by January 20, 2015. FTA will consider late-filed comments to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2014–0025:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2014–0025. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366–4011 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION: FTA seeks comment on whether it should a grant a non-availability waiver for LIRR's procurements of turnouts needed for LIRR's 2015 State of Good Repair Program, the East Side Access Project, and LIRR's Jamaica Capacity Improvement Project, which are utilizing FTA funding.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. 49 CFR 661.5(d). A component is of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d)(2). If FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

LIRR is requesting a non-availability waiver for its procurement of turnouts needed for LIRR's 2015 State of Good Repair Program, the East Side Access Project, and LIRR's Jamaica Capacity Improvement Project. The turnouts consist of multiple components, including Schwihag roller assemblies, Schwihag plates, ZU1–60 steel switch point rail sections, and movable point frogs, which LIRR asserts are not available and are not manufactured in the United States. The turnouts

themselves, however, will be manufactured in the United States.

LIRR states that these turnouts are essential throughout its system for the following operational reasons: (1) the turnouts withstand the frequent and heavy use by passenger and freight trains traveling along LIRR's right of way; (2) the turnouts accommodate an increased amount of rush hour trains and allow them to travel at higher speeds, ultimately providing more throughput during LIRR's busiest hours; (3) the foreign-made components reduce impact loading to the turnouts; and (4) the turnouts provide for less wear and tear, thereby requiring less maintenance, extending the useful lives of the turnouts, and requiring less outages and negative impacts on LIRR's operations.

In support of its requests, LIRR points to a non-availability waiver that FRA issued to the National Railroad Passenger Corporation (also referred to as ''Amtrak'') for the same turnout components on April 23, 2013. FRA's waiver was based on a December 2012 Supplier Scouting Report (Report) developed by the Manufacturing Extension Partnership of the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). NIST's Report identified several potential U.S. manufacturers of the turnout components, but after extensive outreach, FRA determined that no domestic manufacturers were willing and capable of producing the components. To support the waiver requests that are the subject of this notice, LIRR utilized the NIST Report and conducted individualized outreach with each of the manufacturers identified in it. LIRR also conducted its own independent outreach. Based on these efforts, LIRR has determined that there are no U.S. manufacturers that are willing and capable of producing the turnout components that are needed for its system.

Since that initial waiver, FRA published a second notice on September 19, 2014, requesting comments on a subsequent request for turnout components from LIRR for the Harold Interlocking Project that would not meet FRA's Buy America requirements. See, *http://www.fra.dot.gov/Page/P0719*. FRA's comment period closed on October 6, 2014, and interested parties can view FRA's determination via the Buy America web link in the preceding sentence.

The purpose of this Notice is to inform potential interested vendors of LIRR's requests and to seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. Full copies of LIRR's requests will be posted in docket number FTA–2014–0025, along with any public comments.

Dana Nifosi,

Acting Chief Counsel.

[FR Doc. 2014–29730 Filed 12–18–14; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0155]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BELLAROMA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 20, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2014–0155. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BELLAROMA is:

Intended Commercial Use Of Vessel: ''Passenger charter use only. Primarily day charters but some overnights as well.''

Geographic Region: ''Florida, South Carolina and Georgia'' The complete application is given in DOT docket MARAD–2014–0155 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 11, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–29718 Filed 12–18–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0154]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MIS MOONDANCE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 20, 2015.

ADDRESSES: Comments should refer to docket number MARAD–2014–0154. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MIS MOONDANCE is:

Intended Commercial Use of Vessel: ''Charter for recreational use''

Geographic Region: ''Florida, North Carolina, New Jersey, New York''

The complete application is given in DOT docket MARAD–2014–0154 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator

Dated: December 11, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–29717 Filed 12–18–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0122]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: This notice solicits public comments on continuation of the requirements for the collection of information on safety standards. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information on nine Federal motor vehicle safety standards (FMVSSs) and two regulations, for which NHTSA intends to seek OMB approval. The information collection pertains to requirements that specify certain description, instructions and safety precautions regarding items of motor vehicle equipment must appear in the vehicle owner's manual.

DATES: Comments must be received on or before February 17, 2015.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You may call the Docket Management Facility at 202–366–9826.

Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Lou Molino, NHTSA, 1200 New Jersey Avenue SE., Room W43–311, NVS–112, Washington, DC 20590.

Mr. Lou Molino's telephone number is (202) 366–1740. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

OMB Control Number: 2127–0541.

Form Number: This collection of information uses no standard form.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals, households, business, other for-profit, not-for-profit, farms, Federal Government and state, local or tribal government.

Abstract: 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of its safety goals: FMVSS No. 108, ''Lamps, reflective devices, and associated equipment,'' FMVSS No. 110, ''Tire selection and rims,'' FMVSS No. 138, ''Tire Pressure Monitoring Systems,'' FMVSS No. 202a, ''Head restraints,'' FMVSS No. 205, ''Glazing materials,'' FMVSS No. 208, ''Occupant crash protection,'' FMVSS No. 210, ''Seat belt assembly anchorages,'' FMVSS No. 226, ''Ejection mitigation,'' FMVSS No. 213, ''Child restraint systems,'' Part 575 Section 103, ''Camper loading,'' and Part 575 Section 105, ''Utility vehicles.'' This notice requests comments on the information collections of these FMVSSs and regulations.

Description of the need for the information and proposed use of the information: In order to ensure that manufacturers are complying with the FMVSS and regulations, NHTSA requires a number of information collections in FMVSS Nos. 108, 110, 138, 202a, 205, 208, 210, 213 and 226, and Part 575 Sections 103 and 105.

FMVSS No. 108, ''Lamps, reflective devices, and associated equipment.'' This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. Since the specific manner in which headlamp aim is to be performed is not regulated (only the performance of the device is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, to assure that headlamps can be correctly aimed, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

FMVSS No. 110, ''Tire selection and rims.'' This standard specifies requirements for tire selection to prevent tire overloading. The vehicle's normal load and maximum load on the tire shall not be greater than applicable specified limits. The standard requires a permanently affixed vehicle placard specifying vehicle capacity weight, designated seating capacity, manufacturer recommended cold tire inflation pressure, and manufacturer's recommended tire size. The standard further specifies rim construction requirements, load limits of non-pneumatic spare tires, and labeling requirements for non-pneumatic spare tires, including a required placard. Owner's manual information is required for ''Use of Spare Tire.'' FMVSS No. 110 requires additional owner's manual information on the revised vehicle placard and tire information label, on revised tire labeling, and on tire safety and load limits and terminology.

FMVSS No. 138, ''Tire pressure monitoring systems.'' This standard specifies requirements for a tire pressure monitoring system to warn the driver of an under-inflated tire condition. Its purpose is to reduce the likelihood of a vehicle crash resulting from tire failure due to operation in an under-inflated condition. The standard requires the Owner's Manual to include specific information on the low pressure warning telltale and the malfunction indicator telltale.

FMVSS No. 202a, ''Head restraints.'' This standard specifies requirements for head restraints. The standard, which seeks to reduce whiplash injuries in rear collisions, currently requires head restraints for front outboard designated seating positions in passenger cars and in light multipurpose passenger vehicles, trucks and buses. In a final rule published on December 14, 2004 (69 FR 74880), the standard requires that vehicle manufacturers include information in owner's manuals for vehicles manufactured on or after September 1, 2008. The owner's manual must clearly identify which seats are equipped with head restraints. If the head restraints are removable, the owner's manual must provide instructions on how to remove the head restraint by a deliberate action distinct from any act necessary for adjustment, and how to reinstall head restraints. The owner's manual must warn that all head restraints must be reinstalled to properly protect vehicle occupants. Finally, the owner's manual must describe, in an easily understandable format, the adjustment of the head restraints and/or seat back to achieve appropriate head restraint position relative to the occupant's head.

FMVSS No. 205, ''Glazing materials.'' This standard specifies requirement for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in a crash. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield, is required to be placed in the vehicle owner's manual.

FMVSS No. 208, ''Occupant crash protection.'' This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers.

FMVSS No. 210, ''Seat belt assembly anchorages.'' This standard specifies

requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in a crash. The standard requires that manufacturers place the following information in the vehicle owner's manual: a. An explanation that child restraints are designed to be secured by means of the vehicle's seat belts, and b. A statement alerting vehicle owners that children are always safer in the rear seat.

FMVSS No. 213, ''Child restraint systems.'' This standard specifies requirements for child restraint systems and requires that manufacturers provide consumers with detailed information relating to child safety in air bag equipped vehicles. The vehicle owner's manual must include information about the operation and do's and don'ts of built-in child seats.

FMVSS No. 226, ''Ejection mitigation.'' This standard establishes vehicle requirements intended to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. The standard applies to vehicles with a gross vehicle weight rating of 4,536 kg or less. Written information must be provided with every vehicle describing any ejection mitigation countermeasure that deploys in the event of a rollover and a discussion of the readiness indicator specifying a list of the elements of the system being monitored by the indicator, a discussion of the purpose and location of the telltale, and instructions to the consumer on the steps to take if the telltale is illuminated.

Part 575 Section 103, ''Camper loading.'' This regulation requires manufacturers of slide-in campers to affix to each camper a label that contains information relating to identification and proper loading of the camper and to provide more detailed loading information in the owner's manual. This regulation also requires manufacturers of trucks that would accommodate slide-in campers to specify the cargo weight ratings and the longitudinal limits within which the center of gravity for the cargo weight rating should be located.

Part 575 Section 105, ''Vehicle rollover.'' This regulation requires manufacturers of utility vehicles to alert the drivers of those vehicles that they have a higher possibility of rollover than other vehicle types and to advise them of steps that can be taken to reduce the possibility of rollover and/or to reduce the likelihood of injury in a rollover. A statement is provided in the regulation, which manufacturers shall include, in its entirety or equivalent form, in the Owner's Manual.

Estimated Total Annual Burden: 3,724 hours.

Estimated Number of Respondents: 22.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Comments are invited on:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[1] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[2]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

How can I be sure that my comments were received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[3]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

[1] *See* 49 CFR 553.21.

[2] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

[3] *See* 49 CFR 512.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

R. Ryan Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2014–29680 Filed 12–18–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35878]

R Bult Rail Lines, LLC—Lease and Operation Exemption—Rail Line of Marigold Land Company, LLC

R Bult Rail Lines, LLC (RBRL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Marigold Land Company, LLC (Marigold) and operate an approximately 0.46-mile railroad right-of-way and trackage currently owned by Marigold in Chicago, Ill.[1]

According to RBRL, the lease does not contain any interchange commitments.[2] RBRL states that the trackage is used in conjunction with interchanging to and from Canadian National Railway Company, carloads of inbound sugars and corn sweetener for transloading into trucks for final delivery, and that the track also provides service to industry located on an adjoining parcel.

RBRL certifies that its projected revenues from of this transaction do not exceed those that would qualify it as a Class III rail carrier and RBRL states that this transaction will not result in the production of revenues in excess of $5 million.[3]

The effective date of this exemption is January 4, 2015. (30 days after the verified notice was filed).[4] RBRL intends to consummate the proposed transaction on or about January 1, 2015. But the earliest the transaction may be consummated is after the January 4, 2015 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by December 26, 2014 (at least seven days prior to the date the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35878, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, David C. Dillon, Dillon & Nash, Ltd., Attorneys at Law, 111 West Washington Street, Suite 1023, Chicago, IL 60602.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: December 15, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–29768 Filed 12–18–14; 8:45 am]

BILLING CODE 4915–01–P

[1] RBRL states the trackage does not have any milepost numbers.

[2] By letter filed November 25, 2014, RBRL supplemented its notice of exemption and stated there are no interchange commitments on the trackage. *See* 49 CFR 1150.33(h).

[3] By letter filed December 5, 2014, RBRL supplemented its notice of exemption and stated that this transaction will not result in the production of revenues in excess of $5 million.

[4] Because, as noted, RBRL supplemented its verified notice on December 5, 2014, that date is considered the filing date of the verified notice.

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2015 American Eagle One Ounce Silver Proof Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2015 American Eagle One Ounce Silver Proof Coin. The price of the American Eagle One Ounce Silver Proof Coin will be lowered from $52.95 to $48.95.

FOR FURTHER INFORMATION CONTACT: J. Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: December 15, 2014.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–29712 Filed 12–18–14; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2014 American Eagle One Ounce Silver Proof Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a price reduction for the 2014 American Eagle One Ounce Silver Proof Coin. The price of the American Eagle One Ounce Silver Proof Coin will be lowered from $52.95 to $48.95.

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: December 15, 2014.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–29713 Filed 12–18–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0092]

Proposed Information Collection (Rehabilitation Needs Inventory) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to vocational rehabilitation services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 17, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0092'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Rehabilitation Needs Inventory (RNI), VA Form 28–1902w.

OMB Control Number: 2900–0092.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1902w is mailed to service-connected disabled veterans who submitted an application for vocational rehabilitation benefits. VA will use data collected to determine the types of rehabilitation program the Veteran will need.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60,000.

Dated: December 15, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29669 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0579]

Agency Information Collection (Request for Vocational Training Benefits—Certain Children of Vietnam Veterans): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0579'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0579'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Vocational Training Benefits—Certain Children of Vietnam Veterans, 38 CFR 21.8014.

OMB Control Number: 2900–0579.

Type of Review: Extension of a currently approved collection.

Abstract: Vietnam Veterans' children born with certain birth defects may submit a written claim to request participation in a vocational training program. In order for VA to relate the claim to other existing VA records, applicants must provide identifying information about themselves and the natural parent who served in Vietnam. The information collected will allow VA counselors to review existing records and to schedule an appointment with the applicant to evaluate the claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 29, 2014, at page 51653–51654.

Affected Public: Individuals or households.

Estimated Annual Burden: 15 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One–time.

Estimated Number of Respondents: 60.

Dated: December 15, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29684 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Proposed Information Collection (Claim for Disability Insurance Benefits, Government Life Insurance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 17, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to

Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Revision of a currently approved collection.

Abstract: Policyholder's complete VA Form 29–357 to file a claim for disability insurance on National Service Life Insurance and United States Government Life Insurance policies. The information collected is used to determine the policyholder's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Dated: December 15, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29668 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Agency Information Collection;Activity Under OMB Review; Request for Supplies Chapter 31—Vocational Rehabilitation

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0061'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0061'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Supplies (Chapter 31—Vocational Rehabilitation), VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–1905m is used to request supplies for Veterans in rehabilitation programs. The official at the facility providing rehabilitation services to veterans completes the form and certifies that the Veteran needs the supplies for his or her program, and do not have the requested item in his or her possession.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2011, at page 59556.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 16,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16,000.

Dated: December 15, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29672 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0673]

Proposed Information Collection (Request One—VA Identification Verification Card) Activity; Comment Request

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Operations, Security, and Preparedness (OSP), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to issue a Personal Identity Verification (PIV) identification card.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 17, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Thomas Z. Napier, HSPD–12 PMO, Office of Personnel Security and Identity Management (07C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *thomas.napier@va.gov.* Please refer to ''OMB Control No. 2900–0673'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Thomas Z Napier at (202) 461–5082 or FAX (202) 495–5326.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSP invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSP's functions, including whether the information will have practical utility; (2) the accuracy of OSP's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for One-VA Identification Card.

OMB Control Number: 2900–0673.

Type of Review: Revision of a currently approved collection.

Abstract: VA PIV Enrollment System Portal is use to collect pertinent information from Federal employees, contractors, and affiliates prior to issuing a Department identification credential. VA will use the data collected to personalize, print, and issue a PIV card.

Affected Public: Federal government.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100,000.

Dated: December 15, 2014.

By direction of the Secretary:

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29655 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Agency Information Collection (Request for Change of Program or Place of Training): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0074'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0074'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Change of Program or Place of Training, VA Form 22–1995.

OMB Control Number: 2900–0074.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants receiving educational benefits complete VA Form 22–1995 to request a change in program or training establishment. VA uses the data collected to determine the claimant's eligibility for continued educational benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2014, at pages 60584–60585.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Electronically—14,614 hours.

b. Paper Copy—45,465 hours.

Estimated Average Burden per Respondent:

a. Electronically—15 minutes.

b. Paper Copy—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Electronically—58,455.

b. Paper Copy—136,396.

Dated: December 15, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29678 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection (Approval of School Attendance): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW.,

Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0049'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0049'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Revision of a currently approved collection.

Abstract: Recipients of disability compensation, dependency and indemnity compensation, disability pension, and death pension are entitled to benefits for eligible children between the ages of 18 and 23 who are attending school. VA Forms 21–674, 21–674c and 21–674b are used to confirm school attendance of children for whom VA compensation or pension benefits are being paid and to report any changes in entitlement factors, including marriages, a change in course of instruction and termination of school attendance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at pages 59555–59556.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Forms 21–674 and 674c—34,500 hours.

b. VA Form 21–674b—3,292 hours.

Estimated Average Burden Per Respondent:

a. VA Forms 21–674 and 674c—15 minutes.

b. VA Form 21–674b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Forms 21–674 and 674c—138,000 hours.

b. VA Form 21–674b—39,500 hours.

Dated: December 15, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29665 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Agency Information Collection; Activity Under OMB Review; Trainee Request for Leave

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 20, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0034 in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0034'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Trainee Request for Leave—Chapter 31, Title 38, U.S.C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–1905h to request leave from their Vocational Rehabilitation and Employment Program training. The trainer or authorized school official must verify that the absence will or will not interfere with claimant's progress in the program. Claimants will continue to receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 2, 2014, at page 59563–59564.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: December 15, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29662 Filed 12–18–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Office of Management and Budget

2 CFR Parts 1, 25, 170, et al.

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45 CFR Parts 74, 75, and 92

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2 CFR Parts 400, 415, 416, et al.

Office of the Chief Financial Officer

7 CFR Parts 3015, 3016, 3018, et al.

Farm Service Agency

7 CFR Parts 761 and 785

Commodity Credit Corporation

7 CFR Parts 1407 and 1485

National Institute of Food and Agriculture

7 CFR Parts 3400, 3401, 3402, et al.

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2 CFR Part 3187

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2 CFR Part 3255

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2 CFR Part 3374

45 CFR Part 1174

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2 CFR Part 3474

34 CFR Parts 74, 75, 76, et al.

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Office of National Drug Control Policy

2 CFR Part 3603

21 CFR Parts 1403, 1404, and 1405

GULF COAST ECOSYSTEM RESTORATION COUNCIL

2 CFR Part 5900

Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

2 CFR Parts 1, 25, 170, 180, and 200

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2 CFR Part 300

45 CFR Parts 74, 75, and 92

RIN 0991–ZA46

DEPARTMENT OF AGRICULTURE

2 CFR Parts 400, 415, 416, 418, and 422

Office of the Chief Financial Officer

7 CFR Parts 3015, 3016, 3018, 3019, 3022, and 3052

Farm Service Agency

7 CFR Parts 761 and 785

Commodity Credit Corporation

7 CFR Parts 1407 and 1485

National Institute of Food and Agriculture

7 CFR Parts 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, and 3431

Rural Utilities Service

7 CFR Parts 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779, 1780, 1782, and 1783

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Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1942, 1944, 1951, and 1980

Rural Housing Service

7 CFR Parts 3570 and 3575

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4274, 4279, 4280, 4284, 4285, and 4290

RIN 0505–AA15

DEPARTMENT OF STATE

2 CFR Part 600

22 CFR Parts 135 and 145

RIN 1400–AD57

AGENCY FOR INTERNATIONAL DEVELOPMENT

2 CFR Part 700

22 CFR Part 226

RIN 0412–AA73

DEPARTMENT OF VETERANS AFFAIRS

2 CFR Part 802

38 CFR Parts 41 and 43

RIN 2900–AP03

DEPARTMENT OF ENERGY

2 CFR Part 910

10 CFR Parts 602, 605, and 733

RIN 1991–AB94

DEPARTMENT OF TREASURY

2 CFR Part 1000

RIN 1505–AC48

DEPARTMENT OF DEFENSE

2 CFR Part 1103

RIN 0790–AJ25

DEPARTMENT OF TRANSPORTATION

2 CFR Part 1201

49 CFR Parts 18 and 19

RIN 2105–AE33

DEPARTMENT OF COMMERCE

2 CFR Part 1327

15 CFR Parts 14 and 24

RIN 0605–AA34

DEPARTMENT OF THE INTERIOR

2 CFR Part 1402

43 CFR Part 12

RIN 1090–AB08

ENVIRONMENTAL PROTECTION AGENCY

2 CFR Part 1500

40 CFR Parts 30, 31, 33, 35, 40, 45, 46, and 47

RIN 2030–AA99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1800

14 CFR Parts 1260 and 1273

RIN 2700–AE94

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

2 CFR Part 2205

45 CFR Parts 1235, 2510, 2520, 2541, 2543, 2551, 2552, and 2553

RIN 3045–AA61

SOCIAL SECURITY ADMINISTRATION

2 CFR Part 2300

20 CFR Parts 435 and 437

RIN 0960–0960–AH73

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 CFR Part 2400

24 CFR Parts 84 and 85

RIN 2501–AD54

NATIONAL SCIENCE FOUNDATION

2 CFR Part 2500

45 CFR Part 602

RIN 3145–AA57

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

2 CFR Part 2600

36 CFR Parts 1206, 1207, and 1210

RIN 3095–AB83

SMALL BUSINESS ADMINISTRATION

2 CFR Part 2701

13 CFR Part 143

RIN 3245–AG62

DEPARTMENT OF JUSTICE

2 CFR Part 2800

28 CFR Parts 66 and 70

RIN 1121–AA81

DEPARTMENT OF LABOR

2 CFR Part 2900

RIN 1205–AB71

DEPARTMENT OF HOMELAND SECURITY

2 CFR Part 3002

Federal Emergency Management Agency

44 CFR Parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361

RIN 1601–AA70

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

2 CFR Part 3187

45 CFR Parts 1180 and 1183

RIN 3137–AA24

NATIONAL ENDOWMENT FOR THE ARTS

2 CFR Part 3255

45 CFR Part 1157

RIN 3135–AA32

NATIONAL ENDOWMENT FOR THE HUMANITIES

2 CFR Part 3374

45 CFR Part 1174

RIN 3136–AA35

DEPARTMENT OF EDUCATION

2 CFR Part 3474

34 CFR Parts 74, 75, 76, 77, 80, 101, 206, 222, 225, 226, 270, 280, 299, 300, 303, 350, 361, 363, 364, 365, 367, 369, 370, 373, 377, 380, 381, 385, 396, 400, 426, 460, 464, 491, 535, 606, 607, 608, 609, 611, 614, 628, 636, 637, 642, 643, 644, 645, 646, 647, 648, 650, 654, 655, 661, 662, 663, 664, 682, 692, 694, and 1100

RIN 1890–AA19

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

2 CFR Part 3603

21 CFR Parts 1403, 1404, and 1405

RIN 3201–AA00

GULF COAST ECOSYSTEM RESTORATION COUNCIL

2 CFR Part 5900

RIN 3600–AA03

Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Office of Management and Budget, Executive Office of the President; Department of Health And Human Services; Farm Service Agency, Commodity Credit Corporation, National Institute of Food and Agriculture, Rural Utilities Service, Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Farm Service Agency, Department of Agriculture; Department of State; Agency for International Development; Department of Veterans Affairs; Department of Energy; Department of Treasury; Department of Defense; Department of Transportation; Department of Commerce; Department of the Interior; Environmental Protection Agency; National Aeronautics and Space Administration; Corporation for National and Community Service; Social Security Administration; Department of Housing And Urban Development; National Science Foundation; National Archives and Records Administration; Small Business Administration; Department of Justice; Department of Labor; Federal Emergency Management Agency, Department of Homeland Security; Institute of Museum and Library Services; National Endowment for the Arts; National Endowment for the Humanities; Department of Education;, Office of National Drug Control Policy, Executive Office of the President; Gulf Coast Ecosystem Restoration Council.

ACTION: Interim final rule.

SUMMARY: This joint interim final rule implements for all Federal award-making agencies the final guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) published by the Office of Management and Budget (OMB) on December 26, 2013. This rule is necessary in order to incorporate into regulation and thus bring into effect the Uniform Guidance as required by OMB. Implementation of this guidance will reduce administrative burden and risk of waste, fraud, and abuse for the approximately $600 billion per year awarded in Federal financial assistance. The result will be more Federal dollars reprogrammed to support the mission, new entities able to compete and win awards, and ultimately a stronger framework to provide key services to American citizens and support the basic research that underpins the United States economy.

DATES: *Effective date:* This interim final rule is effective on December 26, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 26, 2014.

Implementation dates: For grants authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, this rule is applicable for emergency or major disaster declarations issued on or after December 26, 2014. For non-Federal entities that are nonprofit organizations or institutions of higher education (IHEs), there is a one-year grace period for implementation of the procurement standards in 2 CFR 200.317 through 200.326. As will be detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation for the procurement standards will need to specify in their documented policies and procedures that they continue to comply with OMB circular A–110 for one additional fiscal year which begins after December 26, 2014.

Comment date: To be assured of consideration, comments must be received by OMB electronically through

www.regulations.gov no later than midnight Eastern Standard Time (E.S.T.) on February 17, 2015.

ADDRESSES: Comments should be submitted to *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general information, please contact Victoria Collin or Gil Tran at the OMB Office of Federal Financial Management, 175 17th St. NW., Washington, DC 20500, or via telephone at (202) 395–3993. You may submit comments via the Federal eRulemaking Portal at *www.regulations.gov*, Docket Number OMB–2014–0006. Follow the instructions for submitting comments.

SUPPLEMENTARY INFORMATION:

Background

This joint interim final rule implements for all Federal award-making agencies the final guidance *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* published by the Office of Management and Budget (OMB) on December 26, 2013 in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). The Uniform Guidance followed on a Notice of Proposed Guidance issued February 1, 2013 (available at 78 FR 7282), and an Advanced Notice of Proposed Guidance issued February 28, 2012 (available at 77 FR 11778). The final guidance incorporated feedback received from the public in response to those earlier issuances. Additional supporting resources are available from the Council on Financial Assistance Reform at *www.cfo.gov/COFAR*.

The Uniform Guidance delivered on two presidential directives; Executive Order 13520 on Reducing Improper Payments (74 FR 62201; November 15, 20019), and February 28, 2011 Presidential Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, (Daily Comp. Pres. Docs.; *http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf*). It reflected more than two years of work by the Council on Financial Assistance Reform to improve the efficiency and effectiveness of Federal financial assistance. For a detailed discussion of the reform and its impacts, please see the **Federal Register** notice for the issuance of the final guidance (78 FR 78589).

With this interim final rule, OMB is amending the uniform guidance to make technical corrections where needed, and Federal awarding agencies are joining together to implement the Uniform Guidance in their respective chapters of title 2 of the CFR. With respect to the technical corrections that OMB is issuing, these corrections are included only where it has come to the attention of the COFAR that particular language in the final guidance did not match with the COFAR's intent and would result in an erroneous implementation of the guidance. These technical corrections will go into effect at the time of the effective date of this interim final rule.

Among these technical corrections, please note in particular, parts 25, 170, and 180 are amended to reflect that the Central Contractor Registration (CCR) and Excluded Parties List System (EPLS) no longer exist as stand-alone systems; their functionalities are now available in the System of Award Management (SAM).

2 CFR parts 25, 180 and, 200 are revised to remove references to the Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) and replace them with the term 'unique entity identifier'. This change is consistent with Administration priorities to technically refine existing regulations. The specific standard for this unique entity identifier will be in accordance with the requirements of SAM. This revision does not indicate a change in current policy.

References to the Federal Awardee Performance and Integrity Information System (FAPIIS) remain in 2 CFR part 200 reflecting that final guidance for Federal grants and cooperative agreements will be published following the issuance of this interim final rule.

2 CFR 200.110 Effective/applicability date is revised to allow a grace period of one fiscal year for non-Federal entities to implement changes to their procurement policies and procedures in accordance with sections 200.317 through 200.336 Procurement Standards.

Finally, 2 CFR 200.320 Methods of Procurement paragraph (c), the requirement for sealed bids to be advertised and opened ''publicly'' is limited as was originally intended to state, local and tribal entities. Other requirements in the section remain as originally published.

In addition, throughout the guidance, the COFAR changed the word ''should'' to ''must'' to reflect longstanding policies that have been requirements in practice, but which may have been misinterpreted as optional with the usage of the word ''should''. Other technical corrections are made to eliminate conflicting or unclear language and grammatical inconsistencies or citation errors throughout.

With respect to the implementing regulations that Federal awarding agencies are issuing, any agencies that have received OMB approval for an exception to the Uniform Guidance have included the resulting language in their regulations. OMB has only approved exceptions to the Uniform Guidance where they are consistent with existing policy. Further, agencies are providing additional language beyond that included in 2 CFR part 200, consistent with their existing policy, to provide more detail with respect to how they intend to implement the policy, where appropriate. Agencies are not making new policy with this interim final rule; all regulatory language included here should be consistent with either the policies in the Uniform Guidance or the agencies' existing policies and practices. Three agencies have requested special accommodation with respect to the format of their implementing language. The National Science Foundation, the Department of Education, and the Department of Health and Human Services have included agency-specific preamble language as follows:

National Science Foundation

The National Science Foundation (NSF) has received approval from OMB to implement 2 CFR part 200 via use of a policy, rather than a regulation. In the interest of establishing a single location for each of the Departments' and Agencies' implementation of the Uniform Guidance, per OMB's request, NSF has provided a link to its policy implementation of OMB's Uniform Guidance in 2 CFR part 2500 for inclusion in this issuance.

Department of Education

The Secretary of the Department of Education takes one exception from the Uniform Guidance and makes one clarification regarding another section of the Uniform Guidance (discussed more fully later in this section of the preamble). The Secretary also describes the technical amendments needed to conform to the guidance in 2 CFR part 200. The Secretary publishes this special section of the joint preamble to provide the basis and purpose for the exception and clarification.

The Secretary also seeks comments on whether any of the requirements imposed under our adoption of the Uniform Guidance conflict with any of the requirements in the Department's statutes and regulations.

Exception and Clarification

An exception to the Uniform Guidance is required because the Secretary lacks authority to delegate functions to the Office of Management and Budget (OMB), as contemplated by

the Uniform Guidance. In particular, 2 CFR 200.102(a) would effectively delegate one of the Secretary's functions—granting exceptions to the regulations as promulgated by the Department—to employees of OMB. Section 412 of the Department of Education Organization Act (20 U.S.C. 3472) permits the Secretary to delegate functions of the Department to officers and employees of the Department, but neither that section or any other statute permits the Secretary to delegate to OMB the authority to grant exceptions to the Department's regulations. The Secretary is therefore modifying the regulation in 2 CFR 200.102(a) to authorize the Secretary to grant exceptions to the regulations after consultation with appropriate officials at OMB. This exception is stated in 2 CFR 3474.5.

The Secretary also clarifies that the Department's authority under 2 CFR 200.207, Specific conditions, also permits the Department to designate grants and grantees as high risk. The Department has long used the authority under 34 CFR 74.14, Special award conditions, and 80.12, Special grant or subgrant conditions for ''high-risk'' grantees, to impose high-risk conditions on both individual grants and individual grantees. While these two sections did not both use the term ''high-risk,'' they established identical standards for imposing special conditions on grantees. Under these regulations, the Department has imposed high-risk conditions on specific grants and grantees in appropriate circumstances regardless of whether the grantee was subject to part 74 or part 80. The guidance in 2 CFR 200.205 and 200.207 replaces the requirements in 34 CFR 74.14 and 80.12 and authorizes specific conditions under virtually identical standards to those formerly in parts 74 and 80. Because the standards in 2 CFR 200.207 are virtually identical to those in former 34 CFR parts 74 and 80, the Secretary clarifies that the Department will now use the standards in 2 CFR 200.205 and the procedures in 2 CFR 200.207 to impose specific or high risk conditions on grants and grantees, depending on the circumstances in each case.

The current regulations in parts 74 and 80 contain provisions that authorize the Department to impose conditions on grants or grantees if an applicant or grantee (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.

The guidance in 2 CFR 200.205 requires agencies to conduct a risk evaluation whenever making new awards, authorizing agencies to use a risk-based approach, and may consider any items such as the following: (1) Financial stability; (2) Quality of management systems and ability to meet the management standards prescribed in Part 200; (3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards and, if applicable, the extent to which any previously awarded amounts will be expended prior to future awards; (4) Reports and findings from audits performed under Subpart F—Audit Requirements of Part 200 or the reports and findings of any other available audits; and (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

The standards identified in 2 CFR 200.205 may be used both at the time of the award or after an award is made if the Department discovers new risks posed under a particular grant or by a particular grantee. While the standards in 2 CFR 200.205 provide more detail and are stated in neutral terms, the same underlying reasons apply to the standards used by the Department to impose high-risk conditions under 34 CFR 74.14 and 80.12. Therefore, the Secretary clarifies that the standards in 2 CFR 200.205, which do not mention ''high-risk'' conditions, can be used in appropriate cases by Department officials to impose high-risk conditions on individual grants or on specific grantees.

Technical Amendments and Removal of Obsolete Parts

These interim final regulations also make technical changes: (1) To the Department's regulations in the Education Department General Administrative Regulations (EDGAR), 34 CFR parts 75, 76, and 77, to conform to the Uniform Guidance in part 2 CFR part 200; and (2) to update program regulations that currently reference 34 CFR parts 74 and 80 or specific sections in those parts. In addition, the Department is removing, rather than updating, the following parts of title 34 of the CFR that reference parts 74 and 80 but that are no longer authorized by statute:

Part 380, Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects: previously authorized by section 311(c) of the Rehabilitation Act of 1973 (former 29 U.S.C. 777a(c)); the authority for this program was not retained when Congress reauthorized the Act in 1998 (P.L. 105–220).

Part 426, Cooperative Demonstration Program: previously authorized by section 420A of the Carl D. Perkins Vocational and Applied Technology Act (former 20 U.S.C. 2420a); the authority for this program was not retained when Congress reauthorized the Perkins Act in 1998 (Pub. L. 105–332).

Part 460, Adult Education—General Provisions: previously authorized by the Adult Education Act (former 20 U.S.C. 1201 *et seq.*), which was repealed by section 251(a)(1) of Pub. L. 105–220 (1998).

Part 464, State Literacy Resource Centers Program: previously authorized by section 356 of the Adult Education Act (former 20 U.S.C. 1208aa), which was repealed by section 251(a)(1) of Pub. L. 105–220 (1998).

Part 491, Adult Education for the Homeless Program: previously authorized by section 701 of the McKinney-Vento Homeless Assistance Act (former 42 U.S.C. 11421), which was repealed by section 199(b)(1) of P.L. 105–220 (1998).

Part 535, Bilingual Education: Graduate Fellowship Program: previously authorized by section 7145 of the Elementary and Secondary Education Act of 1965 (ESEA) (former 20 U.S.C. 7475), which was not retained in the 2002 reauthorization of the ESEA (P.L. 107–110).

Part 636, Urban Community Service Program: previously authorized by title XI, part A of the Higher Education Act of 1965 (HEA) (former 20 U.S.C. 1136–1136h), which was repealed by section 202 of P.L. 105–244 (1998).

Part 1100, National Institute for Literacy: Literacy Leader Fellowship Program: previously authorized by section 384(e) of the Adult Education Act (former 20 U.S.C. 1213c(e)), which was repealed by section 251(a)(1) of Pub. L. 105–220 (1998).

Definition of ''Grant''

Two of the technical amendments relate to the definitions of ''grant'' and ''award.'' These terms are defined in 34 CFR parts 74 and 80, as equivalent terms for financial assistance awarded by the Department. The guidance in 2 CFR 200.24 and 200.51 defines ''cooperative agreement'' and ''grant agreement'', respectively, and these definitions follow the Federal Grant and

Cooperative Agreement Act (31 U.S.C. 6303–6305) language closely for the treatment of grants and cooperative agreements. However, because Department regulations use the terms ''grant'' and ''award'' to refer generally to both grants and cooperative agreements, the Department cannot rely on the definition of ''grant agreement'' in part 200. Instead, we establish definitions of ''grant'' and ''award'' in 34 CFR 77.1(c) to include within their scope cooperative agreements as well as grants. Because part 77 defines terms applicable to all programs of the Department, program regulations can continue to use these terms to refer to both types of awards.

General Education Provisions Act Requirements

Section 437(b) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(b), provides that, immediately following each substantive provision of the Department's regulations, the Department must provide the citations to the particular section or sections of statutory law or other legal authority on which that provision is based. The substantive provision in these interim final regulations that adopts the guidance in 2 CFR part 200 is 2 CFR 3474.1. Because the authority citations for all of the sections adopted by the Department are the same (unless noted otherwise), the Department provides the authority citation for all of the adopted guidance in paragraph (b) of 3474.1. For other sections in Part 3474, the authority citations are provided at the end of each of those sections.

Rulemaking Considerations

The Department is generally required, under the General Education Provisions Act (GEPA), section 437 (20 U.S.C. 1232) and the APA to take comment on proposed rules before they become effective. Also, under the Higher Education Act of 1965 (HEA), section 492, (20 U.S.C. 1098a), all Department regulations for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements and, under section 482 of the HEA, any title IV regulations that have not been published in final form by November 1 prior to the start of an award year cannot become effective until the beginning of the second award year following the November 1 date. The joint preamble includes waivers of proposed rulemaking and delayed effective date with respect to the APA.

For the same reasons included in the joint preamble, the Secretary has determined that there is good cause to waive proposed rulemaking and delayed effective date under both GEPA and the HEA.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these interim final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Department of Health and Human Services

The Department of Health and Human Services (HHS) is adapting OMB's final guidance with certain amendments, based on existing HHS regulations, to supplement the guidance as needed for the Department. HHS' amendments are described below, and incorporated into HHS' implementing regulations at 45 CFR part 75. As with NSF, HHS has, in the interest of establishing a single location for each Department's implementation of the uniform guidance, provided a link to its policy implementation of OMB's uniform guidance in 2 CFR part 300. The changes described below are categorized as regulation-wide formatting changes, additions, or revisions. The items described as formatting changes have been made throughout the text of the HHS regulation to accommodate the structure and content of the HHS guidance. All other changes are listed in order by section.

As indicated in the common preamble, OMB has afforded ample opportunity for notice and an opportunity for comment on the provisions contained therein. In addition, HHS finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an effective date of December 26, 2014. All of the additions and modifications listed below already exist in codified regulations (45 CFR part 74 or part 92), and thus are currently applicable to HHS grantees. As such, all HHS grantees should already be in compliance with these provisions. Consequently, no changes on the part of grantees are expected. In order to comport with OMB's timeframe for Federal agency adoption of these regulations, it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date for these minor changes that reflect current HHS rules and practice.

HHS is making the rule effective on December 26, 2014, in order to comport with all other Federal agency adoption, and to ensure consistency in all grant-making procedures. Failure to do so could have unpredictable negative effects on grants implementation.

For the above reasons, the Secretary issues this rule as an interim final rule. However, HHS will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

In 45 CFR part 75, HHS incorporates the guidance in 2 CFR part 200 with the following adjustments:

1. Changes ''Federal Awarding Agency'' to ''HHS Awarding Agency'' where applicable.

2. Removes titles of sections within the regulatory text to improve readability.

3. Revises the numbering schema to facilitate the inclusion of additional definitions and to facilitate the inclusion of material specific to HHS awards. All such numbering changes are updated throughout the document, including internal references.

4. Includes Appendix IX, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals,'' with appropriate numbering schema.

5. Renumber sections, especially Subpart D, to facilitate the inclusion of material specific to HHS awards.

6. Changes citations to reflect location in 45 CFR part 75.

7. Inserts reserved sections throughout the regulation to accommodate future changes.

(a) HHS adopts 2 CFR 200.0 in 45 CFR 75.1, with the following additional acronyms, added to existing list in appropriate alphabetical order:

(1) HHS U.S. Department of Health and Human Services

(2) SF 424 Standard Form 424 series and Form Families Application for Federal Assistance

(b) HHS adopts the definitions found in 2 CFR 200.2–200.99 in 45 CFR 75.2 with the following changes.

(1) Adds the following new definitions:

(i) ''Awardee.''

(ii) ''Commercial organization.''

(iii) ''Departmental Appeals Board.''

(iv) ''Excess property.''

(v) ''Expenditure report.''

(vi) ''Grantee.''

(vii) ''HHS awarding agency.''

(viii) ''Principal Investigator/Program Director/(PI/PD).''

(ix) ''Prior approval.''
(x) ''Project period.''
(xi) ''Surplus property.''
(xii) ''Suspension of award activities.''
(xiii) ''Total Costs.''
(2) Revises the following specific definitions as described below:
(i) Cost sharing or matching to add ''This may include the value of allowable third party in-kind contributions, as well as expenditures by the recipient.'' after the first sentence.
(ii) Indirect cost rate proposal to add ''and Appendix IX'' after ''Appendix VII''.
(iii) Personal property to add ''such as copyrights, patents, or securities'' at the end of the definition.
(iv) Recipient to add ''usually but not limited to non-Federal entities,'' in the first sentence, after ''entity,''.
(v) Research and Development to replace ''non-Federal entities'' with ''HHS award recipients''.
(3) All definitions, including the HHS additions, are in alphabetical order.
(c) HHS adopts 2 CFR 200.104 in 45 CFR 75.104 by adding a new subsection to note the supersession of 45 CFR parts 74 and 92 and renumbers accordingly.
(d) HHS adopts 2 CFR 200.106 in 45 CFR 75.106 and articulates HHS implementation of 2 CFR part 200.
(e) HHS adopts 2 CFR 200.108 in 45 CFR 75.108 and articulates to whom changes for HHS regulations should be addressed.
(f) HHS adopts 2 CFR 200.109 in 45 CFR 75.109 to articulate HHS' review period for its regulations.
(h) HHS adopts 2 CFR 200.112 in 45 CFR 75.112 and articulates HHS' establishment of conflict of interest policies and disclosure criteria.
(i) HHS adopts 2 CFR 200.205 in 45 CFR 75.205 and adds text at the end of subsection (a) to reference suspension and debarment regulations.
(j) HHS adopts 2 CFR 200.206 in 45 CFR 75.206 and amends the section heading and adds new subsections (c) and (d) to specify the forms required.
(k) HHS adopts 2 CFR 200.208 in 45 CFR 75.208 and adds after the introductory language new subsections (a) and (b) to reference 45 CFR part 87 and § 75.206(d)(2).
(l) HHS adopts 2 CFR 200.212 in 45 CFR 75.212 and changes ''2 CFR part 180'' to read ''2 CFR parts 180 and 376''.
(m) HHS adds new 45 CFR 75.213 to reference The Metric Conversion Act and HHS' use of Executive Order 12770.
(n) HHS adds new 45 CFR 75.214 to reference lobbying restrictions in 45 CFR part 93.
(o) HHS adds new 45 CFR 75.215 to reference provisions for awards to Commercial Organizations.
(p) HHS adds new 45 CFR 75.216 to reference provisions for awards to Federal Agencies.
(q) HHS adds new 45 CFR 75.217 to reference standards for faith-based organizations in 45 CFR part 87.
(r) HHS adopts 2 CFR 200.305 in 45 CFR 75.305 and adds at the end of subsection (b)(5)(ii) ''(See 45 CFR part 30).''.
(s) HHS adopts 2 CFR 200.307 in 45 CFR 75.307 with the following changes:
(1) revise subsection (c) to include details concerning the Patent and Trademark Laws Amendments, 34 U.S.C. 200–212, and conditions described under § 75.207 or § 75.215.''.
(t) HHS adopts 2 CFR 200.308 in 45 CFR 75.308 with the following changes:
(1) Add subsections (c)(9) through (11) to include research patient care costs, subaward relations to Simplified Acquisition Threshold, and the disposition of property and equipment.
(2) add at the end, new subsection (j) to detail the appropriate authorizing personnel for revisions.
(u) HHS adopts 2 CFR 200.309 in 45 CFR 75.309 to articulate the use of funds within the period of performance.
(v) HHS adds 45 CFR 75.316 to articulate HHS' policy on property management standards and procedures.
(w) HHS adopts 2 CFR 200.310 in 45 CFR 75.317 with the insertion of ''other'' preceding ''property owned'' in the first sentence.
(x) HHS adopts 2 CFR 200.311 in 45 CFR 75.318 by revising subsection (b):
(1) in subparagraph (b), by inserting subparagraph (1) following ''Use.'';
(2) by adding subparagraph (b)(2) to articulate the use of real property in other federally-sponsored projects.
(3) in subparagraph (c), after ''is no longer needed'', adding the phrase ''as provided in subsection (b).''.
(y) HHS adopts 2 CFR 200.313 in 45 CFR 75.320, by adding, at the end of subsection (c)(4), ''subject to the approval of the HHS awarding agency.''.
(z) HHS adopts 2 CFR 200.315 in 45 CFR 75.322 with the following changes:
(1) The title is amended to read ''Intangible property and copyrights.'';
(2) Add new subsection (f) to exclude commercial organizations from paragraph (e)(1).
(aa) HHS adopts 2 CFR 200.318 in 45 CFR 75.327, with the following changes:
(1) Add, ''In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689. (See 2 CFR part 376.)'' at the end of subparagraph (h).
(2) Add, new subparagraph (l) to articulate the appropriateness of the procurement instrument.
(bb) HHS adopts 2 CFR 200.320 in 45 CFR 75.329 and changes the title.
(cc) HHS adopts 2 CFR 200.325 in 45 CFR 75.334, and adds new subparagraph (d) to reference certificates of authority pursuant to 31 CFR part 223.
(dd) HHS adopts 2 CFR 200.338 in 45 CFR 75.371, with the following changes:
(1) in subparagraph (c), add ''(suspension of award activities)'' after ''suspend''.
(2) in subparagraph (d) add ''at 2 CFR part 376'' after ''regulations''.
(ee) HHS adopts 2 CFR 200.341 in 45 CFR 75.374, with an additional subparagraph (b) to reference additional appeals procedures.
(ff) HHS adopts 2 CFR 200.343 in 45 CFR 75.381, and, in subparagraph (g), changes ''one year'' to ''180 calendar days''.
(gg) HHS adopts 2 CFR 200.345 in 45 CFR 75.391, and adds, at the end of subparagraph (b), ''(See also HHS Claims Collection regulations at 45 CFR part 30.)''.
(hh) HHS adopts 2 CFR 200.407 in 45 CFR 75.407, with the additional subparagraphs (b) and (c) to articulate additional prior approval conditions.
(ii) HHS adopts 2 CFR200.439 in 45 CFR 75.439, and amend subsection (a) to remove definition numbers.
(jj) HHS adds new 45 CFR 75.476 to articulate independent research and development costs.
(kk) HHS adopts 2 CFR 200.501 in 45 CFR 75.501, by adding new subparagraphs (i) and (j) to articulate the audit options and exemptions for commercial organizations.

Additional Outreach and Training

Since the issuance of the Uniform Guidance on December 26, 2013, the COFAR has developed and provided numerous additional resources to assist stakeholders in learning about the guidance. For a complete list and access to these resources, please visit the COFAR Web site at *cfo.gov/COFAR*. Resources available include a Frequently Asked Questions document, as well as several training webcasts. Please note that the Frequently Asked Questions document will be referenced as additional guidance in the 2015 issuance of Appendix XI to Part 200—Compliance Supplement.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1) (PRA), each agency reviewed its final rule and determined that there are no new

collections of information contained therein. However, the OMB uniform guidance in 2 CFR 200 may have a negligible effect on burden estimates for existing information collections, including recordkeeping requirements for non-Federal entities that receive Federal awards.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This common interim final rule implements OMB final guidance issued on December 26, 2013, and will not have a significant economic impact beyond the impact of the December 2013 guidance.

Executive Order 12866 Determination

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) has designated this joint interim final rule to be not significant.

Administrative Procedure Act (5 U.S.C. 553)

Waiver of Proposed Rulemaking

In General

Under the Administrative Procedure Act (APA), some of the agencies joining in this issuance are generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, as noted earlier in the joint preamble, OMB offered the public two opportunities to comment on the Uniform Guidance, first through an advanced notice of proposed guidance and, second, through a notice of proposed guidance. OMB considered over 300 comments submitted in response to each of these notices. OMB has directed agencies to adopt the uniform guidance in part 200 without change, except to the extent that an agency can demonstrate that any conflicting agency requirements are required by statute or regulations, or consistent with longstanding practice and approved by OMB. Finally, OMB made clear that the requirements in 2 CFR part 200, including the audit requirements in subpart F, will apply, starting on December 26, 2014, giving recipients of all types of financial assistance advance notice of when the regulations would become effective. Therefore, under 5 U.S.C. 553(b)(B), there is good cause for waiving proposed rulemaking as unnecessary.

Department of Justice

The rule issued by the Department of Justice concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of prior notice and comment.

Waiver of Delayed Effective Date

In General

Generally, those agencies that are subject to the APA are required to delay the effective date of their final regulations by 30 days after publication, as required under 5 U.S.C. 553(d), unless an exception under subsection (d) applies.

Under 5 U.S.C. 553(d), these agencies may waive the delayed effective date requirement if the they find good cause and explain the basis for the waiver in the final rulemaking document or if the regulations grant or recognize an exemption or relieve a restriction. In the present case, there is good cause to waive the delayed effective date for two reasons.

First, OMB informed the public on December 26, 2013, that agencies would be required to adopt the Uniform Guidance and make it effective by December 26, 2014. The public has had significant time to prepare for the promulgation of these interim final regulations.

Second, while these interim final regulations are based on a new, more effective method for establishing government-wide requirements, the substance of the regulations are, in most cases, virtually identical to the requirements that exist in current agency regulations. In virtually all cases where the new regulations depart from prior OMB guidance to agencies, the new regulations reduce burdens on the public, for example, by increasing the threshold for single audits from $500,000 to $750,000.

Based on these considerations, those agencies subject to the APA have determined that there is good cause to waive the delayed effective date for these interim final regulations.

Department of Justice

The rule issued by the Department of Justice concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of a 30-day delay in the effective date of this rule.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OMB has determined that this joint interim final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the Federal agencies participating in this joint interim final rule have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 13132 Determination

OMB has determined that this joint interim final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

2 CFR Parts 1, 25, 170, 180, 200, 300, 400, 415, 416, 418, 422, 600, 700, 802, 910, 1000, 1103, 1201, 1327, 1402, 1800, 2205, 2300, 2400, 2500, 2600, 2701, 2800, 2900, 3002, 3187, 3255, 3374, 3474, 3603, and 5900; CFR Parts 761, 785, 1407, 1485, 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779, 1780, 1782, 1783, 1942, 1944, 1951, 1980, 3015, 3016, 3018, 3019, 3022, 3052, 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, 3431, 3570, 3575, 4274, 4279, 4280, 4284, 4285, and 4290; 10 CFR Parts 600, 602, 605, and 733; 13 CFR Part 143; 14 CFR Parts 1260 and 1273; 15 CFR Parts 14 and 24; 20 CFR Parts 435 and 437; 21 CFR Parts 1403–1405; 22 CFR Parts 135, 145, and 226; 24 CFR Parts 84 and 85; 28 CFR Parts 66 and 70; 34 CFR Parts 74, 75, 76, 77, 80, 101, 206, 222, 225, 226, 270, 280, 299, 300, 303, 350, 361, 363, 364, 365, 367, 369, 370, 373, 377, 380, 381, 385, 396, 400, 426, 460, 464, 491, 535, 606, 607, 608, 609, 611, 614, 628, 636, 637, 642, 643, 644, 645, 646, 647, 648, 650, 654, 655, 661, 662, 663, 664, 682, 692, 694, and 1100; 36 CFR Parts 1206, 1207, and 1210; 38 CFR Parts 41 and 43; 40 CFR Parts 30, 31, 33, 35, 40, 45, 46, and 47; 43 CFR Part 12; 44 CFR Parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361; 45 CFR Parts 74, 75, 92, 1235, 2510, 2520, 2541, 2543, 2551, 2552, and 2553; 45 CFR Parts 75, 602, 1157, 1174, 1180, and 1183; 49 CFR Parts 18 and 19

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, Appeal procedures, American Samoa, Auditing, Audit requirements, Bilingual education, Blind, Business and Industry, Broadband, Charter schools, Civil rights, Colleges and universities, Community development, Community facilities, Communications, Copyright, Cost principles, Cooperative agreements, Credit, Credit enhancement, Cultural exchange programs, Direct loan programs, Economic development, Education, Education of disadvantaged, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Electric power, Electric power rates, Electric utilities, Energy efficiency improvements, Federally affected areas, Farmers, Federal aid programs, Government contracts, Guam, Home improvement, Homeless, Human research subjects, Hospitals, Indians, Industrial park, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Manpower training programs, Nonprofit organizations, State and local governments, Grant programs, Grant programs—digital televisions, Grant programs—education, Grant programs—health, Grant programs housing and community development, Grant programs—social programs, Grants administration, Guaranteed loans, Homeless, Intergovernmental relations, Inventions and patents, Loan programs, Loan programs—agriculture, Loan program—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—housing and community development, Loan security, Migrant labor, Mortgage insurance, Mortgages, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territory, Privacy, Private schools, Renewable energy systems, Reporting and recordkeeping requirements, Research misconduct, Rural areas, Rural housing, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small business, State and local governments, Student aid, Subsidies, Telecommunications, Teachers, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Telephone, Waste treatment and disposal, Waste treatment and disposal—domestic, Water pollution control, Water resources, Water supply, Water supply—domestic, Watersheds, Women.

2 CFR Part 1500

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, Appeal procedures, American Samoa, Auditing, Audit requirements, Bilingual education, Blind, Business and Industry, Broadband, Charter schools, Civil rights, Colleges and universities, Community development, Community facilities, Communications, Copyright, Cost principles, Cooperative agreements, Credit, Credit enhancement, Cultural exchange programs, Direct loan programs, Economic development, Education, Education of disadvantaged, Education of individuals with disabilities, Educational facilities, Educational research, Educational study programs, Elementary and secondary education, Employment, Equal educational opportunity, Electric power, Electric power rates, Electric utilities, Energy efficiency improvements, Federally affected areas, Farmers, Federal aid programs, Government contracts, Guam, Home improvement, Homeless, Human research subjects, Hospitals, Indians, Industrial park, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Manpower training programs, Nonprofit organizations, State and local governments, Grant programs, Grant programs-—digital televisions, Grant programs—education, Grant programs—health, Grant programs housing and community development, Grant programs—social programs, Grants administration, Guaranteed loans, Homeless, Incorporation by reference, Intergovernmental relations, Inventions and patents, Loan programs, Loan programs—agriculture, Loan programs—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—housing and community development, Loan security, Migrant labor, Mortgage insurance, Mortgages, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territory, Privacy, Private schools, Renewable energy systems, Reporting and recordkeeping requirements, Research misconduct, Rural areas, Rural housing, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small business, State and local governments, Student aid, Subsidies, Telecommunications, Teachers, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Telephone, Waste treatment and disposal, Waste treatment and disposal—domestic, Water pollution control, Water resources, Water supply, Water supply—domestic, Watersheds, Women.

Executive Office of the President, Office of Management and Budget

Under the authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR parts 1, 25, 170, 180, and 200 by making the following correcting amendments:

TITLE 2 —GRANTS AND AGREEMENTS

CHAPTER I —OFFICE OF MANAGEMENT AND BUDGET GOVERNMENTWIDE GUIDANCE FOR GRANTS AND AGREEMENTS

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

■ 2. Revise § 1.215 to read as follows:

§ 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in * * *	On * * *	Previously was in * * *
(a) Chapter I, part 180	Nonprocurement debarment and suspension ..	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995).
(b) Chapter I, part 182	Drug-free workplace requirements	OMB guidance (54 FR 4946, January 31, 1989) and a government-wide common rule (as amended at 68 FR 66534, November 26, 2003).
(c) Chapter II, part 200	Uniform administrative requirements, cost principles, and audit requirements for federal awards.	OMB Circulars A–21, ''Cost Principles for Educational Institutions'' (Chapter II, part 225); A–87, ''Cost Principles for State, Local and Indian Tribal Governments'' (Chapter II, part 225); A–89, ''Federal Domestic Assistance Program Information''; ''; A–102 and a government-wide common rule (53 FR 8034, March 11, 1988); A–110, ''Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations'' (Chapter II, part 215); A–122, ''Cost Principles for Non-Profit Organizations'' (Chapter II, part 230); and A–133 ''Audits of States, Local Governments and Non-Profit Organizations''.

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT

■ 3. The authority citation for part 25 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 4. Revise the heading of 2 CFR part 25 to read as set forth above.

§§ 25.100 and 25.310 [Amended]

■ 5. Amend §§ 25.100 and 25.310 and Appendix A to Part 25 by removing references to ''Central Contractor Registration'' wherever they appear, and adding, in their place, ''System of Award Management''.

§§ 25.100, 25.110, 25.200, 25.205, 25.310, and Appendix A to Part 25 [Amended]

■ 6. Amend §§ 25.100, 25.110, 25.200, 25.205, 25.310, and Appendix A to Part 25 by removing references to ''CCR'' wherever they appear, and adding, in their place, ''SAM''.

§§ 25.100, 25.110, 25.200, 25.205, 25.210, 25.215, 25.315, and Appendix A to Part 25 [Amended]

■ 7. Amend §§ 25.100, 25.110, 25.200, 25.205, 25.210, 25.215, 25.315, and Appendix A to Part 25 by removing references to ''Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number'', ''Data Universal Numbering System (DUNS) Number'', ''DUNS'' or ''DUNS number'' wherever they appear, and adding, in their place, ''unique entity identifier''.

Appendix A to Part 25 [Amended]

■ 8. Revise Appendix A to Part 25, section I, paragraph c.2. and c.4.b. as follows:

Appendix A to Part 25—Award Term

I. * * *

C. * * *

2. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.

* * * * *

4. * * *

4.b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

■ 9. The authority citation for part 170 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

Appendix A to Part 170—[Amended]

■ 10. Amend Appendix A to Part 170—Award Term, section I, paragraph b.2.i. by removing ''*http://www.ccr.gov*'' and add, in its place, ''*https://www.sam.gov*''.

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 11. The authority citation for part 180 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 180.25 [Amended]

■ 12. Amend § 180.25 paragraph (a), second sentence by removing ''has'' and adding, in its place ''have''.

§§ 180.45, 180.100, 180.155, 180.300, 180.320, 180.430, 180.500, 180.505, 180.510, 180.515, 180.520, 180.525, and 180.645 [Amended]

■ 13. Amend §§ 180.45, 180.100, 180.155, 180.300, 180.320, 180.430, 180.500, 180.505, 180.510, 180.515, 180.520, 180.525, and 180.645 by removing references to ''the EPLS'', wherever they appear, and adding, in their place ''SAM Exclusions''.

§ 180.155 and 180.500 [Amended]

■ 14. Amend §§ 180.155 and 180.500 by removing, wherever they appear ''EPLS'' and adding, in their place ''SAM Exclusions''.

■ 15. Amend §§ 180.155 and 180.500 by removing, wherever they appear ''Excluded Parties List System'' and adding, in their place, ''System for Award Management Exclusions''.

■ 16. Revise the heading of Subpart E to read as follows:

Subpart E—System for Award Management Exclusions

§ 180.505 [Amended]

■ 17. Amend § 180.505 paragraph (c) by removing ''is'' and adding, in its place ''are''.

§ 180.515 [Amended]

■ 18. Amend § 180.515 paragraph (a)(7) by removing ''Dun and Bradstreet Number (DUNS), or other similar code'' and adding, in its place, ''unique entity identifier''.

■ 19. Revise § 180.530 to read as follows:

§ 180.530 Where can I find SAM Exclusions?

You may access SAM Exclusions through the Internet, currently at *https://www.sam.gov*.

■ 20. Revise § 180.945 to read as follows:

§ 180.945 System for Award Management Exclusions (SAM Exclusions).

System for Award Management Exclusions (SAM Exclusions) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible.

CHAPTER II—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 21. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

§ 200.0 [Amended]

■ 22. Amend § 200.0 as follows:

(a) Remove the acronyms, ''D&B Dun and Bradstreet'' and ''DUNS Data Universal Numbering System''.

(b) Correct the text ''Generally Accepted Government Accounting Standards'' to read ''Generally Accepted Government Auditing Standards''.

(c) Correct the text ''General Accounting Office'' to read ''Government Accountability Office''.

(d) Add the acronym, ''PMS Payment Management System'' after the acronym ''PII Personally Identifiable Information''.

■ 23. Revise § 200.7 to read as follows:

§ 200.7 Auditor.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

■ 24. Revise § 200.19 paragraphs (a), (b), (c) and add a new paragraph (d) to read as follows:

§ 200.19 Cognizant agency for indirect costs.

* * * * *

(a) For IHEs: Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph C.11.

(b) For nonprofit organizations: Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, paragraph C.12.

(c) For state and local governments: Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans, paragraph F.1.

(d) For Indian tribes: Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposal, paragraph D.1.

§ 200.32 [Removed and Reserved]

■ 25. Remove and reserve § 200.32.

§ 200.42 [Amended]

■ 26. In § 200.42, paragraph (b), remove ''should'' and add, in its place, ''must''.

§ 200.47 [Amended]

■ 27. In § 200.47, paragraph (a), remove ''are'' and add, in its place, ''is''.

§ 200.50 [Amended]

■ 28. In § 200.50, add '', also known as the Yellow Book,'' after ''GAGAS''.

§ 200.56 [Amended]

■ 29. In § 200.56, third sentence, remove ''should'' and add, in its place, ''must''.

§ 200.57 [Amended]

■ 30. Amend § 200.57 by adding '', and Appendix IX to Part 200—Hospital Cost Principles'' after ''this part'' at the end of the paragraph.

■ 31. Revise § 200.68 to read as follows:

§ 200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

■ 32. In § 200.80, revise the first sentence to read as follows:

§ 200.80 Program income.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307 paragraph (f).***

§ 200.90 [Amended]

■ 33. In § 200.90, correct the text ''Virgin Islands'' to read ''U.S. Virgin Islands''.

■ 34. In § 200.101, revise the table in paragraph (b)(1), paragraph (c), the first sentence of paragraph (d)(1), and paragraphs (e)(1)(iv) through (v); and add paragraph (e)(1)(vi) to read as follows:

§ 200.101 Applicability.

* * * * *

(b) ***

(1) ***

This table must be read along with the other provisions of this section.		
The following portions of the Part:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e)) below:	Are NOT applicable to the following types of Federal Awards:
Subpart A – Acronyms and Definitions	—All.	
Subpart B – General Provisions, except for §§200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures	—All.	
§§200.111 English Language, 200.112 Conflict of Interest, and 200.113 Mandatory Disclosures	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subparts C-D, except for Subrecipient Monitoring and Management	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management	—All	
Subpart E—Cost Principles	—Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts in accordance with the FAR. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.	—Grant agreements and cooperative agreements providing food commodities. —Fixed amount awards —Agreements for: loans, loan guarantees, interest subsidies, insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—All.	

(c) Federal awarding agencies may apply subparts A through E of this part to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(d) * * *

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services, except to the extent that the cost and accounting standards of OMB apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B); * * *

* * * * *

(e) * * *

(1) * * *

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

* * * * *

■ 35. In § 200.102, revise paragraph (b) and the first sentence of paragraph (c) to read as follows:

§ 200.102 Exceptions.

* * * * *

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.

(c) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when, required by Federal statutes or regulations, except for the requirements in Subpart F—Audit Requirements of this part. * * *

* * * * *

§ 200.104 [Amended]

■ 36. Amend § 200.104 paragraph (g) by removing ''.'' after ''Organizations''.

■ 37. In § 200.110, revise paragraph (a) to read as follows:

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part which affect administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final. Federal awarding agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB. For the procurement standards in §§ 200.317–200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in § 200.104) for one additional fiscal year after this part goes into effect. If a non-Federal entity chooses to use the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, the non-Federal entity must document this decision in their internal procurement policies.

* * * * *

■ 38. In § 200.200, revise paragraph (a) to read as follows:

§ 200.200 Purpose.

(a) Sections 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts through 200.208 Certifications and representations prescribe instructions and other pre-award matters to be used in the announcement and application process.

* * * * *

■ 39. In § 200.201, revise paragraph (b)(1) to read as follows:

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

* * * * *

(b) * * *

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

* * * * *

■ 40. In § 200.203, amend paragraph (c)(2) by removing the reference to ''paragraph (b)'' and adding in its place ''paragraph (c)(4)'', and revise paragraph (c)(5) to read as follows:

§ 200.203 Notices of funding opportunities.

* * * * *

(c) * * *

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.204 Federal awarding agency review of merit proposals and 200.205 Federal awarding agency review of risk posed by applicants. See also 2 CFR part 27 (forthcoming at time of publication).

■ 41. In § 200.205, revise paragraph (a) to read as follows:

§ 200.205 Federal awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as SAM Exclusions and ''Do Not Pay''. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

* * * * *

■ 42. Revise § 200.207 to read as follows:

§ 200.207 Specific conditions.

(a) The Federal awarding agency or pass-through entity may impose additional specific award conditions as needed, in accordance with paragraphs (b) and (c) of this section, under the following circumstances:

(1) Based on the criteria set forth in § 200.205 Federal awarding agency review of risk posed by applicants;

(2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;

(3) When an applicant or recipient fails to meet expected performance goals as described in § 200.210 Information contained in a Federal award; or

(4) When an applicant or recipient is not otherwise responsible.

(b) These additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

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

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable, and

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

(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

■ 43. In § 200.210. revise paragraphs (a)(1) and (a)(2) to read as follows:

§ 200.210 Information contained in a federal award.

* * * * *

(a) * * *

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

* * * * *

■ 44. Add § 200.212 to subpart C to read as follows:

§ 200.212 Suspension and debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

■ 45. Amend § 200.301, the first and third sentence, by removing ''governmentwide''.

■ 46. In § 200.303, revise the second sentence of paragraph (a) and revise paragraphs (c) and (e) to read as follows:

§ 200.303 Internal controls.

* * * * *

(a) * * * These internal controls should be in compliance with guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States or the ''Internal Control Integrated Framework'', issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

* * * * *

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

* * * * *

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

■ 47. In § 200.305, revise paragraphs (b) introductory text, (b)(2)(i), (b)(2)(ii), (b)(6), and (b)(9) to read as follows:

§ 200.305 Payment.

* * * * *

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.

(2) * * *

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

* * * * *

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§ 200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:

* * * * *

(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as ''addenda records'' by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

(i) For ACH Returns:

Routing Number: 051036706
Account number: 303000
Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns*:

Routing Number: 021030004
Account number: 75010501
Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

(* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868
Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492–5065

(iv) For recipients that do not have electronic remittance capability, please make check** payable to: ''The Department of Health and Human Services.''

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353–0231

(** Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Any additional information/instructions may be found on the PMS Web site at *http://www.dpm.psc.gov/*.

■ 48. In § 200.306, revise paragraphs (a), (c), and (d) and add paragraph (k) to read as follows:

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 Indirect (F&A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity.

* * * * *

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been

charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in Subpart E—Cost Principles. If a Federal awarding agency authorizes the non-Federal entity 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 must be the lesser of paragraphs (d)(1) or (2) of this section.

* * * * *

(k) For IHEs, see also OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

■ 49. In § 200.307, revise paragraphs (d) and (e)(2) and add paragraph (g) to read as follows:

§ 200.307 Program income.

* * * * *

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of this part, Property Standards §§ 200.311 Real property, 200.313 Equipment, and 200.314 Supplies, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) * * *

(2) *Addition.* With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

* * * * *

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401,''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements'' is applicable.

■ 50. In § 200.308, revise paragraphs (c)(4), (c)(6), and (c)(7); add paragraph (c)(8); and revise paragraphs (d) and (g)(4) to read as follows:

§ 200.308 Revision of budget and program plans.

* * * * *

(c) * * *

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, ''Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

* * * * *

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 Exceptions and 200.407 Prior written approval (prior approval).

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

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency is authorized, at its option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

* * * * *

(g) * * *

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

§ 200.309 [Amended]

■ 51. Amend § 200.309, by adding ''(except as described in § 200.461 Publication and printing costs)'' after ''performance''.

§ 200.311 [Amended]

■ 52. Amend § 200.311, paragraphs (c)(1) and (c)(2) by adding ''the'' before ''non-Federal entity''.

■ 53. In § 200.312, revise the first sentence of paragraph (c) to read as follows:

§ 200.312 Federally-owned and exempt property.

* * * * *

(c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award.* * *

§ 200.313 [Amended]

■ 54. Amend § 200.313, paragraph (a)(1) by removing ''until funding for the project ceases'' and adding, in its place, ''during the period of performance''.

§ 200.315 [Amended]

■ 55. Amend § 200.315, paragraph (e)(1), first sentence by removing ''addition, in''.

■ 56. Revise § 200.318, paragraphs (a), (c)(1), (h), and (j)(1) to read as follows:

§ 200.318 General procurement standards.

* * * * *

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

* * * * *

(c) * * *

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest 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 or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities 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 must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

* * * * *

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.212 Suspension and debarment.

* * * * *

(j) * * *

(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

* * * * *

§ 200.319 [Amended]

■ 57. Amend § 200.319, paragraph (a) by removing ''and invitations'' and adding, in its place ''or invitations''; and paragraph (b) by removing ''state or local'' and adding, in its place ''state, local, or tribal''.

■ 58. Revise § 200.320, paragraphs (a), (c)(2)(i), and (c)(2)(iii) to read as follows:

§ 200.320 Methods of procurement to be followed.

* * * * *

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

* * * * *

(c) * * *

(2) * * *

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

* * * * *

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

* * * * *

§ 200.322 [Amended]

■ 59. Amend § 200.322, by removing ''acquired by'' and adding, in its place ''acquired during''.

■ 60. In § 200.331, revise paragraphs (a)(1)(i), (a)(1)(ii), (a)(4), (a)(5), (b), and (d)(1) to read as follows:

§ 200.331 Requirements for pass-through entities.

* * * * *

(a) * * *

(1) * * *

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

* * * * *

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (f) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

* * * * *

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

* * * * *

(d) * * *

(1) Reviewing financial and performance reports required by the pass-through entity.

* * * * *

§ 200.337 [Amended]

■ 61. Amend § 200.337 by removing ''state or local'' and adding, in its place ''state, local, and tribal''.

§ 200.340 [Amended]

■ 62. Amend § 200.340(c) by adding '' (forthcoming at time of publication)'' after ''2 CFR part 77''.

§ 200.341 [Amended]

■ 63. Amend § 200.341 by removing ''proceedings which'' and adding, in its place ''proceedings to which''.

§ 200.343 [Amended]

■ 64. Amend § 200.343 by removing ''Federal agency'' from the introductory text and adding, in its place ''Federal awarding agency''; in paragraph (a) by removing ''by or the'' and adding, in its place ''by the''; and paragraph (d) by removing ''that is'' and adding, in its place ''that are'', and adding '','' after due.

§ 200.344 [Amended]

■ 65. Amend § 200.344, paragraph (a) introductory text by removing ''.'' and adding, in its place '';'' and paragraph (b) by adding '','' after section.

§ 200.400 [Amended]

■ 66. Amend § 200.400, paragraph (f) by adding ''(including pre- and post-doctoral staff)'' after ''employees'' and paragraph (g) by removing ''expressly'' and adding, in its place ''explicitly''.

§ 200.404 [Amended]

■ 67. Amend § 200.404, paragraph (b) by adding '', local, tribal,'' after ''state''.

§ 200.405 [Amended]

■ 68. Amend § 200.405, paragraph (d) by removing ''should'' and adding, in its place ''must''.

§ 200.406 [Amended]

■ 69. Amend § 200.406, paragraph (b) second sentence by removing ''should'' and adding, in its place ''must''.

■ 70. In § 200.407, revise paragraphs (e) through (v) and add paragraphs (w), (x) and (y) to read as follows:

§ 200.407 Prior written approval (prior approval).

* * * * *

(e) § 200.311 Real property;

(f) § 200.313 Equipment;

(g) § 200.332 Fixed amount subawards;

(h) § 200.413 Direct costs, paragraph (c);

(i) § 200.430 Compensation—personal services, paragraph (h);

(j) § 200.431 Compensation—fringe benefits;

(k) § 200.438 Entertainment costs;

(l) § 200.439 Equipment and other capital expenditures;

(m) § 200.440 Exchange rates;

(n) § 200.441 Fines, penalties, damages and other settlements;

(o) § 200.442 Fund raising and investment management costs;

(p) § 200.445 Goods or services for personal use;

(q) § 200.447 Insurance and indemnification;

(r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(s) § 200.455 Organization costs;

(t) § 200.456 Participant support costs;

(u) § 200.458 Pre-award costs;

(v) § 200.462 Rearrangement and reconversion costs;

(w) § 200.467 Selling and marketing costs;

(x) § 200.470 Taxes (including Value Added Tax); and

(y) § 200.474 Travel costs.

§ 200.413 [Amended]

■ 71. Amend § 200.413, paragraph (f)(5) by adding ''See also § 200.442 Fund raising and investment management costs.'' after the first sentence.

■ 72. In § 200.414, revise paragraphs (e) introductory text, (e)(1), (e)(3), (e)(4), (e)(5); add new paragraph (e)(6); revise the first sentence of paragraph (f); and revise paragraph (g) to read as follows:

§ 200.414 Indirect (F&A) costs.

* * * * *

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII and Appendix IX as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

* * * * *

(3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely.***

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

§ 200.415 [Amended]

■ 73. Amend § 200.415, paragraph (b)(1) by adding '', and Appendix IX'' after ''Appendices III through VII''; and paragraph (c) by removing ''corporation'' and adding, in its place ''nonprofit organization''.

■ 74. In § 200.419, revise the second sentence of paragraph (b)(2) to read as follows:

§ 200.419 Cost accounting standards and disclosure statement.

* * * * *

(b) * * *

(2) * * * An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons.* * *

* * * * *

§ 200.430 [Amended]

■ 75. Amend § 200.430, paragraph (g) by removing ''should'' and adding, in its place ''must''; and paragraph (h)(1)(ii) by removing ''(h)(9)'' and adding, in its place ''(i)''.

§ 200.431 [Amended]

■ 76. Amend § 200.431, paragraph (b)(3)(i) by removing ''as indirect costs''; paragraph (e)(3) by removing ''and they are allocated as indirect costs''; and paragraph (h)(6) by adding ''non-Federal'' before ''entity''.

§ 200.433 [Amended]

■ 77. Amend § 200.433, paragraph (b) by removing ''(b)(1)'' and adding, in its place ''(a)''.

§ 200.434 [Amended]

■ 78. Amend § 200.434, paragraph (c) by removing ''is no allowable'' and adding, in its place ''may not be charged to the Federal award''; and paragraph (g)(1) by removing ''is not reimbursable'' and adding, in its place ''may not be charged to the Federal award''.

§ 200.435 [Amended]

■ 79. Amend § 200.435, paragraph (b)(1)(ii)(D) by removing ''for default''.

§ 200.436 [Amended]

■ 80. Amend § 200.436, paragraph (b) by removing ''Appendices IV through VIII'' and adding, in its place ''Appendices III through IX''; paragraph (c) introductory text by removing ''For this purpose'' and adding, in its place ''For the purpose of computing depreciation''; and paragraph (c)(3) by removing ''entity, or where'' and adding, in its place ''entity where''.

■ 81. In § 200.439, add a new paragraph (b)(7) to read as follows:

§ 200.439 Equipment and other capital expenditures.

* * * * *

(b) * * *

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436 Depreciation.

■ 82. In § 200.440, revise paragraph (a) to read as follows:

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

* * * * *

§ 200.443 [Amended]

■ 83. Amend § 200.443, paragraph (b)(3) by removing ''46*''.

■ 84. In § 200.444, revise paragraph (b) to read as follows:

§ 200.444 General costs of government.

* * * * *

(b) For Indian tribes and Councils of Governments (COGs) (see § 200.64 Local government), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 200.448 [Amended]

■ 85. In § 200.448, amend paragraph (b)(3) by removing the word ''should'' and adding in its place ''must''.

§ 200.453 [Amended]

■ 86. In § 200.453, amend paragraph (b) by removing the word ''should'' and adding in its place ''must''.

§ 200.457 [Amended]

■ 87. Amend the first sentence of § 200.457 by removing the text ''routine and security to protect'' and adding, in its place ''protection and security of''.

§ 200.463 [Amended]

■ 88. Amend § 200.463, paragraph (c), the first sentence by removing ''as a direct cost''.

§ 200.464 [Amended]

■ 89. Amend § 200.464, paragraph (c), the second sentence by removing ''allowed either as a direct or indirect cost'' and adding, in its place ''charged to a Federal award''.

■ 90. In § 200.474, remove paragraph (c)(3), revise paragraphs (d) and (e), and add paragraph (f) to read as follows:

§ 200.474 Travel costs.

* * * * *

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, (''Travel and Subsistence Expenses; Mileage Allowances''), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§ 200.501 [Amended]

■ 91. Amend § 200.501, paragraph (f), by removing ''should be considered'' and adding, in its place ''sets forth the considerations''; and paragraph (h), by removing ''should describe'' with ''must describe''.

§ 200.502 [Amended]

■ 92. Amend § 200.502, paragraph (a), by removing ''should be based'' and adding, in its place ''must be based.''

§ 200.507 [Amended]

■ 93. Amend § 200.507, paragraph (b)(1), by adding ''current '' before ''program-specific audit guide''.

§ 200.510 [Amended]

■ 94. Amend § 200.510, paragraph (b)(6), by removing ''non-Federal entity'' and adding, in its place ''auditee.''

■ 95. In § 200.512, revise the heading and first sentence of paragraph (b)(2) to read as follows:

§ 200.512 Report submission.

* * * * *

(b) * * *

(2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section.***

* * * * *

§ 200.513 [Amended]

■ 96. Amend § 200.513, paragraph (c)(5)(i), by removing ''requirement of § 200.513 Responsibilities'' and adding, in its place ''requirements of paragraph (c) of this section''.

§ 200.514 [Amended]

■ 97. Amend § 200.514, paragraph (d)(3), by removing ''the auditor should'' and adding, in its place ''the auditor must''.

§ 200.515 [Amended]

■ 98. Amend § 200.515 as follows:

■ (a) In paragraph (b), remove ''Federal statutes, regulations, and the terms and conditions of the Federal award'' and add, in its place ''provisions of laws, regulations, contracts, and award agreements''.

■ (b) In paragraph (c), remove ''report and internal control'' and add, in its place ''a report on internal control'' in the first sentence; and remove ''modified opinion'' and add, in its place ''disclaimer of opinion'' in the second sentence.

■ (c) In paragraph (d) (3) (i), remove ''should be presented'' and add, in its place ''must be presented''.

■ (d) In paragraph (d) (3) (ii), remove ''should be reported'' and add, in its place ''must be reported''.

§ 200.518 [Amended]

■ 99. Amend § 200.518 as follows:

■ (a) In paragraph (a), remove ''paragraphs (b) through (i)'' and add, in its place ''paragraphs (b) through (h)''.

■ (b) In paragraph (b)(1), in the table, remove ''Equal to $750,000'' and add, in its place ''Equal to or exceed $750,000''.

■ (c) In paragraph (b)(3), remove ''loan guarantees (loans) should not result'' with ''loan guarantees (loans) must not result''.

Appendix I to Part 200 [Amended]

■ 100. Amend Appendix I to Part 200—Full Text of Notice of Funding Opportunity as follows:

■ (a) In the general discussion section, amend the second sentence of the third paragraph by removing ''to include in Section I information'' and adding, in its place ''to include Section A information''.

■ (b) In the general discussion section, amend the last sentence of third paragraph by removing ''The format specifies a standard location for that information in Section III.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections I and III.1'' and adding, in its place ''The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1''.

■ (c) In Section B, second paragraph, remove ''section D'' and add, in its place ''Section D''.

■ (d) In Section C.1, fifth sentence, remove ''Section IV'' and add, in its place ''Section D''.

■ (e) In Section C.1, last sentence, remove references, wherever they appear to ''Section IV.5'' and add, in their place ''Section D.6''.

■ (f) In Section D.2.i, remove ''Section IV.3'' and add, in its place ''Section D.4''.

■ (g) In the heading of Section D.3, remove ''Dun and Bradstreet Universal Numbering System (DUNS) number'' and add, in its place ''Unique entity identifier''.
■ (h) In Section D.3, item (ii), remove ''a valid DUNS number'' and add, in its place ''a valid unique entity identifier''.
■ (i) In Section D.3, item (iii), remove ''all applicable DUNS'' and add, in its place ''all applicable unique entity identifier''.
■ (j) In Section E.1, second paragraph, remove ''Section III.2'' and add, in its place ''Section C.2''.
■ 101. In Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, revise paragraphs (H), (I) and (J); and remove paragraph (K) to read as follows:

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

* * * * *

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ''Debarment and Suspension.'' SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must 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 must 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 non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

■ 102. Amend Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) as follows:
■ (a) In Section A.1.a, add paragraph (3) as set forth below.
■ (b) In Section B.1., remove ''this indirect cost requirements'' and add, in its place ''these indirect cost requirements''.
■ (c) In Section C.2., remove ''subgrants and subcontracts''.
■ (d) In Section C.7.a, first sentence, remove ''Federal agencies must use the negotiated rates except as provided in paragraph (e) of § 200.414 Indirect (F&A) costs, must paragraph (b) (1) for indirect (F&A) costs'' and add, in its place ''Except as provided in paragraph (c)(1) of § 200.414 Indirect (F&A) costs, Federal agencies must use the negotiated rates''
■ (e) In Section C.9.a, remove ''subsection 1.a'' and add, in its place ''subsection C.1.a''
■ (f) In Section C.10, remove ''shall include'' and add, in its place ''must include''.
■ (g) In Section C.11.a.(1), add ''Where a non-Federal entity only receives funds as a subrecipient, § 200.331 Requirements for pass-through entities.'' after the last sentence.
■ (h) In Section C.11.f(1), second sentence, remove ''Non-cognizant Federal agencies for indirect costs, which make Federal awards to an educational institution,'' and add, in its place ''Federal awarding agencies that do not have cognizance for indirect costs''.
■ (i) In Section C.12, second paragraph, remove ''In order to provide mutually agreed upon information for management purposes'' and add, in its place ''As provided in section C.10 of this appendix''.
■ (j) In Section F.2.a, remove ''must'' after ''a proposed indirect cost rate''.
■ (k) Revise F.2.b as set forth below.

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

* * * * *

A. * * *
1. * * *
a. * * *

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

* * * * *

F. * * *
2. * * *

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

* * * * *

Appendix IV to Part 200 [Amended]

■ 103. Amend Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations as follows:
■ (a) In Section B.2.c, remove ''such contracts or subawards'' and add, in its place ''such as subawards''.
■ (b) In Section B.3.b.(4), sentence prior to last sentence, remove '' where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity'' and add, in its place ''as described in § 200.413 Direct Costs''.
■ (c) In Section C.2.a., add ''Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 200.331 Requirements for pass-through entities.'' after the last sentence.
■ (d) In Section D, add section number ''1.'' before ''Required Certification.'' and remove ''j'' in front of ''Each indirect cost rate'' and add, in its place ''2.''.
■ 104. In Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans, revise the heading to read as follows:

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

* * * * *

■ 105. Amend Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans as follows:
■ (a) In Section A.2, the last sentence remove ''the Superintendent of Documents, U.S. Government Printing Office'' and add, in its place ''HHS Cost Allocation Services or at their Web site at *https://rates.psc.gov*''.
■ (b) In Section E.2, the first sentence, remove ''allocated central service'' and add, in its place ''allocation central service*''.

■ 106. Amend Appendix VI to Part 200—Public Assistance Cost Allocation Plans as follows:

■ (a) In Section A, third sentence, remove ''Federal agencies'' and add, in its place ''Federal awarding agencies''.

■ (b) In Section E.1, remove ''the funding agencies'' and add, in its place ''Federal awarding agencies''; and remove ''the cognizant audit agency'' and add, in its place ''the cognizant agency for indirect costs''.

■ (c) In Section E.2, remove ''one funding agency'' and add, in its place ''one Federal awarding agency''.

■ (d) In Section E.3, remove ''two or more funding agencies'' and add, in its place ''two or more Federal awarding agencies''; and remove ''one funding agency'' and add, in its place ''one Federal awarding agency''.

■ (e) In Section E.4, remove ''the Federal agencies'' and add, in its place ''the Federal awarding agencies''.

Appendix VII to Part 200 [Amended]

■ 107. Amend Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals as follows:

■ (a) In Section A.3, remove ''the Superintendent of Documents, U.S. Government Printing Office'' and add, in its place ''HHS Cost Allocation Services or at their Web site at *https://rates.psc.gov*''.

■ (b) In Section A.5, remove ''Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals'' and add, in its place ''Appendix VI to Part 200—Public Assistance Cost Allocation Plans''.

■ (c) In Section B.3, second sentence, remove ''Appendix VI'' add, in its place ''Appendix V.''

■ (d) In Section C.3.e, remove ''subcontracts'' and add, in its place ''subawards''.

■ (e) In Section D.1.a, last sentence, remove ''the Common Rule'' and add, in its place ''§ 200.333 Retention Requirements for Records''.

■ (f) In Section F.2, second sentence, remove ''Appendix VI'' and add, in its place ''Appendix V''.

Appendix IX to Part 200 [Amended]

■ 108. Amend Appendix IX to Part 200—Hospital Cost Principles by removing ''Part 74'' and adding, in its place ''Part 75''.

David Mader,

Controller.

Department of Health and Human Services

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, Part 200 of Title 2, Chapter III is added and 45 CFR subtitle A is amended as follows:

TITLE 2—GRANTS AND AGREEMENTS

CHAPTER III—DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. Add part 300 to read as follows:

PART 300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 2 CFR part 200.

§ 300.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Health and Human Services adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, and has codified the text, with HHS-specific amendments in 45 CFR part 75. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

TITLE 45—PUBLIC WELFARE

■ Subtitle A—Department of Health and Human Services

PART 74 [REMOVED AND RESERVED]

■ 2. Remove and reserve 45 CFR part 74.

■ 3. Part 75 is added to title 45 to read as follows:

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

Subpart A—Acronyms and Definitions

Sec.
75.1 Acronyms.
75.2 Definitions.

Subpart B—General Provisions

75.100 Purpose.
75.101 Applicability.
75.102 Exceptions.
75.103 Authorities.
75.104 Supersession.
75.105 Effects on other issuances.
75.106 Agency implementation.
75.107 OMB responsibilities.
75.108 Inquiries.
75.109 Review date.
75.110 Effective/Applicability date.
75.111 English language.
75.112 Conflict of interest.
75.113 Mandatory disclosures.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

75.200 Purpose.
75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.
75.202 Requirement to provide public notice of Federal financial assistance programs.
75.203 Notices of funding opportunities.
75.204 HHS funding agency review of merit of proposals.
75.205 HHS awarding agency review of risk posed by applicants.
75.206 Standard application requirements, including forms for applying for HHS financial assistance, and state plans.
75.207 Specific award conditions.
75.208 Certifications and Representations.
75.209 Pre-award costs.
75.210 Information contained in a Federal award.
75.211 Public access to Federal award information.
75.212 Suspension and Debarment.
75.213 Metric system of measurement.
75.214 Disclosure of Lobbying Activities.
75.215 Special Provisions for Awards to Commercial Organizations.
75.216 Special Provisions for Awards to Federal Agencies.
75.217 Participation by faith-based organizations.

Subpart D—Post Federal Award Requirements

Standards for Financial and Program Management

75.300 Statutory and national policy requirements.
75.301 Performance measurement.
75.302 Financial management and standards for financial management systems.
75.303 Internal controls.
75.304 Bonds.
75.305 Payment.
75.306 Cost sharing or matching.
75.307 Program income.
75.308 Revision of budget and program plans.
75.309 Period of performance and availability of funds.
75.310–75.315 [Reserved]

Property Standards

75.316 Purpose of property standards.
75.317 Insurance coverage.
75.318 Real property.
75.319 Federally-owned and exempt property.
75.320 Equipment.
75.321 Supplies.
75.322 Intangible property and copyrights.
75.323 Property trust relationship.
75.324–75.325 [Reserved]

Procurement Standards

75.326 Procurements by states.
75.327 General procurement standards.
75.328 Competition.
75.329 Procurement procedures.
75.330 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
75.331 Procurement of recovered materials.
75.332 Contract cost and price.
75.333 HHS awarding agency or pass-through entity review.

75.334 Bonding requirements.
75.335 Contract provisions.
75.336–75.340 [Reserved]

Performance and Financial Monitoring and Reporting

75.341 Financial reporting.
75.342 Monitoring and reporting program performance.
75.343 Reporting on real property.
75.344–75.350 [Reserved]

Subrecipient Monitoring and Management

75.351 Subrecipient and contractor determinations.
75.352 Requirements for pass-through entities.
75.353 Fixed amount subawards.
75.354–75.360 [Reserved]

Record Retention and Access

75.361 Retention requirements for records.
75.362 Requests for transfer or records.
75.363 Methods for collection, transmission and storage of information.
75.364 Access to records.
75.365 Restrictions on public access to records.
75.366–75.370 [Reserved]

Remedies for Noncompliance

75.371 Remedies for noncompliance.
75.372 Termination.
75.373 Notification of termination requirement.
75.374 Opportunities to object, hearings, and appeals.
75.375 Effects of suspension and termination.
75.376–75.380 [Reserved]

Closeout

75.381 Closeout.
75.382–75.385 [Reserved]

Post-Closeout Adjustments and Continuing Responsibilities

75.386 Post-Closeout Adjustments and Continuing Responsibilities.
75.387–75.390 [Reserved]

Collection of Amounts Due

75.391 Collection of amounts due.

Subpart E—Cost Principles

General Provisions

75.400 Policy guide
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Basic Considerations

75.402 Composition of Costs.
75.403 Factors affecting allowability of costs.
75.404 Reasonable costs.
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75.406 Applicable credits.
75.407 Prior written approval (prior approval).
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Subpart A—Acronyms and Definitions

§ 75.1 Acronyms.

The following acronyms apply to this part:

CAS Cost Accounting Standards
CFDA Catalog of Federal Domestic Assistance
CFR Code of Federal Regulations
CMIA Cash Management Improvement Act
COG Councils of Governments
COSO Committee of Sponsoring Organizations of the Treadway Commission
EPA Environmental Protection Agency
ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301–1461)
EUI Energy Usage Index
F&A Facilities and Administration
FAC Federal Audit Clearinghouse
FAIN Federal Award Identification Number
FAR Federal Acquisition Regulation
FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109–282, as amended by § 6202(a) of Public Law 110–252 (31 U.S.C. 6101)
FICA Federal Insurance Contributions Act
FOIA Freedom of Information Act
FR Federal Register
FTE Full-time equivalent
GAAP Generally Accepted Accounting Principles
GAGAS Generally Accepted Government Auditing Standards
GAO Government Accountability Office
GOCO Government owned, contractor operated
GSA General Services Administration
HHS U.S. Department of Health and Human Services
IBS Institutional Base Salary
IHE Institutions of Higher Education
IRC Internal Revenue Code
ISDEAA Indian Self-Determination and Education and Assistance Act
MTC Modified Total Cost
MTDC Modified Total Direct Cost
OMB Office of Management and Budget
PII Personally Identifiable Information
PMS Payment Management System
PRHP Post-retirement Health Plans
PTE Pass-through Entity
REUI Relative Energy Usage Index
SAM System for Award Management
SF 424 Standard Form 424 series and Form Families Application for Federal Assistance
SFA Student Financial Aid
SNAP Supplemental Nutrition Assistance Program
SPOC Single Point of Contact
TANF Temporary Assistance for Needy Families
TFM Treasury Financial Manual
U.S.C. United States Code
VAT Value Added Tax

§ 75.2 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular program or activities. These definitions could be supplemented by additional instructional information provided in in governmentwide standard information collections.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Audit finding means deficiencies which the auditor is required by § 75.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under Subpart F-of this part.

Auditor means an auditor who is a public accountant, or a Federal, state, local government, or Indian Tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Awardee (see *Non-Federal entity*).

Budget means the financial plan for the project or program that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Catalog of Federal Domestic Assistance (CFDA) number means the number assigned to a Federal program in the CFDA.

CFDA program title means the title of the program under which the Federal award was funded in the CFDA.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal

entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 75.381.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 75.352(a). A cluster of programs must be considered as one program for determining major programs, as described in § 75.518, and, with the exception of R&D as described in § 75.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 75.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(1) For IHEs: Appendix III to Part 75 C.11.

(2) For nonprofit organizations: Appendix IV to Part 75 C.1.

(3) For state and local governments: Appendix V to Part 75 F.1.

(4) For Indian tribes: Appendix VII to Part 75 D.1.

Commercial organization means an organization, institution, corporation, or other legal entity, including, but not limited to, partnerships, sole proprietorships, and limited liability companies, that is organized or operated for the profit or benefit of its shareholders or other owners. The term includes small and large businesses and is used interchangeably with ''for-profit organization.''

Compliance supplement means Appendix XI to Part 75 (previously known as the Circular A–133 Compliance Supplement).

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or ''peripherals'') for printing, transmitting and receiving, or storing electronic information. See also *Supplies* and *Information technology systems.*

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see *Subaward*).

Contractor means an entity that receives a contract as defined in *Contract.*

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(a) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(3) A focus on current conditions and corrective action going forward;

(4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E of this part. See also *Final cost objective* and *Intermediate cost objective.*

Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). This may include the value of allowable third party in-kind contributions, as well as expenditures by the recipient. See also § 75.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

Departmental Appeals Board means the independent office established in the Office of the Secretary with delegated authority from the Secretary

to review and decide certain disputes between recipients of HHS funds and HHS awarding agencies under 45 CFR part 16 and to perform other review, adjudication and mediation services as assigned.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also *Capital assets, Computing devices, General purpose equipment, Information technology systems, Special purpose equipment,* and *Supplies.*

Excess property means property acquired in whole or in part under the control of any Federal awarding agency that, as determined by the head of the awarding agency or his/her delegate, is no longer required for the agency's needs or the discharge of its responsibilities.

Expenditure report means:

(1) For non-construction awards, the SF–425 Federal Financial Report (FFR) (or other OMB-approved equivalent report);

(2) For construction awards, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other OMB-approved equivalent report).

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

(A) Goods and other property received;

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

(C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an ''agency'' as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse FAC means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by Subpart F of this part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is: *http://harvester.census.gov/sac/.* Any future updates to the location of the FAC may be found at the OMB Web site.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 75.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 75.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of *Federal financial assistance,* or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of *Federal financial assistance, grant agreement,* and *cooperative agreement.*

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal financial assistance:

(1) For grants and cooperative agreements, *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

(1) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (b) of this section).

(2) For Subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(c) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in § 75.502(h) and (i).

Federal interest means, for purposes of § 75.343 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) Federal share of total project costs; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters,'' as described in the definition of Cluster of Programs

Federal share means the portion of total project costs that are paid by Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also *Cost objective* and *Intermediate cost objective.*

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 75.201(b) and 75.353.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a *Foreign Public Entity.*

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also *Equipment* and *Special Purpose Equipment.*

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

Grantee (see *Recipient*)

HHS awarding agency means any organization component of HHS that is authorized to make and administer awards.

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment:

(1) Means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(b) Includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Indirect (Facilities and Administration or F&A) costs means costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III through Appendix VII, and Appendix IX of this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also *Computing devices* and *Equipment.*

Institution of Higher Education (IHE) is defined at 20 U.S.C. 1001.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost

objectives. See also *Cost objective* and *Final cost objective.*

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of reporting for internal and external use; and

(3) Compliance with applicable laws and regulations.

Internal control over compliance requirements for Federal awards means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards:

(1) Transactions are properly recorded and accounted for, in order to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Transactions are executed in compliance with:

(i) Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and

(ii) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *Program income.*

(1) The term ''direct loan'' means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term ''direct loan obligation'' means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term ''loan guarantee'' means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term ''loan guarantee commitment'' means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

(1) County;

(2) Borough;

(3) Municipality;

(4) City;

(5) Town;

(6) Township;

(7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(9) Special district;

(10) School district;

(11) Intrastate district;

(12) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and

(13) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 75.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 75.503(e).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is $3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 75.513(b).

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (*e.g.,* discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§ 75.210(a)(5) and 75.352(a)(1)(v)).

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, or securities.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Principal Investigator/Program Director (PI/PD) means the individual (s) designated by the recipient to direct the project or program being supported by the grant. The PI/PD is responsible and accountable to officials of the recipient organization for the proper conduct of the project, program, or activity.

Prior approval means written approval by an authorized HHS official evidencing prior consent before a recipient undertakes certain activities or incurs specific costs.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 75.307(f). (See *Period of performance.*) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 75.307, § 75.407 and 35 U.S.C. 200–212 (applies to inventions made under Federal awards).

Project costs means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Project period (see *Period of performance*).

Property means real property or personal property.

Protected Personally Identifiable Information (Protected PII) Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. (See also Personally Identifiable Information (PII)).

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

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

Recipient means an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also *Non-Federal entity.*

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.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by HHS award recipients. 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.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and in accordance with 41 U.S.C. 1908. See also *Micro-purchase*

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also *Equipment* and *General purpose equipment.*

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20

U.S.C. 1070–1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Supplies means all tangible personal property other than those described in *Equipment.* A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. See also *Computing devices* and *Equipment.*

Surplus property (see *Excess property*)

Suspension of award activities means an action by the HHS awarding agency requiring the recipient to cease all activities on the award pending corrective action by the recipient. It is a separate action from suspension under HHS regulations (2 CFR part 376) implementing Executive Orders 12549 and 12689.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.,* property or services) that:

(1) Benefit a federally assisted project or program; and

(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

*Total Costs (*see § 75.402).

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds authorized under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.

Subpart B—General Provisions

§ 75.100 Purpose.

(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 75.101. HHS awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 75.102 and 75.210, or unless specifically required by Federal statute, regulation, or Executive Order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for HHS awarding agency management of Federal grant programs before the Federal award has been made, and the requirements HHS awarding agencies may impose on non-Federal entities in the Federal award.

(c) *Cost Principles.* Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for HHS awarding agencies and pass-through entities when using the results of these audits.

(e) For OMB guidance to Federal awarding agencies on Challenges and Prizes, please see M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

§ 75.101 Applicability.

(a) *General applicability to Federal agencies.* The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(b)(1) *Applicability to different types of Federal awards.* The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal-awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D of this part, §§ 75.351 through 75.353, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

This table must be read along with the other provisions in this section

The following portions of the Part:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e)) below:	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions.	—All	
Subpart B—General Provisions, except for §§ 75.111, 75.112. and 75.113..	—All	
Sections 75.111, 75.112, and 75.113.	—Grant agreements and cooperative agreements	—Agreements for: loans, loan guarantees, interest subsidies and insurance —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements	—Agreements for: loans, loan guarantees, interest subsidies and insurance —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All	
Subpart E—Cost Principles	—Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts in accordance with the FAR. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.	—Grant agreements and cooperative agreements providing food commodities —Fixed amount awards —Agreements for: loans, loan guarantees, interest subsidies and insurance —Federal awards to hospitals (See Appendix IX)
Subpart F—Audit Requirements.	—All	

(2) Federal award of cost-reimbursement contract under the FAR to a non-Federal entity. When a non-Federal entity is awarded a cost-reimbursement contract, only Subpart D of this part, §§ 75.351 through 75.353 (in addition to any FAR related requirements for monitoring Subpart E of this part and Subpart F of this part are incorporated by reference into the contract. However, when the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part except for Subpart F of this part when they are in conflict. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR subpart 31.2 and subpart 31.603 are always unallowable. For requirements other than those covered in Subpart D of this part, §§ 75.351 through 75.353, Subpart E of this part- and Subpart F of this part, the terms of the contract and the FAR apply.

(3) With the exception of Subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C. 450–458ddd–2.

(c) HHS awarding agencies may apply subparts A through E of this part to Federal agencies (see § 75.215), for-profit entities, foreign public entities, or foreign organizations, except where the HHS awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(d) Except for § 75.202 and §§ 75.351 through 75.353 of Subpart D of this part, the requirements in Subpart C of this part, Subpart D of this part, and Subpart E of this part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services, except to the extent that the cost and accounting standards of OMB apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B); Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grant Awards for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary award program) and both the Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant Award (42 U.S.C. 300x–21 to 300x–35 and 42 U.S.C. 300x–51 to 300x64) and the

Mental Health Service for the Homeless Block Grant Award (42 U.S.C. 300x to 300x–9) under the Public Health Service Act.

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858)

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858)

(e) Except for § 75.202, the guidance in Subpart C of this part does not apply to the following programs:

(1) Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (title IV–A of the Social Security Act, 42 U.S.C. 601–619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Social Security Act, 42 U.S.C. 651–669b);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act, 42 U.S.C. 670–679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by § 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (e)(1) of this section;

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e));

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753),

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755),

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a),

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761), and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772),

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773), and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

§ 75.102 Exceptions.

(a) With the exception of Subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances. Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at *www.whitehouse.gov/omb*.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the HHS awarding agency or cognizant agency for indirect costs except where otherwise required by law or where OMB or other approval is expressly required by this part. No case-by-case exceptions may be granted to the provisions of Subpart F of this part.

(c) The HHS awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in Subpart F of this part. An HHS awarding agency may apply less restrictive requirements when making fixed amount awards as defined in Subpart A of this part, except for those requirements imposed by statute or in Subpart F of this part.

(d) On a case-by-case basis, OMB will approve new strategies for Federal awards when proposed by the HHS awarding agency in accordance with OMB guidance (such as M–13–17) to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across Federal programs. Proposals may draw on the innovative program designs discussed in M–13–17 to expand or improve the use of effective practices in delivering Federal financial assistance while also encouraging innovation in service delivery. Proposals submitted to OMB in accordance with M–13–17 may include requests to waive requirements other than those in Subpart F of this part.

§ 75.103 Authorities.

This part is issued under the following authorities.

(a) Subpart B of this part through Subpart D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 31 U.S.C. 1111 (Improving Economy and Efficiency of the United States Government), 41 U.S.C. 1101–1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541, the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507), as well as The Federal Program Information Act (Public Law 95–220 and Public Law 98–169, as amended, codified at 31 U.S.C. 6101–6106).

(b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101–1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503–504); Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

(c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507).

§ 75.104 Supersession.

As described in § 75.110, this part supersedes:

(a) The following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations:

(1) A–21, ''Cost Principles for Educational Institutions'' (2 CFR part 220);

(2) A–87, ''Cost Principles for State, Local and Indian Tribal Governments''

(2 CFR part 225) and also **Federal Register** notice 51 FR 552 (January 6, 1986);

(3) A–89, ''Federal Domestic Assistance Program Information'';

(4) A–102, ''Grant Awards and Cooperative Agreements with State and Local Governments'';

(5) A–110, ''Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations'' (codified at 2 CFR 215);

(6) A–122, ''Cost Principles for Non-Profit Organizations'' (2 CFR part 230);

(7) A–133, ''Audits of States, Local Governments and Non-Profit Organizations, and

(8) Those sections of A–50 related to audits performed under Subpart F of this part.

(b) This part also supersedes HHS' regulations at 45 CFR parts 74 and 92.

§ 75.105 Effect on other issuances.

For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part are superseded upon implementation of this part by the HHS awarding agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 75.102.

§ 75.106 Agency implementation.

HHS is implementing the language in 2 CFR part 200 in these codified regulations.

§ 75.107 OMB responsibilities.

OMB will review HHS agency regulations and implementation of 2 CFR part 200, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 75.108 Inquiries.

Inquiries concerning 2 CFR part 200 may be directed to the Office of Federal Financial Management, Office of Management and Budget, in Washington, DC. Inquiries concerning 45 CFR part 75 should be addressed to the HHS awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.

§ 75.109 Review date.

OMB will review 2 CFR part 200 and HHS will review 45 Part 75 at least every five years after December 26, 2013.

§ 75.110 Effective/Applicability date.

(a) The standards set forth in this part which affect administration of Federal awards issued by Federal agencies become effective December 26, 2014. For the procurement standards in 2 CFR 200.317–200.326, non-Federal entities previously subject to OMB Circular A–110 may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in 2 CFR 200.104) for one additional fiscal year after this part goes into effect. If an entity chooses to remain with the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, they must document this decision in their internal procurement policies, in accordance with the guidance in Appendix XI to this part.

(b) The standards set forth in Subpart F of this part and any other standards which apply directly to HHS agencies will be effective December 26, 2013, and will apply to audits of fiscal years beginning on or after December 26, 2014.

§ 75.111 English language.

(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the HHS awarding agency receives applications in another currency, the HHS awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 75.112 Conflict of interest.

(a) HHS awarding agencies must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the respective HHS awarding agency or pass-through entity in accordance with applicable HHS awarding agency's policy. As a general matter, HHS awarding agencies' conflict of interest policies must:

(1) Address conditions under which outside activities, relationships, or financial interests are proper or improper;

(2) Provide for advance notification of outside activities, relationships, or financial interests, and a process of review as appropriate; and

(3) Outline how financial conflicts of interest may be addressed.

(b) Agencies with Public Health Service (PHS) funded research will ensure that any conflict of interest policies are aligned with the requirements of 42 CFR part 50, subpart F.

§ 75.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the HHS awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 75.371, including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 75.200 Purpose.

(a) Sections 75.201 through 75.208 prescribe instructions and other pre-award matters to be used in the announcement and application process.

(b) Use of §§ 75.203, 75.204, 75.205, and 75.207, is required only for competitive Federal awards, but may also be used by the HHS awarding agency for non-competitive awards where appropriate or where required by Federal statute.

§ 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The HHS awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.,* grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, HHS awarding agencies, or pass-through entities as permitted in § 75.353, may use fixed amount awards (see § 75.2 *Fixed amount awards*) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The HHS awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the ''milestone'' or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the HHS awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the HHS awarding agency or pass-through entity.

§ 75.202 Requirement to provide public notice of Federal financial assistance programs.

(a) The HHS awarding agency must notify the public of Federal programs in the Catalog of Federal Domestic Assistance (CFDA), maintained by the General Services Administration (GSA).

(1) The CFDA, or any OMB-designated replacement, is the single, authoritative, government-wide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the HHS awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission.

(3) The HHS awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the HHS awarding agency must submit the following information to GSA:

(1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the HHS awarding agency's performance plan and should support the HHS awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A–11;

(2) Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) Projected total amount of funds available for the program. Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) Anticipated Source of Available Funds: The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (*e.g.,* Treasury Account Symbol(s));

(5) General Eligibility Requirements: The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (*e.g.,* type of non-Federal entity); and

(6) Applicability of Single Audit Requirements as required by Subpart F of this part.

§ 75.203 Notices of funding opportunities.

For competitive grants and cooperative agreements, the HHS awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary Information in Notices of Funding Opportunities.* The HHS awarding agency must display the following information posted on the OMB-designated government-wide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) HHS Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the HHS awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Catalog of Federal Domestic Assistance (CFDA) Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant HHS awarding agency.

(b) The HHS awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The HHS awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the HHS awarding agency head or delegate.

(c) *Full Text of Funding Opportunities.* The HHS awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I of this part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 75.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 75.204 and 75.205. See also 2 CFR part 27 (forthcoming at time of publication).

(6) Federal Award Administration Information. See also § 75.210.

§ 75.204 HHS funding agency review of merit of proposals.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the HHS awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part.) See also § 75.203.

§ 75.205 HHS awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the HHS awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of government-wide eligibility qualification or financial integrity information, such as SAM Exclusions, and ''Do Not Pay.'' See also suspension and debarment requirements at 2 CFR part 180 as well as HHS suspension and debarment regulations at 2 CFR part 376.

(b) In addition, for competitive grants or cooperative agreements, the HHS awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the HHS awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 75.203.

(c) In evaluating risks posed by applicants, the HHS awarding agency may use a risk-based approach and may consider any items such as the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this part;

(3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits performed under Subpart F of this part or the reports and findings of any other available audits; and

(5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(d) In addition to this review, the HHS awarding agency must comply with the guidelines on government-wide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

§ 75.206 Standard application requirements, including forms for applying for HHS financial assistance, and state plans.

(a) Paperwork clearances. The HHS awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) If applicable, the HHS awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

(c) Forms for applying for HHS financial assistance. HHS awarding agencies should use the Standard Form 424 (SF–424 Application for Federal Assistance) series (or its successor) and its program narrative whenever possible. Alternative mechanisms may be used for formula grant programs which do not require applicants to apply for funds on a project basis.

(1) Applicants shall use the SF–424 series or those forms and instructions prescribed by the HHS awarding agency.

(2) For Federal programs covered by Executive Order 12372, as amended by Executive Order 12416, the applicant shall complete the appropriate sections of the SF–424 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 HHS awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 45 CFR part 100.)

(3) HHS awarding agencies that do not use the SF–424 series will indicate on the application form they prescribe whether the application is subject to review by the State under Executive Order 12372.

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

(5) Except where otherwise noted, or granted by HHS deviation, HHS awarding agencies shall direct applicants to apply for HHS financial assistance through Grants.gov, an OMB-designated Web site for Find and Apply.

(d) State plans. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing Executive Order 12372.

(1) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(2) *Assurances.* In each plan, the State will include an assurance that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in this plan, the State may:

(i) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(ii) Repeat the assurance language in the statutes or regulations, or

(iii) Develop its own language to the extent permitted by law.

(3) *Amendments.* A State will amend a plan whenever necessary to reflect:

(i) New or revised Federal statutes or regulations, or

(ii) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 75.207 Specific award conditions.

(a) The HHS awarding agency or pass-through entity may impose additional

specific award conditions as needed in accordance with paragraphs (b) and (c) of this section, under the following circumstances:

(1) Based on the criteria set forth in § 75.205;

(2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;

(3) When an applicant or recipient fails to meet expected performance goals as described in § 75.210, or;

(4) When the applicant or recipient is not otherwise responsible.

(b) These additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) The HHS awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

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

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable, and

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

(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

§ 75.208 Certifications and Representations.

Unless prohibited by Federal statutes or regulations, each HHS awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

(a) The funds governed under this part shall be administered in compliance with the standards set forth in 45 CFR part 87.

(b) For assurances under State plans, see § 75.206(d)(2).

§ 75.209 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 75.458.

§ 75.210 Information contained in a Federal award.

A Federal award must include the following information:

(a) *General Federal Award Information.* The HHS awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match the name associated with their unique entity identifier as defined in 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see § 75.2 *Federal award date*);

(5) Period of Performance Start and End Date;

(6) Amount of Federal Funds Obligated by this action,

(7) Total Amount of Federal Funds Obligated;

(8) Total Amount of the Federal Award;

(9) Budget Approved by the HHS Awarding Agency;

(10) Total Approved Cost Sharing or Matching, where applicable;

(11) Federal award project description (to comply with statutory requirements (*e.g.,* FFATA));

(12) Name of HHS awarding agency and contact information for awarding official,

(13) CFDA Number and Program Name;

(14) Identification of whether the award is R&D; and

(15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).

(b) *General Terms and Conditions* (1) HHS awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) Administrative requirements implemented by the HHS awarding agency as specified in this part.

(ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 75.300.

(2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions, The reference must be to the Web site at which the HHS awarding agency maintains the general terms and conditions.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the HHS awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the HHS awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(c) HHS Awarding Agency, Program, or Federal Award Specific Terms and Conditions. The HHS awarding agency may include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the HHS awarding agency's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in § 75.203) in addition to being included in a Federal award. See also § 75.206.

(d) Federal Award Performance Goals. The HHS awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (*e.g.,* discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with HHS awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The HHS awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A–11, Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the HHS awarding agency.

§ 75.211 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (*e.g.,* FFATA), except as noted in this section, for applicable Federal awards the HHS awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated government-wide Web site (at time of publication, *www.USAspending.gov*).

(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 75.212 Suspension and Debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR parts 180 and 376. These regulations restrict awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 75.213 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 United States trade and commerce. HHS awarding agencies will follow the provisions of Executive Order 12770.

§ 75.214 Disclosure of Lobbying Activities.

Recipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93.

§ 75.215 Special Provisions for Awards to Commercial Organizations as Recipients.

(a) This section contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

(b) Prohibition against profit. Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

(c) Program Income. Except for grants for research, program income earned by a commercial organization may not be used to further eligible project or program objectives except in the SBIR and STTR programs.

(d)(1) Commercial organizations that receive awards (including for-profit hospitals) have two options regarding audits:

(i) A financial related audit of a particular award in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States, in those cases where the commercial organization receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all awards in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States; or

(ii) An audit that meets the requirements contained in subpart F.

(2) Commercial organizations that receive annual awards totaling less than the audit requirement threshold in subpart F are exempt from HHS audit requirements for that year, but records must be available for review by appropriate officials of Federal agencies or the Government Accountability Office. (See § 75.501).

§ 75.216 Special Provisions for Awards to Federal Agencies.

(a) In order for an HHS awarding agency to make a Federal award to a Federal agency, the HHS awarding agency must have statutory authority that makes such Federal agency explicitly eligible for a Federal award.

(b) All provisions of this part and other HHS regulations apply to Federal entities receiving Federal awards, except for the following:

(1) Except for grants for research, any program income earned by a Federal institution must be used under the deduction alternative. Any program income earned after the end of grant support should be returned to the United States Treasury.

(2) No salary or fringe benefit payments may be made from HHS awarding agency grant funds to support career, career-conditional, or other Federal employees (civilian or uniformed services) without permanent appointments at a Federal institution receiving a grant. While the level of effort required for the project must be allowed by the recipient as part of each individual's official duties, salary costs associated with an individual participating in an official capacity as a Federal employee under a grant to that Federal institution are not allowable costs under an HHS awarding agency grant.

(3) Federal agencies may not be reimbursed for indirect costs under Federal awards.

§ 75.217 Participation by faith-based organizations.

The funds provided under this part must be administered in compliance with the standards set forth in 45 CFR part 87.

Subpart D—Post Federal Award Requirements

Standards for Financial and Program Management

§ 75.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.

§ 75.301 Performance measurement.

The HHS awarding agency must require the recipient to use OMB approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the HHS awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (*e.g.,* through unit

cost data). The recipient's performance should be measured in a way that will help the HHS awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The HHS awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 75.210. Performance reporting frequency and content should be established to not only allow the HHS awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the HHS awarding agency's program and performance decisions are made.

§ 75.302 Financial management and standards for financial management systems.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 75.450.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 75.361, 75.362, 75.363, 75.364, and 75.365):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the HHS awarding agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 75.341 and 75.342. If an HHS awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 75.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 75.305.

(7) Written procedures for determining the allowability of costs in accordance with Subpart E of this part and the terms and conditions of the Federal award.

§ 75.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in ''Standards for Internal Control in the Federal Government,'' issued by the Comptroller General of the United States or the ''Internal Control Integrated Framework,'' issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the HHS awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

§ 75.304 Bonds.

The HHS awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the HHS awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.

(b) The HHS awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 75.305 Payment.

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A–2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 75.302(b)(6). Except as noted elsewhere in these part, Federal agencies must require recipients to use only OMB-approved standard government-wide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual,

immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the HHS awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the HHS awarding agency sets a specific condition per § 75.207, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the HHS awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the HHS awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the HHS awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the HHS awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the HHS awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the HHS awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§ 75.207, Subpart D of this part, 75.371, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A–129. Under such conditions, the HHS awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated. (See 45 CFR part 30).

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 75.375.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(i) The HHS awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than $120,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) 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.

(iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as ''addenda records'' by Financial Institutions) as that will assist in the timely posting of interest earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

For ACH Returns:
Routing Number: 051036706
Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

For Fedwire Returns*:
Routing Number: 021030004
Account number: 75010501
Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY
(* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

For International ACH Returns:
Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868
Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492–5065

For recipients that do not have electronic remittance capability, please make check** payable to:

''The Department of Health and Human Services''

Mail Check to Treasury approved lockbox:
HHS Program Support Center
P.O. Box 530231
Atlanta, GA 30353–0231
(** Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

Any additional information/instructions may be found on the PMS Web site at *http://www.dpm.psc.gov/*.

§ 75.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with HHS awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. See also §§ 75.414, 75.203, and Appendix I to this part.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under Subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the HHS awarding agency; and

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

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in Subpart E. If an HHS awarding agency authorizes the non-Federal entity 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 must be the lesser of paragraphs (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the HHS awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (1) of this section at the time of donation.

(e) Volunteer services furnished by third-party 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 third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with § 75.414(f), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the HHS awarding agency has approved the charges. See also § 75.420.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the

non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity 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 non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24.

(2) The value of donated equipment must 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 must 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 must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

(k) For IHEs, see also OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 75.307 Program income.

(a) *General.* Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental 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 Federal award.

(c) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or HHS awarding agency regulations as program income.

(1) The Patent and Trademark Laws Amendments, 34 U.S.C. 200–212, apply to inventions made under an award for performance of experimental, developmental, or research work.

(2) Unless the terms and conditions for the Federal award provide otherwise, recipients shall have no obligation to HHS with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award. However, no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the HHS awarding agency rights to inventions made by the recipient.

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies, are not program income; such proceeds will be handled in accordance with the requirements of Subpart D of this part, §§ 75.318, 75.320, and 75.321, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) *Use of program income.* If the HHS awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the HHS awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply unless the recipient is subject to conditions under § 75.207 or § 75.215. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the HHS awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the HHS awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the HHS awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) *Addition.* With prior approval of the HHS awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section), program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

(3) *Cost sharing or matching.* With prior approval of the HHS awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) *Income after the period of performance.* There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the HHS awarding agency regulations or the terms and conditions of the award provide otherwise. The HHS awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 75.381.

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the HHS awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts and Cooperative Agreements'' is applicable.

§ 75.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see § 75.2 *Federal share*) or only the Federal share, depending upon HHS awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from HHS awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from HHS awarding agencies for one or more of the following program or budget-related reasons:

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

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project 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 inclusion, unless waived by the HHS awarding agency, of costs that require prior approval in accordance with Subpart E of this part or Appendix IX of this part, or 48 CFR part 31, as applicable.

(5) The transfer of funds budgeted for participant support costs as defined in § 75.2 *Participant support costs* to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 75.102 and 75.407.

(8) A fixed amount subaward as described in § 75.353.

(9) The inclusion of research patient care costs in research awards made for the performance of research work.

(10) The provision of subawards by a pass-through entity on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201. See § 75.353.

(11) The recipient wishes to dispose of, replace, or encumber title to real property, equipment, or intangible property that are acquired or improved with a Federal award. See §§ 75.318, 75.320, 75.322, and 75.323.

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

(d) Except for requirements listed in paragraph (c)(1) of this section, the HHS awarding agencies are authorized, at their option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the HHS awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the HHS awarding agency. All costs incurred before the HHS awarding agency makes the Federal award are at the recipient's risk (*i.e.,* the HHS awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 75.458.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the HHS awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior HHS awarding agency approval when:

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

(ii) The extension requires additional Federal funds.

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

(3) Carry forward unobligated balances to subsequent periods of performance.

(4) For Federal awards that support research, unless the HHS awarding agency provides otherwise in the Federal award or in the HHS awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (*i.e.,* recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(e) The HHS awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the HHS awarding agency. The HHS awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 75.407).

(g) For construction Federal awards, the recipient must request prior written approval promptly from the HHS awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.

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

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

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When an HHS awarding agency makes a Federal award that provides support for construction and non-construction work, the HHS awarding agency may require the recipient to obtain prior approval from the HHS awarding agency before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the HHS awarding agency indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the HHS awarding agency must 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 HHS awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

(j) All approvals granted in keeping with the provisions of this section shall not be valid unless they are in writing, and signed by at least one of the following HHS officials:

(1) The Head of the HHS awarding agency that made the award or subordinate official with proper delegated authority from the Head, including the Head of the Regional Office of the HHS awarding agency that made the award; or

(2) The responsible Grants Officer of the HHS awarding agency that made the award or an individual duly authorized by the Grants Officer.

§ 75.309 Period of performance and availability of funds.

(a) A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in § 75.461) and any costs incurred before the HHS awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity.

Funds available to pay allowable costs during the period of performance include both Federal funds awarded and carryover balances.

(b) A non-Federal entity must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the final Federal Financial Report (FFR). This deadline may be extended with prior written approval from the HHS awarding agency.

§ 75.310–§ 75.315 [Reserved]

Property Standards

§ 75.316 Purpose of property standards.

Sections 75.317 through 75.323 set forth uniform standards governing management and disposition of property furnished by HHS or whose cost was charged directly to a project supported by an HHS award. The HHS awarding agency may not impose additional requirements, unless specifically required to do so by Federal statute. The recipient may use its own property management standards and procedures provided they meet the provisions of these sections.

§ 75.317 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to other property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§ 75.318 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use.* (1) Except as otherwise provided by Federal statutes or by the HHS awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(2) The non-Federal entity shall obtain written approval from the HHS awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.,* awards) or programs that have purpose consistent with those authorized for support by the HHS awarding agency.

(c) *Disposition.* When real property is no longer needed as provided in subsection (b), the non-Federal entity must obtain disposition instructions from the HHS awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the HHS awarding agency. The amount paid to the HHS awarding agency will be computed by applying the HHS awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the HHS awarding agency. The amount due to the HHS awarding agency will be calculated by applying the HHS awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the HHS awarding agency or to a third party designated/approved by the HHS awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§ 75.319 Federally-owned and exempt property.

(a) Title to Federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of Federally-owned property in its custody to the HHS awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the HHS awarding agency for further Federal agency utilization.

(b) If the HHS awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the HHS awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.,* the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999). The HHS awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt Federally-owned property means property acquired under a Federal award where the HHS awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The HHS awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt Federally-owned property acquired under the Federal award remains with the Federal Government.

§ 75.320 Equipment.

See also § 75.439.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the HHS awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the HHS awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the HHS awarding agency, in the following order of priority:

(i) Activities under a Federal award from the HHS awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other HHS awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make the equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the HHS awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 75.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services 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.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property subject to the approval of the HHS awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a HHS awarding agency, except as otherwise provided in Federal statutes, regulations, or HHS awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the HHS awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with HHS awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the HHS awarding agency.

(2) Except as provided in § 75.319(b), or if the HHS awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of $5,000 may be retained by the non-Federal entity or sold. The HHS awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the HHS awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the HHS awarding agency may permit the non-Federal entity to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the HHS awarding agency may direct the non-Federal entity to take disposition actions.

§ 75.321 Supplies.

See also § 75.453.

(a) Title to supplies will vest in the non-Federal entity 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 Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 75.320(e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 75.322 Intangible property and copyrights.

(a) Title to intangible property (see § 75.2 *Intangible property*) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the HHS awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 75.320(e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The HHS awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the

work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401.

(d) The Federal Government has the right to:

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

(2) Authorize others to receive, reproduce, publish, or otherwise use such data

(e) Freedom of Information Act (FOIA).

(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the HHS awarding agency must request, and the non-Federal entity must 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 HHS awarding agency obtains the research data solely in response to a FOIA request, the HHS awarding 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 Federal agency and the non-Federal entity. This fee is in addition to any fees the HHS awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

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

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

(3) Research data means 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:

(i) 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

(ii) 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.

(f) The requirements set forth in paragraph (e)(1) of this section do not apply to commercial organizations

§ 75.323 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The HHS awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

§ 75.324—§ 75.325 [Reserved]

Procurement Standards

§ 75.326 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 75.331 and ensure that every purchase order or other contract includes any clauses required by § 75.335. All other non-Federal entities, including subrecipients of a state, will follow §§ 75.327 through 75.335.

§ 75.327 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest 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 or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities 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 must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing

new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689. (See 2 CFR part 376.)

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The HHS awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, tribal, state, or Federal authority having proper jurisdiction.

(l) The type of procuring instruments used must 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.

§ 75.328 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equivalent'' description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 75.329 Procurement procedures.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (*See micro-purchase*). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified

Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, for state, local, and tribal governments, the bids must be opened publically;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The HHS awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

§ 75.330 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 75.331 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 75.332 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make

independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 75.333 HHS awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the HHS awarding agency or pass-through entity, technical specifications on proposed procurements where the HHS awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the HHS awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the HHS awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity'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 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 contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the HHS awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the HHS awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the HHS awarding agency's right to survey the system. Under a self-certification procedure, the HHS awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 75.334 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the HHS awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the HHS awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) 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.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(d) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223.

§ 75.335 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

§ 75.336–§ 75.340 [Reserved]

Performance and Financial Monitoring and Reporting

§ 75.341 Financial reporting.

Unless otherwise approved by OMB, the HHS awarding agency may solicit only the standard, OMB-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

§ 75.342 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 75.352.

(b) *Non-construction performance reports.* The HHS awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the HHS awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the HHS awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the HHS awarding agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved government-wide standard information collections when providing performance information. As appropriate in accordance with the above-mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the HHS awarding agency program, the HHS awarding agency should include this as a performance reporting requirement.

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

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

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by HHS awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The HHS awarding agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the HHS awarding agency or pass-through entity as soon as the following types of conditions become known:

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

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

(e) The HHS awarding agency may make site visits as warranted by program needs.

(f) The HHS awarding agency may waive any performance report required by this part if not needed.

§ 75.343 Reporting on real property.

The HHS awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the HHS awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.,* every two years or every three years, not to exceed a five-year reporting period; or an HHS awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

§ 75.344–§ 75.350 [Reserved]

Subrecipient Monitoring and Management

§ 75.351 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with HHS awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The HHS awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 75.2 *Subaward.* Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See § 75.2 *Contract.* Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 75.352 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal Award Identification.

(i) Subrecipient name (which must match the name associated with their unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see § 75.2 *Federal award date*);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of HHS awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the HHS awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 75.414(f).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of HHS awarding agency monitoring (*e.g.,* if the subrecipient also receives Federal awards directly from a HHS awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 75.207.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by § 75.521.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 75.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 75.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 75.371 and in program regulations.

§ 75.353 Fixed amount subawards.

With prior written approval from the HHS awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201.

§ 75.354–§ 75.360 [Reserved]

Record Retention and Access

§ 75.361 Retention requirements for records.

Financial records, supporting documents, statistical records, and all

other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the HHS awarding agency or pass-through entity in the case of a subrecipient. HHS awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the HHS awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

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

(d) When records are transferred to or maintained by the HHS awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 75.362 Requests for transfer or records.

The HHS awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the HHS awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 75.363 Methods for collection, transmission and storage of information.

In accordance with Executive Order 13642, the HHS awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The HHS awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the HHS awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 75.364 Access to records.

(a) Records of non-Federal entities. The HHS awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the HHS awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the HHS awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. HHS awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 75.365 Restrictions on public access to records.

No HHS awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the HHS awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 75.322. Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

§ 75.366–§ 75.370 [Reserved]

Remedies for Noncompliance

§ 75.371 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the HHS awarding agency or pass-through entity may impose additional conditions, as described in § 75.207. If the HHS awarding agency or

pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the HHS awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the HHS awarding agency or pass-through entity.

(b) 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.

(c) Wholly or partly suspend (suspension of award activities) or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and HHS awarding agency regulations at 2 CFR part 376 (or in the case of a pass-through entity, recommend such a proceeding be initiated by a HHS awarding agency).

(e) Withhold further Federal awards for the project or program.

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

§ 75.372 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the HHS awarding agency or pass-through entity, if a non-Federal entity fails to comply with terms and conditions of a Federal award;

(2) By the HHS awarding agency or pass-through entity for cause;

(3) By the HHS awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the HHS awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the HHS awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the HHS awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 75.381and 75.386.

§ 75.373 Notification of termination requirement.

(a) The HHS awarding agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.

(c) Upon termination of a Federal award, the HHS awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 75.374 Opportunities to object, hearings, and appeals.

(a) Upon taking any remedy for non-compliance, the HHS awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the HHS awarding agency. The HHS awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

(b) See also:

(1) 42 CFR part 50, subpart D for the Public Health Service Appeals Procedures,

(2) 45 CFR part 16 for the Procedures of the Departmental Appeals Board, and

(3) 45 CFR part 95, subpart A for the time limits for states to file claims.

(4) 45 CFR part 95, subpart E for the State cost allocation plan disapprovals.

§ 75.375 Effects of suspension and termination.

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the HHS awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

§ 75.376–§ 75.380 [Reserved]

Closeout

§ 75.381 Closeout.

The HHS awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and HHS awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The HHS awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.

(b) Unless the HHS awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The HHS awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the HHS awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A–129 and see § 75.391 for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the HHS awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 75.317 through 75.323 and 75.343.

(g) The HHS awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than 180 calendar days after receipt and acceptance of all required final reports.

§ 75.382–§ 75.385 [Reserved]

Post-Closeout Adjustments and Continuing Responsibilities

§ 75.386 Post-Closeout Adjustments and Continuing Responsibilities.

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

(1) The right of the HHS awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The HHS awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F of this part.

(4) Property management and disposition requirements in §§ 75.317 through 75.323.

(5) Records retention as required in §§ 75.361 through 75.365.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the HHS awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

§ 75.387–§ 75.390 [Reserved]

Collection of Amounts Due

§ 75.391 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the HHS awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the HHS awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal. (See also HHS Claims Collection regulations at 45 CFR part 30.)

Subpart E—Cost Principles

General Provisions

§ 75.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal-award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See § 75.2 *Indirect (facilities & administrative (F&A)) costs.*

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 75.307.

§ 75.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also §§ 75.2 *Fixed amount awards* and 75.201.

(4) Federal awards to hospitals (see Appendix IX to Part 75).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal Contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting

Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this Subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (*e.g.,* CAS 414–48 CFR 9904.414, and CAS 417–48 CFR 9904.417), apply rather the allowability provisions of § 75.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII to Part 75. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

Basic Considerations

§ 75.402 Composition of Costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 75.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 75.306(b).

(g) Be adequately documented. See also §§ 75.300 through 75.309.

§ 75.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

§ 75.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 75.317 through 75.323 and 75.439.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

§ 75.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 75.436 and 75.468, for areas of potential application in the matter of Federal financing of activities.)

§ 75.407 Prior written approval (prior approval).

(a) Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the HHS awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

(1) § 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(2) § 75.306 Cost sharing or matching;

(3) § 75.307 Program income;

(4) § 75.308 Revision of budget and program plans;

(5) § 75.309 Period of performance and availability of funds;

(6) § 75.318 Real property;

(7) § 75.320 Equipment;

(8) § 75.353 Fixed amount subawards;

(9) § 75.413 Direct costs, paragraph (c);

(10) § 75.430 Compensation—personal services, paragraph (h);

(11) § 75.431 Compensation—fringe benefits;

(12) § 75.438 Entertainment costs;

(13) § 75.439 Equipment and other capital expenditures;

(14) § 75.440 Exchange rates;

(15) § 75.441 Fines, penalties, damages and other settlements;

(16) § 75.442 Fund raising and investment management costs;

(17) § 75.445 Goods or services for personal use;

(18) § 75.447 Insurance and indemnification;

(19) § 75.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(20) § 75.455 Organization costs;

(21) § 75.456 Participant support costs;

(22) § 75.458 Pre-award costs;

(23) § 75.462 Rearrangement and reconversion costs;

(24) § 75.467 Selling and marketing costs;

(25) § 75.470 Taxes (including Value Added Tax) paragraph (c); and

(26) § 75.474 Travel costs.

(b) A request by a subrecipient for prior approval will be addressed in writing to the recipient. The recipient will promptly review such request and shall approve or disapprove the request in writing. A recipient will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal-award to the recipient. If the revision, requested by the subrecipient would result in a change to the recipient's approved project which requires Federal prior approval, the recipient will obtain the HHS awarding agency's approval before approving the subrecipient's request.

(c) For cost-reimbursement contracts under the FAR, the recipient shall obtain prior written approval in accordance with FAR 52.244–2.

§ 75.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 75.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subpart, certain sections in this subpart describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 75.412 through 75.415);

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 75.416 and 75.417); and

(c) Special Considerations for Institutions of Higher Education (§§ 75.418 and 75.419).

§ 75.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the HHS awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D of this part, §§ 75.300 through 75.309.

§ 75.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the

rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect (F&A) Costs

§ 75.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 75.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 75.405.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 75.454.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 75.454 and 75.450.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 75.421 and 75.450.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 75.432.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 75.442.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 75.431.

§ 75.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the ''Administration'' category; for institutions of higher education, they are included in the ''Facilities'' category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 75.C. 11. Major nonprofit organizations are those which receive more than $10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 75.306.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. An HHS awarding agency may

use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The HHS awarding agency head or delegate must notify OMB of any approved deviations.

(3) The HHS awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 75.203(c), the HHS awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved. See also Appendix I.C.2 and D.6 of this part. As appropriate, the HHS agency should incorporate discussion of these policies into their outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 75.352(a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII, and Appendix IX as follows:

(1) Appendix III to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 75—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 75—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 75—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 75—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to part 75 (D)(1)(b) may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

§ 75.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).''

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 75.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major non-profit organization as defined in § 75.414(a).

(d) See also § 75.450 for another required certification.

Special Considerations for States, Local Governments and Indian Tribes

§ 75.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal-awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central

service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.

§ 75.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to this part.

Special Considerations for Institutions of Higher Education

§ 75.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§ 75.402 through 75.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 75.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling $50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR parts 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling $50 million or more subject to this part during its most recently completed fiscal year must disclose its cost accounting practices by filing a Disclosure Statement (DS–2), which is reproduced in Appendix III to part 75. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS–2 submission by submitting the DS–2 for each business unit that received $50 million or more in Federal awards.

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS–2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period. Amendments of a DS–2 may be submitted at any time. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable HHS agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected HHS awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS–2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS–2 determination of adequacy or noncompliance.

General Provisions for Selected Items of Cost

§ 75.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of §§ 75.402 through 75.411. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 75.402 through 75.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 75.403 must be applied in determining allowability. See also § 75.102.

§ 75.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and

corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 75.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term ''public relations'' includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 75.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§ 75.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the HHS awarding agency or as an indirect cost where allocable to Federal awards. See § 75.444, applicable to states, local governments and Indian tribes.

§ 75.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 75.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 75.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and Subpart F of this part—have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F of this part because its expenditures under Federal awards are less than $750,000 during the non-Federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D of this part, §§ 75.351 through 75.353) which are exempted from the requirements of the Single Audit Act and Subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 75.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 75.428.

§ 75.427 Bonding costs.

(a) Bonding costs arise when the HHS awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: Bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 75.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 75.305.

§ 75.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix III.B.9, as student activity costs.

§ 75.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for

personal services may also include fringe benefits which are addressed in § 75.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by an HHS awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the HHS awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).* (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the HHS awarding agency.

(2) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the HHS awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) Intra-Institution of Higher Education (IHE) consulting. Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the HHS awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation

policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) Periods outside the academic year. (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) Part-time faculty. Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) Sabbatical leave costs. Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn ''extra service pay'' in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *Standards for Documentation of Personnel Expenses* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) of this section for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (*i.e.,* estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (i)(1) of this section if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, ''rolling'' time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy

Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (i)(5)(i) of this section may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved HHS awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

§ 75.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 75.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 75.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*e.g.,* post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension Plan Costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the ''Cost Accounting Standard for Composition and Measurement of Pension Costs'' (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the Federal Government's contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by law, employer-employee agreement, established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the HHS awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the HHS awarding agency.

(j)(1) *For IHEs only.* Fringe benefits in the form of tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate education under IRC Section 117(d) as amended, provided that the benefit does not discriminate in favor of highly compensated employees. Federal reimbursement of tuition or remission of tuition is also limited to the institution for which the employee works. See § 75.466, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 75.402 through 75.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 75.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The HHS awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 75.438, 75.456, 75.474, and 75.475.

§ 75.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the HHS awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the HHS awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 75.300 through 75.309 of Subpart D of this part and 75.403); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the HHS awarding agency to the non-Federal entity's ''contingency reserve'' or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 75.431 and 75.447.

§ 75.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 75.306). Depreciation on donated assets is permitted in accordance with § 75.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 75.306.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 75.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 75.300 through 75.309 of subpart D of this part. The value of the donations must be determined in accordance with §§ 75.300 through 75.309. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

§ 75.435 Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements.

(a) Definitions for the purposes of this section.

(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (41 U.S.C. 1320a–7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs.* (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the HHS awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the HHS awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final HHS agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally

withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§ 75.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (*e.g.,* elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (*e.g.,* sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (*i.e.,* from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

§ 75.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 75.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the HHS awarding agency.

§ 75.439 Equipment and other capital expenditures.

(a) See § 75.2 for the definitions of *Capital expenditures, Equipment, Special purpose equipment, General purpose equipment, Acquisition cost,* and *Capital assets.*

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the HHS awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior written approval of the HHS awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the HHS awarding

agency, or pass-through entity. See § 75.436 for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 75.465.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the HHS awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the HHS awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

§ 75.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The HHS awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the HHS awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

§ 75.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the HHS awarding agency. See also § 75.435.

§ 75.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 75.460.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated an appropriate share of indirect costs under the conditions described in § 75.413.

§ 75.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 75.436 and 75.439.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 75.447.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, *e.g.,* land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 75.317 through 75.323.

§ 75.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 75.474). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 75.435); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see § 75.2 *Local government*), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 75.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (*e.g.,* depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to

the employees. In addition, to be allowable direct costs must be approved in advance by an HHS awarding agency.

§ 75.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.,* insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, *e.g.,* consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 75.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the HHS awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 75.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate

allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (*e.g.,* general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

§ 75.448 Intellectual Property.

(a) *Patent costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 75.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title there.

§ 75.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets are defined in § 75.2 *Capital assets.* An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all non-Federal entities.* (1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, ''initial equity contribution'' means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to

allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to ''full coverage'' under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201–2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), and CAS 417 (48 CFR 9904.417).

§ 75.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, ''New Restrictions on Lobbying'' published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget ''Government-wide Guidance for New Restrictions on Lobbying'' and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of ''lobbying'' or ''influencing legislation'' by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and ''grass roots'' lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, IRC secs.501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by IRC sec. 4911(d)(2) and 26 CFR 56.4911–2(c)(1)–(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 75.413.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 75.415.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 75.302 with respect to lobbying costs during any particular calendar month when:

(*1*) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(*2*) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The HHS awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 75.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 75.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 75.439). These costs are only allowable to the extent not paid through rental or other agreements.

§ 75.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

§ 75.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the HHS awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 75.450.

§ 75.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the HHS awarding agency.

§ 75.456 Participant support costs.

Participant support costs are defined in § 75.2. Participant support costs are allowable with the prior approval of the HHS awarding agency.

§ 75.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 75.439.

§ 75.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the HHS awarding agency.

§ 75.459 Professional services costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 75.435.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative.

However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (*i.e.,* what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (*e.g.,* description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§ 75.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 75.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(c) The non-Federal entity may charge the Federal award before closeout for the costs of publication as prescribed in paragraphs (a) or (b) of this section or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§ 75.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the HHS awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 75.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 75.464.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and

(4) Meet the definition of ''direct cost'' as described in the applicable cost principles.

§ 75.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new

permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with § 75.474, and not § 75.464, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 75.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) and (c) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under ''less-than-arm's-length'' leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 75.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

§ 75.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the HHS awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 75.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 75.431.

§ 75.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 75.421) are unallowable, except as direct costs, with prior approval by the HHS awarding agency when necessary for the performance of the Federal award.

§ 75.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 75.406.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§ 75.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 75.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the HHS awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the HHS awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to an non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the HHS awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the HHS awarding agency.

§ 75.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the HHS awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the HHS awarding agency (see also § 75.320(d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased

property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D of this part, §§ 75.371 through 75.375); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 75.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 75.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 75.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§ 75.474 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 75.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the HHS awarding agency. See also § 75.432.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§ 75.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 75.474.

HHS Selected Items of Cost

§ 75.476 Independent research and development costs.

Independent research and development is research and development which is conducted by an organization, and which is not sponsored by Federal or non-Federal awards, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The cost of independent research and development, including their proportionate share of indirect costs, are unallowable.

Subpart F—Audit Requirements

General

§ 75.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among HHS agencies for the audit of non-Federal entities expending Federal awards.

Audits

§ 75.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 75.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 75.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $750,000.* A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 75.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 75.351 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 75.352.

(i) Recipients and subrecipients that are commercial organizations (including for-profit hospitals) have two options regarding audits:

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

(2) An audit that meets the requirements contained in this subpart.

(j) Commercial organizations that receive annual HHS awards totaling less than $750,000 are exempt from requirements for a non-Federal audit for that year, but records must be available for review by appropriate officials of Federal agencies.

(k) See also § 75.215.

§ 75.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at IHEs.* When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards

pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the HHS agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§ 75.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) Federal agency to pay for additional audits. A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Request for a program to be audited as a major program. An HHS awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the HHS awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the HHS awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 75.518 and, if not, the estimated incremental cost. The HHS awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this HHS awarding agency request, and the HHS awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 75.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 75.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 75.371.

§ 75.506 Audit costs.

See § 75.425.

§ 75.507 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including HHS awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting

policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 75.511(b), and a corrective action plan consistent with the requirements of § 75.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 75.514(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 75.514(d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 75.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 75.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 75.515(d)(1) and findings and questioned costs consistent with the requirements of § 75.515(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 75.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 75.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

(1) § 75.500 through § 75.503(d);

(2) § 75.504 through § 75.506;

(3) § 75.508 through § 75.509;

(4) § 75.511;

(5) § 75.512(e) through (h);

(6) § 75.513;

(7) § 75.516 through § 75.517;

(8) § 75.521, and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 75.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this part in accordance with § 75.509, and ensure it is properly performed and submitted when due in accordance with § 75.512.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 75.510.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 75.511(b) and § 75.511(c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

§ 75.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 75.326 through 75.335 of Subpart D of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 75.330, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ 75.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 75.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 75.502. While not required, the auditee may choose to provide information requested by HHS awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. For a cluster of programs also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in § 75.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in § 75.414.

§ 75.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 75.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 75.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

§ 75.512 Report submission.

(a) *General.* (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data Collection.* The FAC is the repository of record for Subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in Appendix X to part 75, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the

audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (*e.g.,* state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

(2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 75.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 75.511(b);

(3) Auditor's report(s) discussed in § 75.515; and

(4) Corrective action plan discussed in § 75.511(c).

(d) *Submission to FAC.* The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 75.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

Federal Agencies

§ 75.513 Responsibilities.

(a)(1) Cognizant agency for audit responsibilities. A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year thereafter. For example, audit cognizance for periods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a government-wide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. This government-wide audit quality project must be performed once every 6 years beginning in 2018 or at such other interval as determined by OMB, and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, HHS awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable HHS awarding agencies and

pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.

(vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in § 75.2 *Cross-cutting audit finding*) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 75.2 *Oversight agency for audit.* A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) HHS awarding agency responsibilities. The HHS awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 75.210):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the HHS awarding agency must:

(i) Issue a management decision as prescribed in § 75.521;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see § 75.2 *Cooperative audit resolution*) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by HHS awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the HHS awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the HHS awarding agency's program management personnel related to the single audit process.

(iv) Promote the HHS awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the HHS awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one HHS awarding agency.

(vii) Ensure the HHS awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the HHS awarding agency's single audit accountable official's mission.

Auditors

§ 75.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 75.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 75.511(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data Collection Form.* As required in § 75.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

§ 75.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, or award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (*i.e.,* unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance for major programs (*i.e.,* unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 75.516(a);

(vii) An identification of major programs by listing each individual major program; however in the case of a cluster of programs only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 75.518(b)(1), or (b)(3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 75.520.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 75.516(a).

(i) Audit findings (*e.g.,* internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 75.512(b) when

allowed by GAGAS and Appendix X to Part 75.

§ 75.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (*e.g.,* as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 75.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable Federal award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 75.512(b) to allow for easy referencing of the audit findings during follow-up.

§ 75.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting

an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 75.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal this program. The process in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
(i) Equal to or exceed $750,000 but less than or equal to $25 million	$750,000.
(ii) Exceed $25 million but less than or equal to $100 million	Total Federal awards expended times .03.
(iii) Exceed $100 million but less than or equal to $1 billion	$3 million.
(iv) Exceed $1 billion but less than or equal to $10 billion	Total Federal awards expended times .003.
(v) Exceed $10 billion but less than or equal to $20 billion	$30 million.
(vi) Exceed $20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 75.502.

(4) For biennial audits permitted under § 75.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) *Step two.* (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 75.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 75.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 75.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve an HHS awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the HHS awarding agency to comply with 31 U.S.C. 3515. The HHS awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.* (1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 75.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 75.519(b)(1), (b)(2), and (c)(1), a single criteria in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* If the auditee meets the criteria in § 75.520, the auditor need only audit the major programs identified in Step 4 (paragraph (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section)

and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

§ 75.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (*e.g.,* one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 75.430, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 75.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 75.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 75.512 . A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 75.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 75.515(c); or

(3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

Management Decisions

§ 75.521 Management Decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial

statements which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* As provided in § 75.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 75.513(c)(3), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) *Pass-through entity.* As provided in § 75.352(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The HHS awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 75.516(c).

Appendix I to Part 75—Full Text of Notice of Funding Opportunity

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is an HHS awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that an HHS awarding agency would include in that section of an actual announcement.

An HHS awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an HHS awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, an HHS awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an HHS awarding agency may want to include in Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the HHS awarding agency's funding priorities or the technical or focus areas in which the HHS awarding agency intends to provide assistance. As appropriate, it may include any program history (*e.g.,* whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (*e.g.,* if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the HHS awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the HHS awarding agency expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (*e.g.,* grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the ''substantial involvement'' that the HHS awarding agency expects to have or should reference where the potential applicant can find that information (*e.g.,* in the funding opportunity description in section A. or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. HHS agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the HHS awarding agency returning the application without review or, even though an application may be reviewed, will preclude the HHS awarding agency from making a Federal award. Key elements to be addressed are:

1. *Eligible Applicants—Required.* Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (*e.g.,* open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D. specifying documentation that must be submitted to support an eligibility determination (*e.g.,* proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.,* provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.,* in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 75.306. This section should refer to the appropriate portion(s) of section D. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. *Other—Required, if applicable.* If there are other eligibility criteria (*i.e.,* criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as ''responsiveness'' criteria, ''go-no go'' criteria, ''threshold'' criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as

applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. *Address to Request Application Package—Required.* Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (*e.g.,* if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (*e.g.,* references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370h).

3. *Unique Entity Identifier and System for Award Management (SAM)—Required.*

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

(i) Be registered in SAM before submitting its application;

(ii) provide a valid unique entity identifier in its application; and

(iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times—Required.* Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.,* letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 75.203).

Each type of submission should be designated as encouraged or required and, if required, any deadline date (or dates, if the Federal awarding agency plans more than one cycle of application submission, review, and Federal award under the announcement) should be specified. The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

ii. What the deadline means (*e.g.,* whether it is the date and time by which the Federal awarding agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (*e.g.,* mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (*e.g.,* whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgement of receipt. This information should be displayed in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

5. *Intergovernmental Review—Required, if applicable.* If the funding opportunity is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' the notice must say so. In alerting applicants that they must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site. *www.whitehouse.gov/omb/grants/spoc.html.*

6. *Funding Restrictions—Required.* Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. *Other Submission Requirements—Required.* This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, *i.e.,* paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (*e.g.,* application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.[1]

[1]With respect to electronic methods for providing information about funding

opportunities or accepting applicants' submissions of information, each HHS awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

E. Application Review Information

1. Criteria—Required. This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (*e.g.,* minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (*e.g.,* whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (*e.g.,* to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (*e.g.,* in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (*e.g.,* geographical dispersion, program balance, or diversity). The HHS awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (*e.g.,* peers external to the HHS awarding agency or HHS awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (*e.g.,* an external panel advising internal HHS awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each HHS awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the HHS awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. Anticipated Announcement and Federal Award Dates—Optional. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the HHS awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a ''rolling'' basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the HHS awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 75.210.

2. Administrative and National Policy Requirements—Required. This section must identify the usual administrative and national policy requirements the HHS awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal-award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some specific terms and conditions that differ from the HHS awarding agency's usual (sometimes called ''general'') terms and conditions, this section should highlight those specific terms and conditions. Doing so will alert applicants that have received Federal awards from the HHS awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (*e.g.,* if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required. This section must include general information about the type (*e.g.,* financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (*e.g.,* by report type, frequency, form/format, or circumstances for use) from what the HHS awarding agency's Federal awards usually require.

G. HHS Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the HHS awarding agency should consider approaches such as giving:

1. Points of contact who may be reached in multiple ways (*e.g.,* by telephone, FAX, and/or email, as well as regular mail).

2. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

3. Different contacts for distinct kinds of help (*e.g.,* one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

1. Indicate whether this is a new program or a one-time initiative.

2. Mention related programs or other upcoming or ongoing HHS awarding agency funding opportunities for similar activities.

3. Include current Internet addresses for the HHS awarding agency Web sites that may be useful to an applicant in understanding the program.

4. Alert applicants to the need to identify proprietary information and inform them about the way the HHS awarding agency will handle it.

5. Include certain routine notices to applicants (*e.g.,* that the Federal Government is not obligated to make any Federal award

as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

Appendix II to Part 75—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the HHS agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

A. Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of ''federally assisted construction contract'' in 41 CFR part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, as amended by Executive Order 11375, and implementing regulations at 41 CFR part 60.

D. Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must 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 one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must 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.

F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of ''funding agreement'' under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' the recipient or subrecipient must comply with the requirements of 37 CFR part 401 and any implementing regulations issued by the awarding agency.

G. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ''Debarment and Suspension.'' SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must 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 must 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 non-Federal award.

J. See § 75.331 Procurement of recovered materials.

Appendix III to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activitie*s means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 75.468 of this part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are ''unallowable'' to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsections B.4.c may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be

allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See § 75.414 which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 75.436.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (*e.g.,* individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 75.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the ''effective square footage'' described in subsection (c)(2)(ii) of this section.

(ii) ''Effective square footage'' allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory ''Labs for the 21st Century'' benchmarking tool *http://labs21benchmarking.lbl.gov/CompareData.php* and the US Department of Energy ''Buildings Energy Databook'' and *http://buildingsdatabook.eren.doe.gov/CBECS.aspx*) were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.,* solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration

expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (*e.g.,* chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 75.413(c) and 75.468.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 75.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Subpart E of this part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B of this paragraph C.1-, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to

arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2, and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect (F&A) costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of Federal awards performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. If a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect (F&A) costs, provisions should be made for a separate indirect (F&A) cost pool applicable to such work. The separate indirect (F&A) cost pool should be developed during the regular course of the rate determination process and the separate indirect (F&A) cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect (F&A) cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other Federal awards at the institution.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 75.2. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87–638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the ''indirect costs'' (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

a. Except as provided in paragraph (c)(1) of § 75.414 Federal agencies must use the negotiated rates for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. ''Negotiated rates'' per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. ''Life'' for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in § 75.414, when an educational institution does not have a negotiated rate with the Federal Government

at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, Identification and assignment of indirect (F&A) costs, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the ''Administration'' portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under ''Administration'' as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the ''Administration'' portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in § 75.2.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 75.352.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See § 75.414.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (*i.e.,* a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of work covered by this part 75 at an institution does not exceed $10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in

determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a. from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB Web site here: *http://www.whitehouse.gov/omb/grants_forms.*

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729–3733 and 3801–3812)''.

2. Certification of Indirect (F&A) Costs

a. *Policy.* Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate.* The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:
Signature:
Name of Official:
Title:
Date of Execution:

Appendix IV to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 75.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be

allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

''Major nonprofit organizations'' are defined in § 75.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 75.413(e).

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such contracts or subawards for $25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 75.2.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in section A.3 of this Appendix, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.,* Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: ''Facilities'' and ''Administration,'' as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 75.436 .

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 75.449.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in § 75.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost

studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (*e.g.,* individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in § 75.2, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 75.2).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: ''Facilities'' and ''Administration,'' as described in section A.3 of this Appendix.

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the

reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards with an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 75.414.) Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 75.352.

b. Except as otherwise provided in § 75.414(e), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 75.414(f), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

1. Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the non-profit organization using the Certificate of Indirect (F&A) Costs set forth in subsection b., below. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

2. Certificate. Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with Subpart E of part 75.

(3) This proposal does not include any costs which are unallowable under Subpart E of part 75 such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization:
Signature:
Name of Official:
Title:
Date of Execution:

Appendix V to Part 75—State/Local Governmentwide Central Service Cost Allocation Plans

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*'' A copy of this brochure may be obtained from the HHS' Cost Allocation Services at *https://rates.psc.gov*.

B. Definitions

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in § 75.2. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. *Major local government* means local government that receives more than $100 million in direct Federal awards subject to this part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: An organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service, the plan must also include the following: A brief description of the service,* an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.*

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.*, regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (*e.g.,* salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: The fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (*e.g.*, automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: A listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, *e.g.*, legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit:
Signature:
Name of Official:
Title:
Date of Execution:

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following

Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) Are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a ''fixed with carry-forward'' basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This ''carry-forward'' procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) A cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in Subpart D of part 75.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VI to Part 75—Public Assistance Cost Allocation Plans

A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid for Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. *State public assistance agency* means a state agency administering or supervising the

administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, Review of Implementation of Approved Plans, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) A cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

Appendix VII to Part 75—States and Local Government and Indian Tribe Indirect Cost Proposals

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*'' A copy of this brochure may be obtained from the HHS' Cost Allocation Services at *https://rates.psc.gov*.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to part 75.

B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or

future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a ''final'' rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subawards in excess of $25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) It can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of $25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a ''restricted rate'' is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 75.361.

b. A governmental department or agency unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the

proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required Certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this 45 CFR part 75. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit:
Signature:
Name of Official:
Title:
Date of Execution:

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in § 75.420 of this part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (*i.e.,* the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (*e.g.,* computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit) should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VIII to Part 75—Nonprofit Organizations Exempted from Subpart E of Part 75

Advance Technology Institute (ATI), Charleston, South Carolina
Aerospace Corporation, El Segundo, California
American Institutes of Research (AIR), Washington, DC
Argonne National Laboratory, Chicago, Illinois
Atomic Casualty Commission, Washington, DC
Battelle Memorial Institute, Headquartered in Columbus, Ohio
Brookhaven National Laboratory, Upton, New York
Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
CNA Corporation (CNAC), Alexandria, Virginia
Environmental Institute of Michigan, Ann Arbor, Michigan
Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
Hanford Environmental Health Foundation, Richland, Washington
IIT Research Institute, Chicago, Illinois
Institute of Gas Technology, Chicago, Illinois
Institute for Defense Analysis, Alexandria, Virginia
LMI, McLean, Virginia
Mitre Corporation, Bedford, Massachusetts
Noblis, Inc., Falls Church, Virginia
National Radiological Astronomy Observatory, Green Bank, West Virginia
National Renewable Energy Laboratory, Golden, Colorado
Oak Ridge Associated Universities, Oak Ridge, Tennessee
Rand Corporation, Santa Monica, California
Research Triangle Institute, Research Triangle Park, North Carolina
Riverside Research Institute, New York, New York
South Carolina Research Authority (SCRA), Charleston, South Carolina
Southern Research Institute, Birmingham, Alabama
Southwest Research Institute, San Antonio, Texas
SRI International, Menlo Park, California
Syracuse Research Corporation, Syracuse, New York
Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
Urban Institute, Washington DC
Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
Other non-profit organizations as negotiated with Federal awarding agencies

Appendix IX to Part 75—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals

A. Purpose and Scope

1. Objectives

This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Health and Human Services. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

2. Policy Guides

The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Health and Human Services as to their scope, applicability and interpretation. It is recognized that:

a. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

b. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

c. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

d. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

e. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

3. Application

All operating agencies within the Department of Health and Human Services that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

B. Definition of Terms

1. *Organized research* means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

3. *Research agreement* means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

4. *Instruction and training* means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

5. *Other hospital activities* means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See paragraph C.4 below.) Also included under this definition is any category of cost treated as ''Unallowable,'' provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in paragraph E.1.) are properly allocable.

6. *Patient care* means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in paragraph I.2.w, it means the cost of these services applicable to patients involved in research programs.

7. *Allocation* means the process by which the indirect costs are assigned as between:

a. Organized research,

b. Patient care including departmental research.

c. Instruction and training, and

d. Other hospital activities.

8. *Cost center* means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

9. *Cost finding* is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

10. *Step down* is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce

revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

11. *Scatter bed* is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

12. *Discrete bed* is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

C. Basic Considerations

1. Composition of Total Costs

The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See paragraph C.5.)

2. Factors Affecting Allowability of Costs

The tests of allowability of costs under these principles are:

a. They must be reasonable.

b. They must be assigned to research agreements under the standards and methods provided herein.

c. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See paragraph A.2.e.) and

d. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. Reasonable Costs

A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

a. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,

b. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,

c. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and

d. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

4. Allocable Costs

a. A cost is allocable to a particular cost center (*i.e.,* a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. Applicable Credits

a. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in paragraph E.1. Typical examples of such transactions are: Purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

b. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, *i.e.,* patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

D. Direct Costs

1. General

Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in paragraph VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

2. Application to Research Agreements

Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see paragraph E.2.d(2)); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. General

Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

2. Criteria for Distribution

a. *Base period.*

A base period for distribution of indirect costs is the period during which such costs

are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.*

The overall objective of the allocation process is to distribute the indirect costs described in paragraph F. to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in paragraph E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in 2.c. below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, paragraph H. provides an alternate method which may be used under certain conditions.

c. *Selection of distribution method.*

Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under 2.b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

(1) It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

(2) It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

d. *General consideration on cost groupings.*

The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in 2.b. and 2.c.above.

(2) Where any types of expense ordinary treated as indirect cost as outlined in paragraph are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited inB.5.) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

(6) Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also paragraph.)

e. *Materiality.*

Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

3. Administration of Limitations on Allowances for Indirect Costs

a. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

(1) The terms and amount authorized in each case conform with the provisions of paragraphs C, E, and I of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

(2) The amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

b. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in 3.a. above, such alternative amounts should be determined in accordance with the following guides:

(1) The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

(2) The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

c. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

F. Identification and Assignment of Indirect Costs

1. Depreciation or Use Charge

a. The expenses under this heading should include depreciation (as defined in paragraph I.2.i(1)) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See paragraph I.2.)

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in paragraph E.2., on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable

estimates will suffice as a means for effecting distribution of the amounts involved.

2. Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, *i.e.,* solely to patient care, organized research, instruction and training, or other hospital activities.

b. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in paragraph E.2.

3. Operation of Plant

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph E.2., on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

(1) Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various costs centers normally will suffice as a means for effecting distribution of the amounts involved; or

(3) Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

4. Maintenance of Plant

a. The expenses under this heading should include:

(1) All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

(2) All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

(3) Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

(1) Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

(3) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

5. Laundry and Linen

a. The expenses under this heading should include:

(1) Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

(2) Supplies used in connection with the laundry operation and all linens purchased; and

(3) Amounts paid to outside concerns for purchased laundry and/or linen service.

b. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

(1) Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

6. Housekeeping

a. The expenses under this heading should include:

(1) All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

(2) All supplies used in carrying out the housekeeping functions; and

(3) Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

(1) Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

(3) Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

7. Dietary

a. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

b. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to number of employees.

8. Maintenance (Housing) of Personnel

a. The expenses under this heading should include:

(1) The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

(2) All supplies used in connection with the operation of such dormitories; and

(3) Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

(1) Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

(2) A net cost per housed employee may then be computed; and

(3) Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

9. Medical Records and Library

a. The expenses under this heading should include:

(1) The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

(2) All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

G. Determination and Application of Indirect Cost Rate or Rates

1. Indirect Cost Pools

a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

(1) Such indirect cost rate differs significantly from that which would have obtained under a. above; and

(2) The volume of research work to which such rate would apply is material in relation to other government research at the institution.

c. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

2. The Distribution Base

Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to paragraph G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

3. Negotiated Lump Sum for Overhead

A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Overhead Rates

The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

H. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in paragraph H.2. below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

b. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

c. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

2. Abbreviated Procedure

a. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in paragraph I.2.d. and unallowable costs as defined under various headings in paragraph I. and paragraph C.5.

b. Total expenditures as adjusted under the foregoing will then be distributed among (1) expenditures applicable to administrative and general overhead functions, (2) expenditures applicable to all other overhead functions, and (3) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in paragraphs F.2. and 7. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under paragraph B.5. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in paragraph E. shall be considered as expenditures for all other purposes.

c. The expenditures distributed to the first two groups in paragraph H.2.b. should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in paragraph C.5.a.

d. In applying the procedures in paragraphs H.2.a and 2.b, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital.

When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

e. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under paragraphs H.2.b and 2.c. above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All Other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under paragraphs H.2.b. and 2.c. above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under paragraph H.2.b.

I. General Standards for Selected Items of Cost

1. General

This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

a. Facilities costs, such as;

(1) Depreciation

(2) Rental

(3) Use charges for fully depreciated assets

(4) Idle facilities and idle capacity

(5) Plant reconversion

(6) Extraordinary or deferred maintenance and repair

(7) Acquisition of automatic data processing equipment.

b. Pre-award costs

c. Non-hospital professional activities

d. Self-insurance

e. Support services charged directly (computer services, printing and duplicating services, etc.)

f. Employee compensation, travel, and other personnel costs, including:

(1) Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation;

(2) Morale, health, welfare, and food service and dormitory costs.

(3) Training and education costs.

(4) Relocation costs, including special or mass personnel movement.

2. Selected Items

a. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for:

(1) The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in paragraph I.2.hh;

(2) The procurement of scarce items for the performance of the research agreement; or

(3) The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraphs D. and E. are observed.

b. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

c. *Bonding costs.*

(1) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(2) Costs of bonding required pursuant to the terms of the research agreement are allowable.

(3) Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

d. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

e. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

f. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

g. *Compensation for personal services.*

(1) General

Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see paragraph I.2.j.), and pension plan costs (see paragraph I.2.y.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less

than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

(2) Payroll Distribution

Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in paragraph (3) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (i) Patient care; (ii) organized research; (iii) instruction and training; (iv) indirect activities as defined in paragraph E.1.; or (v) other hospital activities as defined in paragraph B.5.

(3) Reporting Time or Effort

Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

(4) Preparation of Estimates of Effort

Where required under paragraph (3) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (2) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term ''all other hospital activities'' would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

(5) Application of Budget Estimates

Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

(6) Non-Hospital Professional Activities

A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (i) hospital activities, and (ii) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

(7) Salary Rates for Part-Time Appointments

Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

h. *Contingency provisions.*

Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

i. *Depreciation and use allowances.*

(1) Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(2) Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

(3) Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (4) below, is an allowable element of research cost provided that the amount thereof is computed:

i. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

ii. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

iii. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(a) The straight line method;

(b) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (a) above;

(c) The sum of the years-digits method; and

(d) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (b) above.

(4) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(5) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

(6) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(7) Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Pub. L. 89–97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformity reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, *Operating Costs* means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. *Allowable Costs* means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Pub. L. 89–97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health and Human Services.

(8) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

(9) Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

j. *Employee morale, health, and welfare costs and credits.*

The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

k. *Entertainment costs.*

Except as pertains to j. above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

l. *Equipment and other facilities.*

The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

m. *Fines and penalties.*

Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

n. *Insurance and indemnification.*

(1) Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

(2) Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (i) Types and extent and cost of coverage must be in accordance with sound institutional practice; (ii) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (iii) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(3) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

(4) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

o. *Interest, fund raising and investment management costs.*

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(2) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

(3) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

(4) Costs related to the physical custody and control of monies and securities are allowable.

p. *Labor relations costs.*

Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

q. *Losses on research agreements or contracts.*

Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

r. *Maintenance and repair costs.*

(1) Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

i. Normal maintenance and repair costs are allowable;

ii. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

(2) Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

s. *Material costs.*

Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

t. *Memberships, subscriptions and professional activity costs.*

(1) Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

(2) Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

(3) Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

u. *Organization costs.*

Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (1) organization or reorganization of a hospital, or (2) raising capital, are unallowable.

v. *Other business expenses.*

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

w. *Patient care.*

The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

(1) Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

(2) Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR–EKG, etc.

(3) Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Pub. L. 89–97 (Medicare Program) as defined under the ''Principles of Reimbursement For Provider Costs'' published by the Social Security Administration of the Department of Health and Human Services. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, *i.e.* using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with paragraph w.(3).ii.

(4) Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

x. *Patent costs.*

Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also paragraph I.2.jj.)

y. *Pension plan costs.*

Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

z. *Plan security costs.*

Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

aa. *Pre-research agreement costs.*

Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

bb. *Professional services costs.*

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (2) and (3) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include (i) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (ii) the nature and scope of managerial services expected of the institution's own organizations; and (iii) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

(3) Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

cc. *Profits and losses on disposition of plant equipment, or other assets.*

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or

other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

dd. *Proposal costs.*

Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

ee. *Public information services costs.*

Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

ff. *Rearrangement and alteration costs.*

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

gg. *Reconversion costs.*

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

hh. *Recruiting costs.*

(1) Subject to (2), (3), and (4) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(2) In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

(3) Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

(4) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

ii. *Rental costs (including sale and lease-back of facilities).*

(1) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

(2) Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

(3) Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

jj. *Royalties and other costs for use of patents.*

Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

kk. *Severance pay.*

(1) Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

(2) Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(3) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

ll. *Specialized service facilities operated by a hospital.*

(1) The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (2) or (3) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under paragraph C.5.

(2) The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (i) are designed to recover only actual costs of providing such services, and (ii) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

(3) In the absence of an acceptable arrangement for direct costing as provided in (2) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

mm. *Special administrative costs.*

Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

nn. *Staff and/or employee benefits.*

(1) Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

(2) Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see paragraph I.2.y.), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with

established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

oo. *Taxes.*

(1) In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (i) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal Income Taxes.

(2) Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

pp. *Transportation costs.*

Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

qq. *Travel costs.*

(1) Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

(2) Travel costs are allowable subject to (3) and (4) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

(3) The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(4) Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

rr. *Termination costs applicable to contracts.*

(1) Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

(2) The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

(3) If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

(4) Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (i) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (iii) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (ii) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable: (i) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (ii) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

(7) Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

ss. *Voluntary services.*

The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

Appendix X to Part 75—Data Collection Form (SF–SAC)

The Data Collection Form SF–SAC is available on the FAC Web site *https://harvester.census.gov/facweb/Default.aspx.*

Appendix XI to Part 75—Compliance Supplement

The compliance supplement is available on the OMB Web site: (*http://www.whitehouse.gov/omb/circulars/*)

PART 92 [REMOVED AND RESERVED]

■ 4. Remove and reserve 45 CFR part 92.

Ellen Murray,

Assistant Secretary for Financial Resources.

Department of Agriculture

For the reasons stated in the common preamble, under the authority of 5

U.S.C. 301, 7 CFR 2.28(a)(13)(iii), and the authorities listed below, USDA adds Parts 400, 415, 416, 418 and 422 to Title 2 of the CFR and removes Parts 3015, 3016, 3018, 3019, 3022 and 3052 from Title 7 of the CFR as follows:

TITLE 2—GRANTS AND AGREEMENTS

CHAPTER IV—DEPARTMENT OF AGRICULTURE

■ 1. Title 2 of the Code of Federal Regulations is amended by adding Part 400 to read as follows:

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

400.1 What does this part do?
400.2 Conflict of interest.

Authority: 31 U.S.C. 503.

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

§ 400.1 What does this part do?

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this part, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part.

§ 400.2 Conflict of interest.

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal awards.

(b) Non-Federal entities must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity.

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award, or administration of a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest 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 or a tangible personal benefit from a non-Federal entity considered for a Federal award. The non-Federal entity 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 must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of the relationships with a parent company, affiliate, or subsidiary organization, is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

■ 2. Title 2 of the Code of Federal Regulations is amended by adding Part 415 to read as follows:

PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS

Subpart A—Application for Federal Assistance

Sec.
415.1 Competition in the awarding of discretionary grants and cooperative agreements.

Subpart B—Miscellaneous

415.2 Acknowledgement of Support on Publications and Audiovisuals.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

415.3 Purpose.
415.4 Definitions.
415.5 Applicability.
415.6 Secretary's general responsibilities.
415.7 Federal interagency coordination.
415.8 State selection of programs and activities.
415.9 Communication with State and local elected officials.
415.10 State comments on proposed Federal financial assistance and direct Federal development.
415.11 Processing comments.
415.12 Accommodation of intergovernmental concerns.
415.13 Interstate situations.
415.14 Simplification, consolidation, or substitution of State plans.
415.15 Waivers.

Authority: 5 U.S.C. 301.

Subpart A—Application for Federal Assistance

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

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

(1) Potential applicants must be invited to submit proposals through publications such as the **Federal Register**, OMB-designated governmentwide Web site as described in 2 CFR 200.203, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

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

(3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the application is to be evaluated. When the awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.

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

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

(2) Eligible applicants;

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

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

(5) Methods for evaluating and ranking applications;

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

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

(8) Applicable cost principles and administrative requirements;

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

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

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

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

(1) Nonmonetary awards of property or services;

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

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

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

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

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

Subpart B—Miscellaneous

§ 415.2 Acknowledgement of USDA Support on Publications and Audiovisuals.

(a) *Definitions.*

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

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

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

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

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

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

(2) [Reserved]

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

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

§ 415.3 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, areawide, 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.

§ 415.4 Definitions.

As used in this part, the following definitions apply:

Department means the U.S. Department of Agriculture.

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

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

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

§ 415.5 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.

§ 415.6 Secretary's general responsibilities.

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

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

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

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

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

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

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

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

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

§ 415.7 Federal interagency coordination.

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

§ 415.8 State selection of programs and activities.

(a) A State may select any program or activity published in the **Federal Register** in accordance with § 415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

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

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

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

§ 415.9 Communication with State and local elected officials.

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

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

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

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

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. All communications should be sent to the Office of the Chief Financial Officer, Room 143–W, 1400 Independence Avenue SW., Washington, DC 20250, Attention: E.O. 12372.

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

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

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

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

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

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 415.11 Processing comments.

(a) The Secretary follows the procedures in § 415.12 if:

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

(2) That office or official transmits a State process recommendation for a program selected under § 415.8.

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

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

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

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 415.12.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 415.12, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 415.12 Accommodation of intergovernmental concerns.

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

(1) Accepts the recommendations;

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

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

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

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

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

(c) For purposes of computing the waiting period under paragraph (b)(1) of

this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 415.13 Interstate situations.

(a) The Secretary is responsible for:

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

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

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

(4) Responding, pursuant to § 415.12, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 415.12 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 415.14 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

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

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

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

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

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

§ 415.15 Waivers.

In an emergency, the Secretary may waive any provision in Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities, 2 CFR 415.3 to 415.14.

■ 3. Title 2 of the Code of Federal Regulations is amended by adding Part 416 to read as follows:

PART 416—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Authority: 5 U.S.C. 301.

§ 416.1 Special Procurement Provisions.

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.101(e)(4) through (6) shall be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR 200.101(e)(4) through (6) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(b) Procurements by States under USDA entitlement programs specified in 2 CFR 200.101(e)(4) through (6) shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences except as provided for in 2 CFR 200.319(b).

■ 4. Title 2 of the Code of Federal Regulations is amended by adding part 418 to read as follows:

PART 418—NEW RESTRICTIONS ON LOBBYING

Sec.

Subpart A—General

418.100 Conditions on use of funds.
418.105 Definitions.
418.110 Certification and disclosure.

Subpart B—Activities by Own Employees

418.200 Agency and legislative liaison.
418.205 Professional and technical services.
418.210 Reporting.

Subpart C—Activities by Other Than Own Employees

418.300 Professional and technical services.

Subpart D—Penalties and Enforcement

418.400 Penalties.
418.405 Penalty procedures.
418.410 Enforcement.

Subpart E—Exemptions

418.500 Secretary of Defense.

Subpart F—Agency Reports

418.600 Semi-annual compilation.
418.605 Inspector General report.

APPENDIX A TO PART 418—CERTIFICATION REGARDING LOBBYING

APPENDIX B TO PART 418—DISCLOSURE FORM TO REPORT LOBBYING

Authority: 31 U.S.C. 1352; 5 U.S.C. 301.

Subpart A—General

§ 418.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any

payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 418.105 Definitions.

For purposes of this part:

(a) *Agency,* as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action.* (1) Covered Federal action means any of the following Federal actions:

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and,

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 418.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b)(1) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(i) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

(2) Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person shall file a certification, and a disclosure form, if required, to the next tier above who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 418.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 418.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 418.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly

and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 418.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 418.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 418.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 418.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 418.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C.s 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 418.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.'

Subpart E—Exemptions

§ 418.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 418.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 418.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

Appendix A to Part 418—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Appendix B to Part 418—Disclosure Form To Report Lobbying

BILLING CODE 6050–28–4210–67–4910–9X–3280–F5–4410–18–4710–24–3510–17–9110–9J–9111–23–6450–01–7537–01–6560–50–6560–58–7036–01–7515–01–7536–01–6116–01–4334–12–8320–01–4150–24–7555–01–5001–06–7510–13–8025–01–4191–02–4810–25–3410–KS–3410–22–3410–15–3410–05–4000–01–4510–FM–3110–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ **Prime** ☐ **Subawardee**
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(*if individual, last name, first name, MI*):

b. Individuals Performing Services (*including address if different from No. 10a*)
(*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):
$ _____ ☐ **actual** ☐ **planned**

12. Form of Payment (*check all that apply*):
☐ **a. cash**
☐ **b. in-kind; specify:** nature _____
value _____

13. Type of Payment (*check all that apply*):
☐ **a. retainer**
☐ **b. one-time fee**
☐ **c. commission**
☐ **d. contingent fee**
☐ **e. deferred**
☐ **f. other; specify:** _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: ☐ **Yes** ☐ **No**

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Approved by OMB
0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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■ 5. Title 2 of the Code of Federal Regulations is amended by adding part 422 to read as follows:

CHAPTER IV

PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCTS

Sec.

422.1 Definitions.
422.2 Procedures.
422.3 Inquiry, investigation, and adjudication.
422.4 USDA Panel to determine appropriateness of research misconduct policy.
422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.
422.6 Notification of USDA of allegations of research misconduct.
422.7 Notification of ARIO during an inquiry of investigation.
422.8 Communication of research misconduct policies and procedures.
422.9 Documents required.

422.10 Reporting to USDA.
422.11 Research records and evidence.
422.12 Remedies for noncompliance.
422.13 Appeals.
422.14 Relationship to other requirements.

Authority: 5 U.S.C. 301; Office of Science and Technology Policy (65 FR 76260); USDA Secretary's Memorandum (SM) 2400–007; and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

§ 422.1 Definitions.

The following definitions apply to this part:

Adjudication. The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

Agency Research Integrity Officer (ARIO). The individual appointed by a USDA agency that conducts research and who is responsible for:

(1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;

(2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;

(3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;

(4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

(i) Public health or safety is at risk;

(ii) USDA's resources, reputation, or other interests need protecting;

(iii) Research activities should be suspended;

(iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

Allegation. A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

Applied research. Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Assistant Inspector General for Investigations. The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

Basic research. Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

Extramural research. Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

Fabrication. Making up data or results and recording or reporting them.

Falsification. Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of research misconduct. The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

Inquiry. The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

Intramural research. Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

Investigation. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

Office of Inspector General (OIG). The Office of Inspector General of the United States Department of Agriculture.

Office of Science and Technology Policy (OSTP). The Office of Science and Technology Policy of the Executive Office of the President.

Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

Research institution. All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

Research misconduct. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

Research record. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals,

research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

USDA. United States Department of Agriculture.

USDA Research Integrity Officer (USDA RIO). The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

(1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

§ 422.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality. To the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know; and

(f) Timely resolution.

§ 422.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and

(d) Take action to ensure the following:

(1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as informants (see § 422.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

§ 422.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available shall convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

§ 422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

(1) Did not adhere to its own research misconduct procedures;

(2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or

(3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry,

investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

§ 422.6 Notification of USDA of allegations of research misconduct.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing Federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG may be notified using any of the following methods:

(i) Via the OIG Hotline: Telephone: (202) 690–1622, (800) 424–9121, (202) 690–1202 (TDD).

(ii) Email: *usda_hotline@oig.usda.gov.*

(iii) U.S. Mail: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026–3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; telephone: 202–720–5923; Email: *researchintegrity@usda.gov.*

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

§ 422.7 Notification of ARIO during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

§ 422.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

§ 422.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

§ 422.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the

ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

§ 422.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution shall be inventoried and stored in a secure place and manner. Research records involving raw data shall include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records shall be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

§ 422.12 Remedies for noncompliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

§ 422.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures identify the appeal process when a finding of research misconduct is elevated to the agency.

§ 422.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (*e.g.,* a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other agency(ies) in designating a lead agency. When USDA is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

TITLE 7—Agriculture

CHAPTER XXX—OFFICE OF THE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE

PARTS 3015, 3016, 3018, 3019, 3022, and 3052—[REMOVED]

■ 6. Remove 7 CFR parts 3015, 3016, 3018, 3019, 3022, and 3052.

Farm Service Agency

For the reasons discussed above in the common preamble, FSA amends 7 CFR chapter VII and CCC amends 7 CFR chapter XIV as follows:

CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 761—GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for 7 CFR 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 761.5 [Amended]

■ 2. Amend 761.5 by removing the reference to ''7 CFR part 3018'' and adding the reference to ''2 CFR part 418'' in its place.

PART 785—CERTIFIED STATE MEDIATION PROGRAM

■ 3. The authority citation for 7 CFR 785 continues to read as follows:

Authority: 5 U.S.C. 301; 7 as follows: U.S.C. 1989; and 7 U.S.C. 5104.

§ 785.4 [Amended]

■ 4. Amend § 785.4 as follows:

■ a. In paragraph (c)(1), remove ''as set forth or referenced in § 3016.22 of this title'' and add ''in 2 CFR part 200, subpart E'' in its place, and

■ b. In paragraph (c)(2)(iii), remove ''OMB Cost Principles found in part 3015, subpart T, of this title and OMB Circular No. A–87'' and add ''2 CFR part 200, subpart E'' in its place.

■ 5. Revise § 785.8(b) to read

§ 785.8 Reports by qualifying States receiving mediation grants.

* * * * *

(b) *Audits.* Any qualifying State receiving a grant under this part is required to submit an audit report in compliance with 2 CFR part 200, subpart F.

■ 6. In § 785.9, revise the introductory text to read as follows:

§ 785.9 Access to program records.

The regulations in 2 CFR 200.333 through 200.337 provide general record retention and access requirements for records pertaining to grants. In addition, the State must maintain and provide the Government access to pertinent records regarding services delivered by the certified State mediation program for purposes of evaluation, audit and monitoring of the certified State mediation program as follows:

* * * * *

§ 785.11 [Amended]

■ 7. Amend § 785.11(b) by removing ''part 3017 of this title'' and adding ''2 CFR parts 180 and 417'' in its place.

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

PART 1407—DEBARMENT AND SUSPENSION

■ 8. The authority citation for 7 CFR 1407 continues to read as follows:

Authority: 15 U.S.C. 714b.

§ 1407.2 [Amended]

■ 9. Amend § 1407.2(a) by removing ''7 CFR part 3017'' and adding ''2 CFR parts 180 and 417'' in its place.

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

■ 10. The authority citation for 7 CFR 1485 continues to read as follows:

Authority: 7 U.S.C. 5623, 5662–5664 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

■ 11. Amend § 1485.10 as follows:
■ a. Revise paragraph (b)(1)(iv);
■ b. Remove paragraphs (b)(1)(v) and (vii) through (x);
■ c. Redesignate paragraph (b)(1)(vi) and (xi) as (b)(1)(v) and (viii) respectively; and
■ d. Add paragraphs (b)(1)(vi) and (vii).

The revision and additions read as follows:

§ 1485.10 General purpose and scope.

* * * * *

(b)(1) * * *

(iv) 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

* * * * *

(vi) 2 CFR part 418—New Restrictions on Lobbying

(vii) 2 CFR part 421—Requirements for Drug-Free Workplace (Financial Assistance)

* * * * *

§ 1485.19 [Amended]

■ 12. Amend § 1485.19 as follows:
■ a. In paragraph (b), first sentence, by removing ''set forth in the applicable parts of this title (*e.g.,* 7 CFR parts 3015, 3016, and 3019)'' and adding ''in 2 CFR part 200'' in their place.
■ b. In paragraph (c), second sentence, by removing ''in the applicable parts of this title apply (*e.g.,* 7 CFR parts 3015, 3016, and 3019)'' and adding ''in 2 CFR part 200'' in their place.

§ 1485.21 [Amended]

■ 13. Amend § 1485.21(a) by removing ''set forth in the applicable parts of this title (*e.g.,* 7 CFR parts 3015, 3016, and 3019)'' and adding ''in 2 CFR part 200'' in its place.

§ 1485.22 [Amended]

■ 14. Amend § 1485.22(e), first sentence, by removing ''OMB Circular A–133 audit in accordance with 7 CFR part 3052'' and adding ''audit in accordance with 2 CFR part 200'' in its place.

§ 1485.23 [Amended]

■ 15. Amend § 1485.23(d), introductory text, fifth sentence, by removing ''*e.g.,* 7 CFR parts 3015, 3016, and 3019'' and adding ''for example, 2 CFR part 200'' in its place.

§ 1485.27 [Amended]

■ 16. Amend § 1485.27(b) by removing ''in the applicable parts of this title (*e.g.,* 7 CFR parts 3015, 3016, and 3019)'' and adding ''in 2 CFR part 200'' in its place.

§ 1485.28 [Amended]

■ 17. Amend § 1485.28(a), third sentence, by removing ''in the applicable parts of this title (*e.g.,* 7 CFR parts 1485, 3015, 3016, 3018, 3021, 3019, and 3052)'' and adding ''in 2 CFR parts 200 and 421 and this part'' in its place.

§ 1485.29 [Amended]

■ 18. Amend § 1485.29 as follows:
■ a. In paragraph (b), first sentence, remove ''*e.g.,* 7 CFR parts 3015, 3016, and 3019'' and add ''for example, 2 CFR part 200'' in its place, and in the second sentence, remove ''7 CFR part 3019'' and add ''2 CFR part 200'' in its place, and

b. In paragraph (d), seventh sentence, remove ''set forth in the applicable parts of this title (*e.g.,* 7 CFR parts 3015, 306, 3019)'' and add ''in 2 CFR part 200'' in its place.

§ 1485.34 [Amended]

■ 19. Amend § 1485.34, first sentence by removing ''set forth in the applicable parts of this title (*e.g.,* 7 CFR parts 3015, 3016, and 3019)'' and adding ''in 2 CFR part 200'' in their place.
■ 20. Revise § 1485.35 to read as follows:

§ 1485.35 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in 2 CFR part 200. If an agreement is terminated, the applicable regulations in 2 CFR part 200 will apply to the closeout of the agreement.

Department of Agriculture

National Institute of Food and Agriculture (NIFA)

For the reasons stated in the preamble, NIFA amends 7 CFR Part Chapter XXXIV as follows:

TITLE 7—AGRICULTURE

CHAPTER XXXIV—NATIONAL INSTITUTE OF FOOD AND AGRICULTURE

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

■ 1. The authority for part 3400 continues to read as follows:

Authority: 7 U.S.C. 450i(c).

§ 3400.6 [Amended]

■ 2. In § 3400.6(a) remove the words ''the Department's Uniform Federal Assistance Regulations'' and add in their place ''2 CFR part 200.''
■ 3. Revise § 3400.8 to read as follows:

§ 3400.8 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension.

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR

part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

■ 4. The authority citation for part 3401 continues to read as follows:

Authority: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

§ 3401.8 [Amended]

■ 5. In the last sentence of § 3401.8(a) remove the words ''the Department's Uniform Federal Assistance Regulations'' and add in their place ''2 CFR part 200.''

■ 6. Revise § 3401.10 to read as follows:

§ 3401.10 Other Federal Statutes and Regulations that Apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines To Agencies On Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

■ 7. In § 3401.14, add a sentence at the end of the section to read as follows:

§ 3401.14 Conflicts of interest.

* * * Administration of the peer review group must be in accordance with the Department's conflict of interest policy, 2 CFR 400.2.

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

■ 8. The authority citation for part 3402 continues to read as follows:

Authority: 7 U.S.C. 3316.

§ 3402.19 [Amended]

■ 9. In the last sentence of § 3402.19, remove the words ''the Department's Uniform Federal assistance regulations (parts 3015 and 3019 of 7 CFR)'' and add in their place ''2 CFR part 200.''

■ 10. Revise § 3402.20 to read as follows:

§ 3402.20 Other Federal Statutes and Regulations that Apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

■ 11. The authority citation for part 3403 continues to read as follows:

Authority: 15 U.S.C. 638.

§ 3403.1 [Amended]

■ 12. In the last sentence of § 3403.1(a), remove the words ''the Office of Extramural Programs,'' before ''NIFA.''

§ 3403.12 [Amended]

■ 13. In the last sentence of § 3403.12, remove the words ''the Department's Uniform Federal Assistance Regulations (7 CFR part 3015)'' and add in their place ''2 CFR part 200.''

■ 14. Revise § 3403.15 to read as follows:

§ 3403.15 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures to Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3405—HIGHER EDUCATION CHALLENGE GRANTS PROGRAM

■ 15. The authority citation for part 3405 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

§ 3405.9 [Amended]

■ 16. In the second sentence of § 3405.9, remove the words ''OMB Circular No. A–21'' and add in their place ''2 CFR part 200.''

§ 3405.11 [Amended]

■ 17. In § 3405.11(g)(2)(v), remove the words ''OMB Circulars A–110, 'Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,' and A–21 'Cost Principles for Educational Institutions''' and add in their place ''2 CFR part 200 and Part 400.''

§ 3405.17 [Amended]

■ 18. In § 3405.17(a), remove the words ''the Department's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (7CFR part 3019)'' and replace with ''2 CFR part 200.''

■ 19. Revise § 3405.20 to read as follows:

§ 3405.20 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures To Implement The National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3406—1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM

■ 20. The authority citation for part 3406 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

§ 3406.10 [Amended]

■ 21. In § 3406.10, remove the words ''OMB Circular No. A–21'' and add in their place ''2 CFR part 200''.

§ 3406.24 [Amended]

■ 22. In § 3406.24(a), remove the words ''the Department's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations(7 CFR part 3019)'' and add in their place ''2 CFR part 200 and Part 400.''

■ 23. Revise § 3406.27 to read as follows:

§ 3406.27 Other Federal Statutes and Regulations that Apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform

administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines To Agencies On Government-Wide Debarment And Suspension (Nonprocurement) And USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3407—IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

■ 24. The authority citation for part 3407 continues to read as follows:

Authority: National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.;* E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR parts 1500–1508; and 7 CFR part 1b.

§ 3407.4 [Amended]

■ 25. In the introductory text of § 3407.4, correct the word ''responsibe'' to read ''responsible''.

PART 3415—BIOTECHNOLOGY RISK ASSESSMENT RESEARCH GRANTS PROGRAM

■ 26. The authority citation for part 3415 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 5921.

§ 3415.6 [Amended]

■ 27. In § 3415.6(a), remove the words ''and the Department's assistance regulations (part 3015 and part 3016 of this title)'' and add in their place ''2 CFR part 200.''

■ 28. Revise § 3415.8 to read as follows:

§ 3415.8 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-Wide Debarment And Suspension (Nonprocurement) and USDA Nonprocurement Debarment And Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA Implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures To Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

■ 29. The authority citation for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

§ 3430.1 [Amended]

■ 30. In § 3430.1(a), remove the words ''7 CFR parts 3016 (State, local, and tribal governments), 3019 (institutions of higher education, hospitals, and nonprofits), and 3015 (all others)'' and add in their place ''2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.''

§ 3430.2 [Amended]

■ 31. In § 3430.2, remove the definitions of the terms ''State'' and ''Third party in-kind contributions.''

■ 32. Revise § 3430.4 to read as follows:

§ 3430.4 Other Federal statutes and regulations that apply.

(a) The Office of Management and Budget (''OMB'') issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.''

(b) Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

2 CFR part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards.

2 CFR part 180 and Part 417—OMB Guidelines to Agencies on Government-

Wide Debarment and Suspension (Nonprocurement) and USDA Nonprocurement Debarment and Suspension

7 CFR part 1c—USDA Implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR 1.1—USDA Implementation of Freedom of Information Act.

7 CFR part 3—USDA Implementation of OMB Circular A–129 Regarding Debt Collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3407—NIFA Procedures to Implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3430.12 [Amended]

■ 33. In § 3430.12(a), remove the words ''the Office of Management and Budget (OMB) policy directive 68 FR 37370–37379 (June 23, 2003)'' and replace with ''Appendix I to 2 CFR part 200''.

§ 3430.41 [Amended]

■ 34. In § 3430.41:

■ a. In paragraph (a), remove the words ''parts 3015, 3016, 3019 of 7 CFR'' and add in their place''2 CFR part 200.''

■ b. In paragraph (b) introductory text, remove ''including, at a minimum, the following:'' and add in its place ''noted in section 210 of 2 CFR part 200.''

■ c. Remove paragraphs (b)(1) through (10).

§ 3430.54 [Amended]

■ 35. In § 3430.54, remove the words ''the applicable assistance regulations and cost principles'' and add in their place ''2 CFR part 200''.

§ 3430.59 [Amended]

■ 36. Amend § 3430.59 as follows:

■ a. Remove all references to ''the Office of Extramural Programs'' or ''OEP'' and add in their place ''NIFA.''

■ b. In the last sentence of paragraph (c), remove the words ''subject to 7 CFR part 3052'' and add in their place ''2 CFR 200.521.''

■ c. In paragraph (e), remove all references to ''OEP Assistant Director'' and add in their place ''Office of Grants and Financial Management (OGFM) Deputy Director.''

§ 3430.62 [Amended]

■ 37. In § 3430.62(c), remove all references to ''OEP Assistant Director'' and add in their place ''Office of Grants and Financial Management (OGFM) Deputy Director.''

PART 3431—VETERINARY MEDICINE LOAN REPAYMENT PROGRAM

■ 38. The authority citation for part 3431 continues to read as follows:

Authority: 7 U.S.C. 3151a; Pub. L. 106–107 (31 U.S.C. 6101 note).

§ 3431.20 [Amended]

■ 39. In § 3431.20, in the first sentence remove the words ''Office of Extramural Programs (OEP)'' after ''NIFA,'' and in the second sentence remove ''OEP'' and add in its place ''NIFA.''

Department of Agriculture

Rural Development

For the reasons set forth in the common preamble, chapters XVII, XVIII, XXXV and XLII of Subtitle B, title 7, Code of Federal Regulations are amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—RURAL DEVELOPMENT

■ 1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Subpart D—Distance Learning and Telemedicine Loan and Grant Program—General

■ 2. Amend § 1703.106 by revising paragraph (a) to read as follows:

§ 1703.106 Disbursement of loans and grants.

(a) For financial assistance of $100,000 or greater, prior to the disbursement of a grant and a loan, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 2 CFR part 200, which is adopted by USDA through 2 CFR part 400.

* * * * *

■ 3. Amend § 1703.108 by revising paragraph (b) to read as follows:

§ 1703.108 Audit requirements.

* * * * *

(b) If the recipient is a State or local government, or non-profit organization, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

Subpart E—Distance Learning and Telemedicine Grant Program

■ 4. Amend § 1703.125 by revising paragraphs (i)(5), (i)(6), (i)(7) and (l) to read as follows:

§ 1703.125 Completed application.

(i) * * *

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

* * * * *

(l) *Federal debt certification.* The applicant must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

* * * * *

■ 5. Amend § 1703.127 by revising paragraph (g) to read as follows:

§ 1703.127 Application selection provisions.

* * * * *

(g) Grantees shall comply with all applicable provisions of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

Subpart F—Distance Learning and Telemedicine Combination Loan and Grant Program

■ 6. Amend § 1703.134 by revising paragraphs (g)(5), (g)(6), (g)(7) and (j) to read as follows:

§ 1703.134 Completed application.

* * * * *

(g) * * *

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

* * * * *

(j) *Federal debt certification.* The applicant must provide evidence that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

* * * * *

Subpart G—Distance Learning and Telemedicine Loan Program

■ 7. Amend § 1703.144 by revising paragraphs (g)(5), (g)(6), (g)(7) and (j) to read as follows:

§ 1703.144 Completed application.

* * * * *

(g) * * *

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(6) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

* * * * *

(j) *Federal debt certification.* The applicants must provide a certification that it is not delinquent on any obligation owed to the government (31 U.S.C. 3720B).

* * * * *

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

■ 8. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

Subpart A—General Requirements

■ 9. Amend § 1709.12 by revising the introductory text to read as follows:

§ 1709.12 Reporting requirements.

To support Agency monitoring of project performance and use of grant funds, Grantees shall file periodic reports, required under 2 CFR part 200, as adopted by USDA through 2 CFR part 400, as provided in this part, and the grant agreement as follows:

* * * * *

■ 10. Amend § 1709.13 by revising the second sentence to read as follows:

§ 1709.13 Grant administration.

* * * Administration of RUS grants is governed by the provisions of this subpart and subpart B of this part, the terms of the grant agreement and, as applicable, the provisions of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

■ 11. Amend § 1709.16 by revising the second sentence to read as follows:

§ 1709.16 Performance reviews.

* * * If the grantee does not comply with or does not meet the performance criteria set out in the grant agreement, the Administrator may require amendment of the grant agreement, or may suspend or terminate the grant pursuant to 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

■ 12. Amend § 1709.19 by revising paragraph (a) through (e) and removing paragraph (f), to read as follows:

§ 1709.19 Other USDA regulations.

* * * * *

(a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200, as adopted by USDA through 2 CFR part 400;

(b) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(c) E.O.s 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417;

(d) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418; and

(e) Subpart F of 2 CFR 200, as adopted by USDA through 2 CFR 400.

■ 13. Amend § 1709.21 by revising paragraph (b) to read as follows:

§ 1709.21 Audit requirements.

* * * * *

(b) If the grantee is a State or local government, or a non-profit corporation (other than an RUS Electric or Telecommunication Borrower), the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

Subpart B—RUS High Cost Energy Grant Program

■ 14. Amend § 1709.102 by revising paragraph (a) to read as follows:

§ 1709.102 Policy.

(a) All high energy cost grants will be awarded competitively subject to the limited exceptions in 2 CFR 415.1(d).

* * * * *

Subpart G—Recovery of Financial Assistance Used for Unauthorized Purposes

■ 15. Amend § 1709.601 by revising the last sentence to read as follows:

§ 1709.601 Policy.

* * * The Agency shall make full use of available authority and procedures, including but not limited to those available under 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1710—GENERAL AND PRE–LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 16. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart C—Loan Purposes and Basic Policies

■ 17. Revise § 1710.123 to read as follows:

§ 1710.123 Debarment and Suspension.

Borrowers are required to comply with certain requirements on debarment and suspension as set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417.

■ 18. Revise § 1710.125 to read as follows:

§ 1710.125 Restrictions on lobbying.

Borrowers are required to comply with certain requirements with respect to restrictions on lobbying activities. See 2 CFR part 418.

■ 19. Revise § 1710.127 to read as follows:

§ 1710.127 Drug free workplace.

Borrowers are required to comply with the Drug Free Workplace Act of 1988 (41 U.S.C. 8101 *et. seq.*) and the Act's implementing regulations (2 CFR part 421) when a borrower receives a Federal grant or enters into a procurement contract awarded pursuant to the provisions of the Federal Acquisition Regulation (title 48 CFR) to sell to a Federal agency property or services having a value of $25,000 or more.

Subpart I—Application Requirements and Procedures for Loans

■ 20. Amend § 1710.501 by revising paragraphs (a)(10) and (a)(12) to read as follows:

§ 1710.501 Loan applications documents.

(a) * * *

(10) *Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* This statement certifies that the borrower will comply with certain regulations on debarment and suspension required by Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189). See 2 CFR 417, and § 1710.123.

* * * * *

(12) *Lobbying.* The following information on lobbying is required pursuant to 2 CFR 418, and § 1710.125. Borrowers applying for both insured and guaranteed financing should consult RUS before submitting this information.

PART 1717—POST–LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 21. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

■ 22. Amend § 1717.855 by revising paragraph (k) to read as follows:

§ 1717.855 Application contents: Advance approval—100 percent private financing of distribution, sub-transmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(k) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 180, as adopted by USDA through 2 CFR part 417;

* * * * *

■ 23. Amend § 1717.857 by revising paragraph (c)(7) to read as follows:

§ 1717.857 Refinancing of existing secured debt—distribution and power supply borrowers.

(c) * * *

(7) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 417:

* * * * *

■ 24. Amend § 1717.858 by revising paragraph (c)(9) to read as follows:

§ 1717.858 Lien subordination for rural development investments.

(c) * * *

(9) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 180, as adopted by USDA through 2 CFR part 417;

* * * * *

■ 25. Amend § 1717.860 by revising paragraph (c)(2)(vi)(C) to read as follows:

§ 1717.860 Lien accommodations and subordinations under section 306E of the RE Act.

(c) * * *

(2) * * *

(vi) * * *

(C) Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions, as required by 2 CFR part 180, adopted by USDA through 2 CFR part 417;

* * * * *

PART 1724—ELECTRIC ENGINEERING, ARCHITECTURAL SERVICES AND DESIGN POLICIES AND PROCEDURES

■ 26. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 27. Revise § 1724.7 to read as follows:

§ 1724.7 Debarment and suspension.

Borrowers shall comply with the requirements on debarment and suspension in connection with procurement activities set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417, particularly with respect to lower tier transactions, *e.g.,* procurement contracts for goods or services.

■ 28. Revise § 1724.8 to read as follows:

§ 1724.8 Restrictions on lobbying.

Borrowers shall comply with the restrictions and requirements in connection with procurement activities as set forth in 2 CFR part 418.

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 29. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 30. Revise § 1726.16 to read as follows:

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417, particularly with respect to lower tier transactions, *e.g.,* procurement contracts for goods or services.

■ 31. Revise § 1726.17 to read as follows:

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in 2 CFR part 418.

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

■ 32. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.;* Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart C—The Loan Application

■ 33. Amend § 1737.22 by revising paragraph (b)(6) to read as follows:

§ 1737.22 Supplementary information.

* * * * *

(b) * * *

(6) Executed copy of Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

* * * * *

Subpart E—Interim Financing of Construction of Telephone Facilities

■ 34. Amend § 1737.41 by revising paragraph (b)(2)(vi) to read as follows:

§ 1737.41 Procedure for obtaining approval.

* * * * *

(b) * * *

(2) * * *

(vi) Executed copy of Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

* * * * *

Subpart F—Review of Application Procedures

■ 35. Amend § 1737.50 by revising paragraphs (a)(2) and (b) to read as follows:

§ 1737.50 Loan approval requirements.

(a) * * *

(2) A completed certification Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;''

* * * * *

(b) RUS shall review the completed loan application, particularly noting subscriber data, grades of service, extended area service (EAS), connecting company commitments, commercial facilities, system and exchange boundaries, and proposed acquisitions. RUS shall review the LD to determine that the system design is acceptable to RUS, that the design is technically correct, that the cost estimates are reasonable, and that the design provides

for area coverage service. RUS shall also review the population and incorporation status of all communities served or to be served by the borrower to determine if any nonrural areas are served and if municipal franchises are required. Any RUS lending for nonrural areas must be in accordance with 7 CFR part 1735. RUS shall also check the ''List of Parties Excluded from Federal Procurement of Nonprocurement Programs'', compiled, maintained and distributed by General Services Administration, to determine whether the borrower is debarred, suspended, ineligible, or voluntarily excluded (see 2 CFR 180.430).

* * * * *

PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

■ 36. The authority citation for part 1738 continues to read as follows:

Authority: Pub. L. 107–171, 7 U.S.C. 901 *et seq.*

Subpart D—Direct Loan Terms

■ 37. Amend § 1738.156 to revise paragraphs (a)(10) and (11) to read as follows:

§ 1738.156 Other Federal requirements.

* * * * *

(a) * * *

(10) The regulations implementing E.O. 12549, Debarment and Suspension (2 CFR part 180, which is adopted by USDA through 2 CFR part 417, including subpart C of 2 CFR part 417, ''Responsibilities of Participants Regarding Transactions,'' and 2 CFR 417.332.

(11) The requirements regarding lobbying for Contracts, Grants, Loans and Cooperative Agreements in 31 U.S.C. 1352 (2 CFR part 418).

* * * * *

PART 1739—BROADBAND GRANT PROGRAM

■ 38. The authority citation for part 1739 continues to read as follows:

Authority: Title III, Pub. L. 108–199, 118 Stat. 3.

Subpart A—Community Connect Grant Program

■ 39. Amend § 1739.15 as follows:

■ a. Revise the first sentence of the introductory text;

■ b. Revise paragraph (l)(2);

■ c. Revise paragraph (l)(4);

The revisions read as follows:

§ 1739.15 Completed application.

Applications should be prepared in conformance with the provisions of this part and all applicable regulations, including 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

(l) * * *

(2) 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

(4) 2 CFR part 418—New Restrictions on Lobbying;

* * * * *

■ 40. Amend § 1739.20 by revising paragraph (b) to read as follows:

§ 1739.20 Audit requirements.

* * * * *

(b) If the recipient is a Tribal, State or local government, or non-profit organization, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM

■ 41. The authority citation for part 1740 continues to read as follows:

Authority: Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Public Law 108–447.

Subpart A—Public Television Station Digital Transition Grant Program

■ 42. Amend § 1740.9 by revising paragraphs (j)(5), (j)(6), and (j)(7) to read as follows:

§ 1740.9 Grant application.

* * * * *

(j) * * *

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 8101 *et. seq.*), 2 CFR part 421;

(6) Executive Orders 12549 and 12689, Debarment and Suspension, 2 CFR part 180, which is adopted by USDA through 2 CFR part 417; and

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 2 CFR part 418.

* * * * *

PART 1773—POLICY ON AUDITS OF RUS BORROWERS

■ 43. The authority citation for part 1773 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—RUS Audit Requirements

■ 44. Amend § 1773.3 by revising paragraphs (d) and (e) to read as follows:

§ 1773.3 Annual audit.

* * * * *

(d) A borrower that qualifies as a unit of state or local government or Indian tribe as such terms are defined in the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*), the Single Audit Act Amendments of 1996 (31 U.S.C. 7505 *et seq.*) and OMB Circular A–133, Audits of States and Local Government, and Non Profit Organizations (which applies for audits of fiscal years beginning prior to December 26, 2014) and Subpart F of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as adopted by USDA though 2 CFR 400 (which applies for fiscal years beginning on or after December 26, 2014) must comply with this part as follows:

(1) A borrower that expends $500,000 under OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) and $750,000 under Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning after December 26, 2014) or more in a year in Federal awards must have an audit performed and submit an auditor's report meeting the requirements of the respective Single Audit Act requirements

(2) An entity with loans less than $500,000 under OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) and $750,000 under Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning on or after December 26, 2014) in Federal awards during the year must have an audit performed in accordance with the requirements of this part.

(3) A borrower must notify RUS, in writing, within 30 days of the as of audit date, of the total Federal awards expended during the year and must state whether it will have an audit performed in accordance with OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) or Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning on or after December 26, 2014) or this part.

(i) A borrower that elects to comply with this part must select a CPA that meets the qualifications set forth in § 1773.5.

(ii) If an audit is performed in accordance with OMB Circular A–133 (for audits of fiscal years beginning prior to December 26, 2014) or Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 (for audits for fiscal years beginning after December 26, 2014, an auditor's report that meets

the requirements of the respective single Audit Act requirements, will be sufficient to satisfy that borrower's obligations under this part.

(e) OMB Circular A–133 and Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400 do not apply to audits of RUS electric and telecommunications cooperatives and commercial telecommunications borrowers.

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 45. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C)

Subpart A—General Provisions

■ 46. Amend § 1774.8 by revising paragraphs (f) through (j) and removing paragraphs (k) and (l) to read as follows:

§ 1774.8 Other Federal Statutes.

* * * * *

(f) 2 CFR part 200, as adopted by USDA through 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal.

(g) 2 CFR part 180, as adopted by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 on debarment and suspension.

(h) 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(i) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C 8101 et. seq.).

(j) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

Subpart B—Grant Application Processing

■ 47. Amend § 1774.13 by revising paragraph (g) to read as follows:

§ 1774.13 Limitations.

* * * * *

(g) Pay for any other costs that are not allowable under 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 48A. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Provisions

■ 48B. Amend § 1775.5 by revising paragraph (h) to read as follows:

§ 1775.5 Limitations.

* * * * *

(h) Pay for any other costs that are not allowable under 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

■ 49. Amend § 1775.8 by revising paragraphs (f) and (h) through (j), and by removing and reserving paragraphs (g) and (k) to read as follows:

§ 1775. 8 Other Federal statutes.

(f) 2 CFR part 200, as adopted by USDA through 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal.

(g) [Reserved]

(h) 2 CFR part 180, as implemented by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 on debarment and suspension.

(i) 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(j) 2 CFR 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C 701).

(k) [Reserved]

* * * * *

Subpart B—Grant Application Processing

■ 50. Amend § 1775.10 by revising paragraph (c)(9) to read as follows:

§ 1775.10 Applications.

* * * * *

(c) * * *

(9) Indirect cost documentation such as cost rate proposals, cost allocation plans, or other election for indirect costs and appropriate certification of indirect costs in accordance with Cost Principles in 2 CFR 200, subpart E, as adopted by USDA through 2 CFR part 400.

* * * * *

■ 51. Amend § 1775.20 by revising paragraphs (b) and (c) to read as follows:

§ 1775.20 Reporting.

* * * * *

(b) SF–425,'' Federal Financial Report,'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each calendar quarter.

(c) A final project performance report will be required with the last SF–425 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

* * * * *

■ 52. Amend § 1775.21 by revising paragraphs (a) and (b) as follows:

§ 1775.21 Audit or financial statement.

* * * * *

(a) Grantees expending $750,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400. The audit will be submitted with 9 months of the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

(b) Grantees expending less than $750,000 will provide annual financial statement covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statement will be submitted within 90 days after the grantees fiscal year.

PART 1776—HOUSEHOLD WATER WELL SYSTEM GRANT PROGRAM

■ 53. The authority citation for part 1776 continues to read as follows:

Authority: 7 U.S.C. 1926e.

■ 54. Revise § 1776.2 to read as follows:

§ 1776.2 Uniform Federal Assistance Provisions.

This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as adopted by USDA through 2 CFR part 400.

■ 55. Amend § 1776.13 by revising paragraph (d) to read as follows:

§ 1776.13 Administrative expenses.

* * * * *

(d) Allowability of administrative expense costs shall be determined in accordance with 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

■ 56. The authority citation for part 1778 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 57. Amend § 1778.14 by revising paragraphs (e) and (f) to read as follows:

§ 1778.14 Other considerations.

* * * * *

(e) *Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free work place.* All projects must comply with the requirements set forth in the U.S. Department of Agriculture regulations 2 CFR part 417, 2 CFR part 421, and RD Instruction 1940–M.

(f) *Intergovernmental review.* All projects funded under this part are subject to Executive Order 12372 (3 CFR, 1983 Comp., p. 197), which requires intergovernmental consultation with State and local officials. These requirements are found at 2 CFR part 415, subpart C, ''Intergovernmental Review of Department of Agriculture Programs and Activities'' and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEE LOANS

■ 58. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 59. Amend § 1779.42 by revising paragraph (e) to read as follows:

§ 1779.42 Design and construction requirements.

* * * * *

(e) *Administrative.* When the Agency reviews the preliminary architectural and engineering reports or plans, they must also consider all applicable Federal laws such as the seismic requirements of Executive Order 12699 (55 FR 835, 3 CFR, 1990 Comp., p. 269), the debarment requirements of 2 CFR part 417, and the Copeland Anti-Kickback Act (18 U.S.C. 874).

■ 60. Amend § 1779.63 by adding a sentence to the end of paragraph (b) to read as follows:

§ 1779.69 Loan servicing.

* * * * *

(b) * * * Additionally, when applicable, the lender will require an audit in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 61. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

■ 62. Amend § 1780.1 by adding paragraph (l) and (m) to read as follows:

§ 1780.1 General.

* * * * *

(l) Applicants for grant assistance will be required to comply with the following requirements as applicable:

(1) 2 CFR part 200, as adopted by USDA through 2 CFR part 400, '' Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards''.

(2) 2 CFR part 415—General Program Administrative Regulations.

(3) 2 CFR part 416– General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments.

(4) 2 CFR part 417—Nonprocurement Debarment and Suspension.

(5) 2 CFR part 418—New Restrictions on Lobbying.

(m) Applicants for loan assistance will be required to comply with Subpart F of 2 CFR part 200, ''Audit Requirements.''

■ 63. Amend § 1780.47 by revising paragraphs (d) and (g) as follows:

§ 1780.47 Borrower accounting methods, management reporting and audits.

* * * * *

(d) *Audits.* All audits are to be performed in accordance with the latest revision of the generally accepted government auditing standards (GAGAS), issued by the Comptroller General of the United States. In addition, the audits are also to be performed in accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400. The type of audit each borrower is required to submit will be designated by RUS. Further guidance on preparing an acceptable audit can be obtained from RUS. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits must be performed annually except as allowed under the provisions for biennial audits provided in subpart F of 2 CFR part 200. Audits are to be submitted to the processing office as soon as possible after receipt of the auditor's report but no later than nine months after the end of the audit period

* * * * *

(g) *Substitute for management reports.* When RUS loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State program official may authorize an annual audit to substitute for other management reports if the audit is received within nine months after the end of the audit period.

PART 1782—SERVICING OF WATER AND WASTE PROGRAMS

■ 64. The authority citation for part 1782 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

■ 65. Revise § 1782.7 to read as follows:

§ 1782.7 Grants.

Servicing actions relating to Agency grants are governed by the provisions of several regulations and executive orders, including, but not limited to, 2 CFR part 200 as adopted by 2 CFR part 400, and 2 CFR parts 415, 416, 417, and 418 and Executive Order (E.O.) 12803. Grantees remain responsible for property acquired with grant funds in accordance with terms of a grant agreement and applicable regulations.

■ 66. Revise § 1782.10 to read as follows:

§ 1782.10 Audit requirements.

Audits for loans will be required in accordance with § 1780.47 of this chapter. If the borrower becomes delinquent or is experiencing problems, the servicing official will require an audit or other documentation deemed necessary to resolve the delinquency. The provisions of Subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400, address audit requirements for recipients of Federal assistance.

PART 1783—REVOLVING FUNDS FOR FINANCING WATER AND WASTEWATER PROJECTS (REVOLVING FUND PROGRAM)

■ 67. The authority citation for part 1783 continues to read as follows:

Authority: 7 U.S.C. 1926 (a)(2)(B).

■ 68. Revise § 1783.2 to read as follows:

§ 1783.2 What Uniform Federal Assistance Provisions apply to the Revolving Fund Program?

(a) This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

(b) This program is subject to the uniform administrative requirements that apply to all grants made by USDA to non-profit organizations and that are set forth in 2 CFR part 415.

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVES SERVICE, RURAL UTILITIES SERVICE AND FARM SERVICE AGENCY

PART 1942—ASSOCIATIONS

■ 69. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

■ 70. Amend § 1942.1 by adding paragraph (e) to read as follows:

§ 1942.1 General.

* * * * *

(e) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200 as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

■ 71. Amend § 1942.2 by revising the paragraph (a)(1)(iii) to read as follows:

§ 1942.2 Processing applications.

(a) * * *

(1) * * *

(iii) State intergovernmental review comments and recommendations (clearinghouse comments), as outlined in 2 CFR part 400, if applicable.

* * * * *

■ 72. Amend § 1942.5 by revising paragraph (b)(1)(ii)(B) to read as follows:

§ 1942.5 Application review and approval.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Applicable State Intergovernmental Review comments, if the program or activity has been selected under the State. RD Instruction 1970–I, available in any Rural Development office.

* * * * *

■ 73. Amend § 1942.17 by revising paragraphs (j)(3)(iii) and (n)(2)(xi); adding paragraph (j)(3)(ii)(C); and revising paragraph (q) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(j) * * *

(3) * * *

(ii) * * *

(C) Fidelity bonds must 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.''

(iii) *Insurance.* The following types of coverage must be maintained if appropriate for the type of project and entity involved. Insurance must be in amounts acceptable to the Agency and at least equivalent to coverage for real property and equipment acquired without Federal funds.

* * * * *

(n) * * *

(2) * * *

(xi)(A) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds must be deposited and maintained in insured accounts whenever possible. Funds must be maintained in interest bearing accounts, unless the following apply:

(*1*) The borrower 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 $500 per year on Federal cash balances;

(*3*) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources; and,

(*4*) A foreign government or banking system prohibits or precludes interest bearing accounts.

(B) Interest earned on Federal payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expense.

* * * * *

(q) *Borrower accounting methods, management reporting and audits.* (1) *Annual financial statements.* Borrowers are required to provide the Agency with annual financial statements for the life of the loan as outlined in the Letter of Conditions issued by the Agency. The financial statements are the responsibility of the borrower's governing body. The type of statement required is dependent on the amount of Federal financial assistance received during the borrower's fiscal year. Federal financial assistance includes Federal assistance that a non-Federal entity received or administered during the entity's fiscal year in the form of grants, loans, and loan guarantees. A Federal award is Federal financial assistance a non-Federal entity received directly from Federal awarding agencies or indirectly from pass-through entities. Federal awards expended generally pertain to events that require the non-Federal entity to comply with Federal Statues, regulations, and terms and conditions of federal awards, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to sub-recipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(2) *Method of accounting and preparation of financial statements.* Annual organization-wide financial statements must be prepared on the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP), unless State statute, tribal law or regulatory agencies provide otherwise, or an exception is granted by the Agency. An organization may maintain its accounting records on a basis other than accrual accounting, and make the necessary adjustments so that annual financial statements are presented on the accrual basis.

(3) *Record retention.* Each Applicant will retain all records, books, and supporting material for 3 years after the issuance of the audit or management reports, or for a time period required by other agencies or common business practice, whichever is longer. Upon request, this material will be made available to Rural Development, OIG, USDA, the Comptroller General, or to their assignees.

(4) *Audits.* Any applicant that expends $750,000 or more in Federal financial assistance during their fiscal

year must submit an audit report conducted in accordance with 2 CFR part 200, subpart F, ''Audit Requirements.'' Applicants expending less than $750,000 in Federal financial assistance per fiscal year are exempt from 2 CFR part 200 audit requirements. All audits are to be performed in accordance with the latest revision of the Generally Accepted Government Accounting Standards (GAGAS), developed by the Comptroller General of the United States. Further guidance on preparing an acceptable audit can be obtained from any Agency office. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits should be supplied to the Processing Official within the timeframes stated in paragraph (f) of this section. OMB Circulars and Agency Compliance Supplements are available in any USDA/Agency office or OMB's Web site. Any state, local government, or Indian tribe that is required by constitution or state statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(a). This requirement must still be in effect for the biennial period. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(b). All biennial audits must cover both years within the biennial period.

(5) *Exemption from audits.* Except as noted in 2 CFR 200.503, Relation to other audit requirement, public bodies or nonprofits expending less than $750,000 in Federal awards during its fiscal year, whose payments are current, and are having no signs of operational or financial difficulty may submit a management report. A management report, at a minimum, will include a balance sheet and income and expense statement. Financial information may be reported on Form RD 442–2, ''Statement of Budget, Income and Equity'' and RD Form 442–3, ''Balance Sheet'', or similar. The following management data will be submitted by the borrower to the servicing office. Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(i) *Annual management reports.* Thirty days prior to the beginning of each fiscal year the following will be submitted to the Servicing Official:

(A) One copy of the proposed annual budget. The borrower will submit two copies of Form RD 442–2, or equivalent, Statement of Budget, Income and Equity, Schedule 1, page 1; and Schedule 2, Projected Cash Flow. The only data required at this time is Schedule 1, page 1, Column 3, annual budget, and all of Schedule 2, Projected Cash Flow.

(B) An annual audit report may be submitted in lieu of Forms RD 442–2 and 442–3.

(ii) [Reserved]

(6) *Deadlines for submitting audits and management reports.* In accordance with 2 CFR part 200, audits must be submitted no later than 9 months after the end of the fiscal year or 30 days after the borrower's receipt of the auditor's reports, whichever is earlier. Management reports must be submitted no later than 2 months after the end of the borrower's fiscal year.

(7) *Additional information to be submitted with audits and management reports.* (i) *Insurance.* Agency borrowers will maintain adequate insurance coverage as required by the loan resolution and § 1942.17(j)(3). The servicing official is required to monitor insurance annually after the initial insurance verification.

(ii) *Reserve account(s).* Borrowers will provide documentation that the Agency required reserve account(s) is properly funded;

(iii) *Property tax information.* If applicable, documentation that property taxes have been paid and are current.

(iv) *A list of directors and officers.*

(8) *Quarterly reports.* A quarterly management report will be required for the first full year of operations for new borrowers, and existing borrowers operating a new facility, starting a new type of operation or proposing a significant expansion of an existing facility. Borrowers should submit the following to the Servicing Official:

(i) One copy of Form RD 442–2, or equivalent, Schedule 1, page 1, columns 4–6, as appropriate, and page 2. This information should be received in the Servicing Office 30 days after the end of each of the first three quarters of the fiscal year.

(ii) The Servicing Office may request a borrower experiencing financial or management problems to submit quarterly copies of Form RD 442–2, or equivalent, Schedule 1, pages 1 and 2.

■ 74A. Amend § 1942.18 by revising paragraph (k)(1) to read as follows:

§ 1942.18 Community Facilities—Planning, Bidding, Contracting, Constructing.

* * * * *

(k) * * *

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property, costing in the aggregate not more than the Simplified Acquisition Threshold. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

* * * * *

Subpart B—Housing Application Packaging Grants

■ 74B. Amend § 1944.66 by revising paragraphs (b), (d), (e)(1), (e)(2), and (f) to read as follows:

§ 1944.66 Administrative requirements.

* * * * *

(b) The policies and regulations contained in RD Instruction 1940–Q (available in any Agency office), Departmental Regulation 2400–5, 2 CFR part 200 as adopted by USDA through 2 CFR part 400 apply to grantees under this subpart.

* * * * *

(d) The grantee will retain records for 3 years from the date Standard Form (SF)-269A, ''Financial Status Report (Short Form),'' is submitted. These records will be accessible to RHS and other Federal officials in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(e) * * *

(1) States, State agencies, or units of general local government will complete an audit in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400 and OMB Circular A–128.

(2) Nonprofit organizations will complete an audit in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(f) Performance reports, as required, will be submitted in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

Subpart G—RBEG and Television Demonstration Grants

■ 75. Amend § 1942.304 by adding the definition for ''Conflict of interest'' in alphabetical order to read as follows:

§ 1942.304 Definitions.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that

involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 76. Amend § 1942.310 by revising paragraphs (d), (f), and (i) and adding paragraphs (j) and (k) to read as follows:

§ 1942.310 Other considerations.

* * * * *

(d) *Project Management.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 2 CFR part 200, subpart D, as codified in 2 CFR 400.1 and established Rural Development guidelines.

* * * * *

(f) *Uniform Relocation and Real Property* Acquisition Policies Act. All projects must comply with the requirements set forth in Title 49 CFR part 24, which are the implementing regulations for the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) and are referenced by 7 CFR part 21.

* * * * *

(i) *Close Out.* The award will be closed out in accordance with 2 CFR part 200 as codified in 2 CFR part 400. When the project purpose is for revolving loan funds, the grantee must maintain the fund into perpetuity. Once the grantee has provided loan assistance to projects, in an amount equal to the grant provided by Rural Development, the Agency will no longer consider the eligibility of new projects thereafter financed from the revolving fund as required by § 1942.313(b).

(j) *Intergovernmental Review.* RBE/Television Demonstration grant projects are subject to the provisions of Executive Order 12372 and 2 CFR 415, Subpart C, which requires intergovernmental consultation with State and local officials.

(k) *Conflict of Interest Policy for Non-Federal Entities.* In accordance with 2 CFR 400.2 (b), the non-Federal entities (recipients) must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest.

■ 77. Amend § 1942.311 by revising paragraph (a)(1) to read as follows:

§ 1942.311 Application processing.

(a) * * *

(1) The application review and approval procedures outlined in § 1942.2 will be followed as appropriate. The applicant shall use Standard Form (SF) 424, ''Application for Federal Assistance,'' and SF 424–A, ''Budget Information for Non-Construction Programs,'' and SF 424–B, ''Assurance Agreement for Non-Construction Programs,'' or SF 424–C, ''Budget Information for Construction Programs,'' and SF 424–D, ''Assurance Agreement for Construction Programs,'' as applicable, when requesting financial assistance under this program.

* * * * *

■ 78. Amend § 1942.314 by adding paragraphs (f)(4) and (f)(5) to read as follows:

§ 1942.314 Grants to provide financial assistance to third parties, television demonstration projects, and technical assistance programs.

* * * * *

(f) * * *

(4) Form RD 400–1, ''Equal Opportunity Agreement.''

(5) Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1966).''

* * * * *

■ 79. Amend § 1942.315 by revising paragraph (b) to read as follows:

§ 1942.315 Docket preparation and Letter of Conditions.

* * * * *

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in the Grant Agreement and Departmental Regulations, as currently codified in 2 CFR parts 400, 415, 417, 418, and 421 are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director or other designated Rural Development representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

''This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application.''

''This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $_____.''

''Please complete and return the attached Form RD 1942–46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application.''

Form RD 400–1, ''Equal Opportunity Agreement,'' if applicable.

Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1966).''

■ 80. Amend § 1942.316 by revising the section heading and adding paragraph (d) to read as follows:

§ 1942.316 Grant approval, fund obligation, third party financial assistance and grant servicing.

* * * * *

(d) *Grant servicing.* Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O and the Departmental Grants and Agreements Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421. The only exception is that the delegation of post-award servicing does not require the prior approval of the Administrator.

PART 1944—HOUSING

■ 81. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C 1480.

Subpart I—Self-Help Technical Assistance Grants

■ 82. Amend § 1944.406 by revising paragraph (d) to read as follows:

§ 1944.406 Prohibited use of grant funds.

* * * * *

(d) Paying for training of an employee as authorized by 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 83. Amend § 1944.410 by revising paragraphs (a)(6) and (e)(8) to read as follows:

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

(a) * * *

(6) A proposed budget which will be prepared on SF–424A, ''Budget

Information (Non-Construction Programs)'' will be completed to address applicable assurances as outlined in 2 CFR part 200 as adopted by USDA through 2 CFR part 400. State and local Government will include an assurance that the grantee shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. The State and local governments shall also comply with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

(e) * * *

(8) Indirect or direct cost policy and proposed indirect cost rate developed in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 84. Amend § 1944.411 by revising paragraphs (c) and (e) to read as follows:

§ 1944.411 Conditions for approving a grant.

* * * * *

(c) The grantee furnishes a signed statement that it complies with the requirements of the Departmental Regulations found in 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(d) * * *

(e) The grantee has fidelity bonding as covered in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 if a nonprofit organization or, if a State or local government, to the extent required in 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 85. Amend § 1944.422 by revising the introductory text and paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 1944.422 Audit and other report requirements.

The grantee must submit an audit to the appropriate Rural Development District Office annually (or biennially if a State or local government with authority to do a less frequent audit requests it) and within 90 days of the end of the grantee's fiscal year, grant period, or termination of the grant. The audit, conducted by the grantee's auditors, is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), using the publication ''Standards for Audit of Governmental Organizations, Programs, Activities and Functions'' developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400 and Rural Development requirements as specified in this subpart. Audits of borrower loan funds will be required. The number of borrower accounts audited will be determined by the auditor. In incidences where it is difficult to determine the appropriate number of accounts to be audited, auditors should be authorized by the State Director to audit the lesser of 10 loans or 10 percent of total loans.

(a) *Nonprofit organizations and others.* If determined necessary, these organizations are to be audited in accordance with Rural Development requirements in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. These requirements also apply to public hospitals, public colleges, and universities if they are excluded from the audit requirements of paragraph (b) of this section.

* * * * *

(b) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and 2 CFR part 200 as adopted by USDA through 2 CFR part 400. The grantee will forward completed audits to the appropriate Federal Cognizant agency and a copy to the Rural Development District Director. ''Cognizant agency'' for audits is defined at 2 CFR 200.18 as the Federal agency designated to carry out the responsibilities described in § 200.513 Responsibilities, paragraph (a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site. Within USDA, the OIG shall fulfill cognizant agency responsibilities. Smaller grantees not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that Rural Development provided the major portion of Federal financial assistance, the State Director will contact the appropriate USDA OIG Regional Inspector General. Rural Development and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG.

(1) State and local governments and Indian tribes that receive $25,000 or more a year in Federal financial assistance shall have an audit made in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(2) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

■ 86. Amend § 1944.426 by revising paragraph (c) to read as follows:

§ 1944.426 Grant closeout.

* * * * *

(c) *Grant suspension.* When the grantee has failed to comply with the terms of the agreement, the District Director will promptly report the facts to the State Director. The State Director will consider termination or suspension of the grant usually only after a Grantee has been classified as ''high risk'' in accordance with § 1944.417(b)(2). When the State Director determines that the grantee has a reasonable potential to correct deficiencies the grant may be suspended. The State Director will request written authorization from the National Office to suspend a grantee. The suspension will adhere to 2 CFR part 200 as adopted by USDA through 2 CFR part 400. The grantee will be notified of the grant suspension in writing by the State Director. The State Director will also promptly inform the grantee of its rights to appeal the decision by use of Exhibit B–3 of Subpart B of part 1900 of this chapter.

* * * * *

■ 87. Amend Exhibit A to subpart I of part 1944 by revising paragraph (i) to read as follows:

Exhibit A to Subpart I of Part 1944—Self-Help Technical Assistance Grant Agreement.

* * * * *

(i) Acquisition and disposal of personal, equipment and supplies should comply with Subpart R of 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

■ 88. Amend § 1944.526 by revising paragraph (c)(2) to read as follows:

§ 1944.526 Preapplication procedure.

(c) * * *

(2) Within 30 days of the closing date for receipt of preapplications as published in the **Federal Register**, the State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant(s), including any comments received in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I available in any Rural Development Office and

the comments and recommendations of the County Office(s), District Office(s), and the State Office. The State Office will submit the preapplication(s) in accordance with the annual notice provided for by § 1944.525 (b).

* * * * *

■ 89. Amend § 1944.529 by revising paragraph (b)(9) to read as follows:

§ 1944.529 Project selection.

(b) * * *

(9) Any comments received in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I, available in any Rural Development Office.

* * * * *

■ 90. Amend § 1944.531 by revising paragraph (c)(3) to read as follows:

§ 1944.531 Applications submission.

(c) * * *

(3) Any comments received in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I, available in any Rural Development Office.

* * * * *

■ 91. Amend Exhibit A to subpart K of part 1944 by revising paragraph (Part B)(8)(a), (Part C) (1), and (Part C) (14) to read as follows:

Exhibit A to Subpart K of Part 1944—Grant Agreement—Technical and Supervisory Assistance

Part-B *Terms of agreement.*

* * * * *

(8) * * *

(a) In accordance with Treasury Circular 1075 (fourth revision) Part 205, Chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by Rural Development as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the Grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for State and local governments and 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for nonprofit organizations.

* * * * *

Part—C *Grantee Agrees.*

(1) To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A–102 or Attachment N of 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for State and local governments or nonprofit organizations respectively. ''Personal property'' means property of any kind except real property. It may be tangible—having physical existence—or intangible-having no physical existence, such as patents, inventions, and copyrights. ''Nonexpendable personal property'' means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. ''Expendable personal property'' refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

* * * * *

(14) That the Grantee shall abide by the policies promulgated in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment and other services with Federal grant funds.

* * * * *

Subpart N—Housing Preservation Grants

■ 92–93. Amend § 1944.658 by revising paragraph (a)(3) to read as follows:

§ 1944.658 Applicant eligibility.

(a) * * *

(3) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation, the grant agreement, and 2 CFR part 200 as adopted by USDA through 2 CFR part 400 (available in any Rural Development or its successor agency under Public Law 103–354 office), as appropriate, and comply with the grant agreement and Rural Development or its successor agency under Public Law 103–354 regulations; and

* * * * *

■ 94. Amend § 1944.666 by revising paragraph (e) to read as follows:

§ 1944.666 Administrative activities and policies.

* * * * *

(e) The policies, guidelines and requirements of 2 CFR part 200, as adopted by USDA through 2 CFR part 400, apply to the acceptance and use of HPG funds.

■ 95. Amend § 1944.670 by revising paragraph (a) to read as follows:

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners, owners of rental properties, and co-ops is governed by 2 CFR part 200 as adopted by USDA through 2 CFR part 400. All income during the grant period, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

* * * * *

■ 96. Amend § 1944.676 by revising paragraph (b)(1)(x) to read as follows:

§ 1944.676 Preapplication procedures.

* * * * *

(b) * * *

(1) * * *

(x) A copy of an indirect cost proposal as required in 2 CFR part 200 as adopted by USDA through 2 CFR part 400, when the applicant has another source of federal funding in addition to the Rural Development or its successor agency under Public Law 103–354 HPG program;

* * * * *

■ 97. Amend § 1944.688 by revising paragraph (e) to read as follows:

§ 1944.688 Grant evaluation, closeout, suspension, and termination.

* * * * *

(e) The grantee will have an audit performed upon termination or completion of the project in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

■ 98. Amend § 1944.689 by revising paragraph (a)(3) to read as follows:

§ 1944.689 Long-term monitoring by grantee.

(a) * * *

(3) All requirements noted in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 during the effective period of the grant agreement.

* * * * *

■ 99. Amend Exhibit A of subpart N of part 1944 by revising paragraphs (Part A)(3), (Part B)(9), (Part B)(18)(a)(ii), and (Part C)(13) to read as follows:

Exhibit A to Subpart N of Part 1944—Housing Preservation Grant Agreement

* * * * *

Part A * * *

(3) *Disallowed costs* are those charges to a grant which Rural Development or its successor agency under Public Law 103–354 determines cannot be authorized in accordance with applicable Federal cost principles contained in Treasury Circular 74–4, ''Cost Principles Applicable to Grants and Contracts with State and Local Governments,'' OMB Circular A–87, ''Cost Principles for State and Local Governments,'' OMB Circular A–122, ''Cost Principles for Nonprofit Organizations,'' and other conditions contained in this Agreement and OMB Circular A–102 ''Uniform Requirements

for Grants to State and Local Governments,'' and OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, Uniform Administrative Requirements,'' as appropriate, and 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

* * * * *

Part B * * *

(9) In accordance with Treasury Circular 1075 (fourth revision) part 205, chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by Rural Development or its successor agency under Public Law 103–354 as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated to OMB Circular A–102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A–110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

* * * * *

(18) * * *

(a) * * *

(ii) The grantee will furnish to Rural Development or its successor agency under Public Law 103– 354 within 90 calendar days after the date of completion of the grant an SF–269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

* * * * *

Part C * * *

* * * * *

(13) That the grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, or OMB Circular A–110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

PART 1951—SERVICING AND COLLECTIONS

■ 100. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Insured Business Program Loans and Grants

■ 101. Amend § 1951.215 by revising paragraph (a) introductory text and removing paragraph (a)(3) to read as follows:

§ 1951.215 Grants.

* * * * *

(a) *Applicability of requirements.* Servicing actions relating to Rural Development or its successor agency under Public Law 103–354 grants are governed by the provisions of this subpart, the terms of the Grant Agreement and, if applicable, the provisions of 2 CFR parts 200, 400, 415, 417, 418, and 421.

* * * * *

Subpart R—Rural Development Loan Servicing

■ 102. Add § 1951.872 to read as follows:

§ 1951.872 Other regulatory requirements.

Intergovernmental consultation. The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to Rural Development's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with the requirements set forth in U.S. Department of Agriculture regulations 2 CFR part 415, subpart C, and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

PART 1980—GENERAL

■ 103. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart E—Business and Industrial Loan Program

■ 104. Amend § 1980.445 by revising paragraphs (a) and (e) to read as follows:

§ 1980.445 Periodic financial statements and audits.

* * * * *

(a) *Audited financial statements.* Except as provided in paragraphs (d) and (e) of this section, all borrowers with a total principal and interest loan balance for loans under this subpart, at the end of the borrower's fiscal year, of more than $1 million must submit annual audited financial statements. The audit must be performed in accordance with generally accepted accounting principles (GAAP) and any other requirements specified in this subpart.

* * * * *

(e) *Public bodies and nonprofit corporations.* Notwithstanding other provisions of this section, any public body or nonprofit corporation that receives a guarantee of a loan that meets the thresholds established by 2 CFR part 200, subpart F, as codified by 2 CFR 400.1, must provide an audit for the fiscal year of the borrower in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation required by this paragraph will be considered adequate to meet the requirements of this section for that year.

■ 105. Amend § 1980.451 by revising paragraph (f)(8) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(f) * * *

(8) Intergovernmental consultation should be carried out in accordance with 2 CFR part 415, subpart C, ''Intergovernmental Review of Department of Agriculture Programs and Activities.''

* * * * *

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3570—COMMUNITY PROGRAMS

■ 106. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Community Facilities Grant Program

■ 107. Amend § 3570.51 by revising paragraph (g) and adding paragraph (j) to read as follows:

§ 3570.51 General.

* * * * *

(g). Grants made under this subpart will be administered under, and are subject to, 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as appropriate.

* * * * *

(j). The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2

CFR part 200 on December 26, 2013. In 2 CFR part 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Departments' policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

* * * * *

■ 108–109. Amend § 3570.70 by revising paragraphs (b) and (c) to read as follows:

§ 3570.70 Other considerations.

* * * * *

(b). Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG grants and grantees. See 2 CFR part 180, as implemented by USDA through 2 CFR part 417, and RD Instruction 1940–M for further guidance.

(c). Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 2 CFR part 418 subpart A.

* * * * *

■ 110. Amend § 3570.80 by revising paragraph (c) to read as follows:

§ 3570.80 Grant closing and delivery of funds.

* * * * *

(c) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 as subsequently modified.

* * * * *

■ 111. Amend § 3570.83 by revising paragraph (a) to read as follows:

§ 3570.83 Audits.

(a). An audit will be conducted in accordance with 2 CFR part 200 subpart F, as adopted by USDA through 2 CFR part 400, except as provided in this section. The audit requirements apply only to the years in which grant funds are expended.

* * * * *

■ 112. Revise § 3570.84 to read as follows:

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with RD Instructions 1951–E and 1951–O and 2 CFR part 200 as applicable.

■ 113. Revise § 3570.87 to read as follows:

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable.

■ 114. Revise § 3570. 91 to read as follows:

§ 3570.91 Regulations.

Grants under this part will be in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

■ 115. Add § 3570.92 to read as follows:

§ 3570.92 Grant agreement.

Form RD 3570–3 is a Grant Agreement which contains the procedures for making and servicing grants made under this part. Any property acquired or improved with CFG funds may have use and disposition conditions which apply to the property as provided by 2 CFR 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.

PART 3575—GENERAL

■ 116. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Community Programs Guaranteed Loans

■ 117. Amend § 3575.1 by adding paragraph (c) to read as follows:

§ 3575.1 General.

* * * * *

(c) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR part 400, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Departments' policies and procedures for uniform administrative requirement, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

■ 118. Amend § 3575.2 by revising the definition of ''State'' to read as follows:

§ 3575.2 Definitions.

* * * * *

State. Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and an agency or instrumentality thereof exclusive of local governments.

* * * * *

■ 119. Amend § 3575.27 by revising paragraph (b) to read as follows:

§ 3575.27 Eligible lenders.

* * * * *

(b) *Conflict of interest.* The lender and borrower must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award or administration of a Federal award if they have a real or apparent conflict of interest. Such a conflict of interest 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, has a financial or other interest in or a tangible personal benefit from a non-Federal entity considered for a Federal award. The lender 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 must provide for disciplinary actions to be applied for violations of such standards. If the lender has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the lender or borrower, written standards of conduct covering organizational conflict of interest must also be maintained. Organizational conflicts of interest means that because of the relationships with a parent company, affiliate, or subsidiary organization, the lender or borrower is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization. The lender or borrower must disclose such business or ownership relationships in writing. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

* * * * *

■ 120. Revise § 3575.37 to read as follows:

§ 3575.37 Insurance and fidelity bonds.

The lender must provide evidence that the borrower has adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage must be maintained for the life of the loan and is subject to Agency review and approval. Insurance is required in amounts at least equal to coverage for real property and equipment that was obtained without an Agency guarantee.

■ 121. Amend § 3575.64 by adding paragraph (f) to read as follows:

§ 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

* * * * *

(f) *Cancellation of obligation.* If the conditions for the loan are rejected, cannot be met after completion of any appeal, or funds are, in whole or in part, no longer needed, the State Director will cancel the obligation. This can be done using the State Office terminal. Requests for partial cancellation must be in writing and include a reason for the partial cancellation, the effective date, and the portion to be cancelled.

* * * * *

CHAPTER XLII—RURAL BUSINESS–COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4274—DIRECT AND INSURED LOANMAKING

■ 122. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program

■ 123. Amend § 4274.302 by adding a definition for ''Conflict of interest'' in alphabetical order to read as follows:

§ 4274.302 Definitions and abbreviations.

* * * * *

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 124. Amend § 4274.338 by revising paragraphs (b)(4)(i)(B) and (b)(4)(ii)(C) to read as follows:

§ 4274.338 Loan Agreements between the Agency and the intermediary.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by 2 CFR part 200, subpart F, as codified in 2 CFR 400.1, should submit audits made in accordance with that regulation.

(ii) * * *

(C) The reports will be submitted through the Agency approved electronic system and includes information on the intermediary's lending activity, income and expenses, financial condition and a summary of applicable information of the ultimate recipients the intermediary has financed.

* * * * *

■ 125. Amend § 4274.343 by revising paragraph (a)(13) to read as follows:

§ 4274.343 Applications.

(a) * * *

(13) A statement on a form provided by the Agency (Appendix B to Part 418—Disclosure Form to Report Lobbying) regarding lobbying, as required by 2 CFR part 418.

* * * * *

PART 4279—GUARANTEED LOANMAKING

■ 126. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

Subpart A—General

■ 127. Amend § 4279.43 by revising paragraph (g)(1)(v) to read as follows:

§ 4279.43 Certified Lender Program.

* * * * *

(g) * * *

(1) * * *

(v) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C; and

* * * * *

■ 128. Revise § 4279.71 to read as follows:

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F, as codified by 2 CFR 400.1, must provide an audit for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with paragraph will be considered adequate to meet the audit requirements of the B&I program for that year.

Subpart B—Business and Industry Loans

■ 129. Amend § 4279.161 by revising paragraph (b)(5) to read as follows:

§ 4279.161 Filing preapplications and applications.

* * * * *

(b) * * *

(5) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C.

* * * * *

Subpart C—Biorefinery Assistance Loans

■ 130. Amend § 4279.261 by revising paragraph (l) to read as follows:

§ 4279.261 Application for loan guarantee content.

* * * * *

(l) *Intergovernmental consultation.* Intergovernmental consultation comments in accordance with RD Instruction 1940–J and 7 CFR part 415, subpart C.

* * * * *

PART 4280—LOANS AND GRANTS

■ 131. The authority citation for part 4280 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 940c; 7 U.S.C. 8107.

Subpart A—Rural Economic Development Loan and Grant Programs

■ 132. Amend § 4280.3 by adding a definition of ''Conflict of interest'' in alphabetical order to read as follows:

§ 4280.3 Definitions.

* * * * *

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 133. Revise § 4280.19 to read as follows:

§ 4280.19 REDG Grants.

Intermediaries receiving Grants must partially finance a Revolving Loan Fund that the Intermediary will operate and administer, by providing supplemental funds of at least 20 percent of the Grant. Grants are subject to 2 CFR parts 200, 400, 415, 417, 418, 421 as applicable.

■ 134. Amend § 4280.23 by revising paragraph (f) to read as follows:

§ 4280.23 Requirements for lending from Revolving Loan Fund.

* * * * *

(f) *Termination for cause.* Rural Development will terminate the Fund and require repayment of the Grant funds if Rural Development determines that the Fund is not being operated according to the approved Revolving Loan Fund Plan, this subpart, or for other good cause determined by Rural Development, such as questionable prepayment of initial loans. As applicable, Rural Development will follow remedies for noncompliance, closeout and post-closeout adjustments and continuing responsibilities in accordance with 2 CFR 200.338–200.344 as codified by 2 CFR 400.1.

* * * * *

■ 135. Amend § 4280.30 by revising paragraph (a) to read as follows:

§ 4280.30 Restrictions on the use of REDL or REDG funds.

(a) *Conflict of interest.* The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted. The intermediary must also disclose in writing any potential conflicts of interest to the USDA awarding agency and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest in accordance with 2 CFR 400.2(b).

* * * * *

■ 136. Amend § 4280.36 by revising paragraphs (f), (g), (h), (i) and (n) to read as follows:

§ 4280.36 Other laws that contain compliance requirements for these Programs.

* * * * *

(f) *Drug-free workplace.* Grants made under these Programs are subject to the requirements contained in 2 CFR part 421 which implements the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101 *et seq.*). An Intermediary requesting a REDG Grant will be required to certify that it will establish and make a good faith effort to maintain a drug-free workplace program.

(g) *Debarment and suspension.* The requirements of 2 CFR part 180 and Departmental Regulations 2 CFR part 417, Nonprocurement Debarment, and Suspension are applicable to these Programs.

(h) *Intergovernmental review of Federal programs.* These Programs are subject to the requirements of Executive Order 12372 (3 CFR 1982 Comp., p. 197) and 2 CFR part 415, subpart C, which implements Executive Order 12372. Proposed Projects are subject to the State and local government review process contained in 2 CFR part 415, subpart C.

(i) *Restrictions on lobbying.* The restrictions and requirements imposed by 31 U.S.C. 1352, and 2 CFR part 418, are applicable to these Programs.

* * * * *

(n) *Audits.* These Programs are subject to 2 CFR part 200, subpart F, as codified in 2 CFR part 400.1.

* * * * *

■ 137. Amend § 4280.50 by revising paragraphs (c) introductory text and (c)(2) to read as follows:

§ 4280.50 Disbursement of Zero-Interest Loan funds.

* * * * *

(c) For a REDG loan, Rural Development will disburse Grant funds to the Intermediary in accordance with 2 CFR 200 as adopted by USDA in 2 CFR part 400 as applicable. Specifically, Rural Development will disburse the Grant funds in advance if the following requirements are met:

* * * * *

(2) The management system of the Intermediary meets the requirements of 2 CFR part 200 as adopted by USDA in 2 CFR part 400, as applicable;

* * * * *

■ 138. Amend § 4280.55 by revising paragraph (c) to read as follows:

§ 4280.55 Monitoring responsibilities.

* * * * *

(c) Rural Development will review and monitor Grants in accordance with 2 CFR part 200, as adopted by USDA in 2 CFR parts 400, 415, 417, 418, and 421 as applicable.

* * * * *

■ 139. Amend § 4280.56 by revising paragraphs (a) introductory text, (b) and (c) to read as follows:

§ 4280.56 Submission of reports and audits.

* * * * *

(a) In addition to any reports and audits required by 2 CFR part 200 and Subpart F as adopted by USDA in 2 CFR part 400, the Intermediary must submit the following monitoring reports to Rural Development:

* * * * *

(b) If the Intermediary does not have an existing loan with RUS, the Intermediary will submit a copy of its annual audit to Rural Development within 90 days of its completion. All REDL audits must be conducted in accordance with Generally Accepted Government Auditing Standards or Generally Accepted Accounting Principles and REDG audits in accordance with 2 CFR part 200 as adopted by USDA in 2 CFR part 400.

(c) Rural Development may require Ultimate Recipients that receive loans financed with Grant funds provided under the REDG Program to submit annual audits to comply with Federal audit regulations. In accordance with 2 CFR part 200, as adopted by USDA in 2 CFR part 400, Ultimate Recipients that are nonprofit entities, or a State or local government, may be required to submit an audit subject to the threshold established in 2 CFR part 200, as adopted by in 2 CFR part 400.

Subpart B—Rural Energy for America Program

■ 140. Amend § 4280.103 by revising the definition of ''Departmental regulations'' to read as follows:

§ 4280.103 Definitions.

* * * * *

Departmental regulations. The Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, 421,.

* * * * *

Subpart D—Rural Microentrepreneur Assistance Program

■ 141. Amend § 4280.302 by adding the definition of ''Conflict of interest'' in alphabetical order to read as follows:

§ 4280.302 Definitions and abbreviations.

* * * * *

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

■ 142. Amend § 4280.311 by revising paragraph (h)(1)(i), removing paragraph (h)(1)(ii), and redesignating paragraph (h)(1)(iii) as paragraph (h)(1)(ii) to read as follows:

§ 4280.311 Loan provisions for Agency loans to microlenders.

* * * * *

(h) * * *

(1) * * *

(i) Quarterly reports, using an Agency-approved automation system, containing such information as the Agency may require, and in accordance with 2 CFR part 200 as adopted by USDA in 2 CFR part 400, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made. At a minimum, these reports must identify each microborrower under this program and should include a discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as provided in the application package; and

* * * * *

■ 143. Amend § 4280.320 by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows and remove (a)(1)(iii):

§ 4280.320 Grant administration.

* * * * *

(a) * * *

(1) * * *

(i) A program performance report required by 2 CFR part 200 as adopted by USDA in 2 CFR part 400. This report will include information on the microlender's technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information; and

(ii) As appropriate, SF–270.

* * * * *

■ 144. Amend § 4280.321 by revising paragraph (a) to read as follows:

§ 4280.321 Grant and loan servicing.

* * * * *

(a) *Grants.* Grants will be serviced in accordance with the Department of Agriculture regulations including, but not limited to 7 CFR part 1951, subparts E and O and 2 CFR parts 400, 415, 417, 418, and 421; and

* * * * *

■ 145. Amend § 4280.323 by revising paragraph (m) to read as follows:

§ 4280.323 Ineligible microloan purposes and uses.

* * * * *

(m) Any lobbying activities as described in 2 CFR part 418.

* * * * *

PART 4284—GRANTS

■ 146. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart F also issued under 7 U.S.C. 1932(e). Subpart G also issued under 7 U.S.C. 1926(a)(11). Subpart J also issued under 7 U.S.C. 1621 note. Subpart K also issued under 7 U.S.C. 1621 note.

Subpart A—General Requirements for Cooperative Services Grant Program

■ 147. Amend § 4284.3 by removing the defi1nition ''Agriculture Producer Group,'' adding the definition ''Conflict of Interest'' in alphabetical order, revising the definition ''Matching Funds,'' and removing the definition ''Emerging Markets,'' to read as follows:

§ 4284.3 Definitions.

* * * * *

Conflict of interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. In cases of tribally-owned businesses, to avoid a conflict of interest, any business assisted by a tribe must be held through a separate entity, such as a tribal corporation. The separate entity may be owned by the tribe and distribute profits to the tribe. However, the entity's governing board must be independent from the tribal government and be elected or appointed for a specific time period. These board members must not be subject to removal without cause by the tribal government. The entity's board members must not, now or in the future, make up the majority of members of the tribal council or be members of the tribal council or other governing board of the tribe.

* * * * *

Matching Funds—Cash or confirmed funding commitments from non-Federal sources unless otherwise provided by law. Unless otherwise provided, in-kind contributions that conform to the provisions of 2 CFR part 200 as adopted by USDA in 2 CFR part 400 can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space. Matching funds must be provided in advance of grant funding, such that for every dollar of grant that is advanced, not less than the pro-rata portion of matching funds shall have been expended prior to submitting the request for reimbursement. Matching

funds are subject to the same use restrictions as grant funds.

* * * * *

■ 148. Revise § 4284.8 to read as follows:

§ 4284.8 Grant approval and obligation of funds.

The following statement will be entered in the comment section of the Request for Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in the applicable 7 CFR part 4284 and the Grants and Agreements Departmental Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421, in effect on the date of grant approval, and the approved Letter of Conditions.

■ 149. Revise § 4284.9 to read as follows:

§ 4284.9 Grant disbursement.

The Agency will determine, based on 2 CFR part 200 as adopted by USDA in 2 CFR part 400 whether disbursement of a grant will be by advance or reimbursement.

■ 150. Amend § 4284.11 by revising paragraphs (a) and (b) to read as follows:

§ 4284.11 Award requirements.

* * * * *

(a) Enter into an Agency-approved grant agreement with RBS;

(b) Disclose in writing any potential conflicts of interest and maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest in accordance with 2 CFR 400.2;

* * * * *

■ 151. Amend § 4284.12 by revising paragraph (a) to read as follows:

§ 4284.12 Reporting requirements.

* * * * *

(a) A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end as identified in the grant agreement or applicable program attachment. Reports are due 30 days after the reporting period ends. Failure to submit the required reports within the specified time frame is considered cause for suspension or termination of the grant.

* * * * *

■ 152. Revise § 4284.14 to read as follows:

§ 4284.14 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subparts E and O and the Departmental Grants and Agreements Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421. The only exception is that the delegation of post-award servicing does not require the prior approval of the Administrator. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

■ 153. Amend § 4284.16 by revising paragraph (c) to read as follows:

§ 4284.16 Other considerations.

* * * * *

(c) *Other USDA regulations.* The grant programs under this part are subject to the provisions of the following regulations, as applicable:

(1) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(2) 2 CFR part 415, General Program Administrative Regulations;

(3) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(4) 2 CFR part 418, New Restrictions on Lobbying; and

(5) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance).

■ 154. Revise § 4284.18 to read as follows:

§ 4284.18 Audit requirements.

Grantees must comply with the audit requirements of 2 CFR part 200 as adopted by USDA in 2 CFR part 400. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

Subpart G—Rural Business Opportunity Grants

■ 155. Amend § 4284.630 by revising paragraph (c) to read as follows:

§ 4284.630 Other considerations.

* * * * *

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable;

(1) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(2) 2 CFR part 415, General Program Administrative Regulations;

(3) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(4) 2 CFR part 418, New Restrictions on Lobbying; and

(5) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance).

■ 156. Amend § 4284.638 by revising paragraph (a)(2)(vi) to read as follows:

§ 4284.638 Application processing.

(a) * * *

(2) * * *

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372 and 2 CFR part 415, subpart C.

* * * * *

■ 157. Revise § 4284.647 to read as follows:

§ 4284.647 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request For Obligation of Funds, which must be signed by the grantee:

The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 7 CFR part 4284, subparts A and G, and the Grants and Agreements Departmental Regulations as currently codified in 2 CFR parts 400, 415, 417, 418, and 421, in effect on the date of grant approval; and the approved Letter of Conditions.

(b) The Agency and the grantee must enter into an Agency-approved grant agreement prior to the advance of funds.

■ 158. Revise § 4284.648 to read as follows:

§ 4284.648 Fund disbursement.

The Agency will determine, based on 2 CFR part 200 as adopted by USDA in 2 CFR part 400, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement, (available in any Agency office) must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

■ 159. Revise § 4284.657 to read as follows:

§ 4284.657 Audit requirements.

Grantees must provide an annual audit in accordance with 2 CFR part 200, as adopted by USDA in 2 CFR part 400. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

Subpart J—Value-Added Producer Grant Program

■ 160. Amend § 4284.902 by revising the definition for ''Departmental regulations'' to read as follows:

§ 4284.902 Definitions.

* * * * *

Departmental regulations. The Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

* * * * *

■ 161. Revise § 4284.908 to read as follows:

§ 4284.908 Compliance with other regulations.

(a) *Departmental regulations.* Applicants must comply with the Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

(b) *Cost principles.* Applicants must comply with the applicable cost principles found in 2 CFR part 200, as adopted by USDA in 2 CFR part 400 and in 48 CFR 31.2.

(c) *Definitions.* If a term is defined differently in the Departmental Regulations, 2 CFR part 200, or 48 CFR 31.2 and in this subpart, such term shall have the meaning as found in this subpart.

■ 162. Amend § 4284.921 by revising paragraph (a) to read as follows:

§ 4284.921 Ineligible applicants.

(a) Consistent with the Departmental regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension,'' and 2 CFR part 180, as adopted by USDA in 2 CFR part 417.

* * * * *

■ 163. Amend § 4284.924 by revising paragraph (j) to read as follows:

§ 4284.924 Ineligible uses of grant and matching funds.

* * * * *

(j) Fund any activities prohibited by the Departmental Regulations, 2 CFR part 200, as adopted by USDA in 2 CFR part 400 and 48 CFR 31.2.

* * * * *

PART 4285—COOPERATIVE AGREEMENTS

■ 164. The authority citation for part 4285 continues to read as follows:

Authority: 7 U.S.C. 1623; Public Law 103–111, 107 Stat. 1046; 7 U.S.C. 2201; USDA Secretary's Memorandum 1020–39, dated September 30, 1993; and Public Law 103–211, 108 Stat. 3.

Subpart A—Federal-State Research on Cooperatives Program

■ 165. Amend § 4285.81 by revising paragraph (a) to read as follows:

§ 4285.81 Cooperative agreement awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the Grants and Agreements regulations of the Department of Agriculture as currently codified in 2 CFR parts 400, 415, 417, 418, and 421.

* * * * *

■ 166. Amend § 4285.93 by revising paragraphs (e), (f), (g), (h), (i), (j), and (k) to read as follows:

§ 4285.93 Other Federal statutes and regulations that apply.

* * * * *

(e) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(f) 2 CFR part 415, General Program Administrative Regulations;

(g) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(h) 2 CFR part 418, New Restrictions on Lobbying;

(i) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance);

(j) 7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions; 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

(k) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

■ 167. Revise § 4285.94 to read as follows:

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award and audit requirements of 2 CFR part 200, as adopted by USDA in 2 CFR part 400 apply.

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (''RBIC'') PROGRAM

■ 168. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2009cc *et seq.*

Subpart B—Definition of Terms Used in Part 4290

■ 169. Amend § 4290.50 by adding the definition for ''Conflict of interest'' in alphabetical order to read as follows:

§ 4290.50 Definition of terms.

* * * * *

Conflict of interest means a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or a tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members.

* * * * *

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

■ 170. Amend § 4290.600 by revising paragraph (d) to read as follows:

§ 4290.600 General requirement for RBIC to maintain and preserve records.

* * * * *

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in 2 CFR part 200, as adopted by USDA in 2 CFR part 400.

■ 171. Amend § 4290.660 by revising paragraph (e) to read as follows:

§ 4290.660 Other items required to be filed by RBIC with the Secretary.

* * * * *

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in 2 CFR part 200, subpart D, as codified in 2 CFR 400.1 and any grant award document executed between you and the Secretary.

* * * * *

Subpart M—Miscellaneous

■ 172. Amend § 4290.1940 by revising paragraphs (a) and (f) to read as follows:

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review.* To the extent applicable to this part, the Secretary will comply with 2 CFR part 415, subpart C, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

* * * * *

(f) *Conflict of interest.* To the extent applicable to this part, the Secretary will comply with 2 CFR 400.2, subpart D of 7 CFR part 1900, and RD Instruction 2045–BB. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

* * * * *

Jon M. Holladay,

Chief Financial Officer.

Department of State

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR Chapter VI and 22 CFR Chapter I are amended as follows:

Title 2—Grants and Agreements

CHAPTER VI—DEPARTMENT OF STATE

■ 1. Part 600 is added to Title 2, Chapter XI of the Code of Federal Regulations to read as follows:

PART 600—THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

600.101 Applicability.
600.205 Federal awarding agency review of risk posed by applicants.
600.315 Intangible property.
600.407 Prior written approval (prior approval).

Authority: 5 U.S.C. 301; 22 U.S.C 2651a, 22 U.S.C. 2151, 22 U.S.C. 2451, 22 U.S.C. 1461, 2 CFR part 200.

§ 600.101 Applicability.

Under the authority listed above, the Department of State adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for:

(a) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 (Subparts A through F) shall apply to all non-Federal entities, except as noted below.

(b) Subparts A through E of 2 CFR part 200 shall apply to all foreign organizations not recognized as Foreign Public Entities and Subparts A through D of 2 CFR part 200 shall apply to all U.S. and foreign for-profit entities, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31 Contract Cost Principles and Procedures takes precedence over the cost principles in Subpart E for Federal awards to U.S. and foreign for-profit entities. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

§ 600.205 Federal awarding agency review of risk posed by applicants.

Use of 2 CFR 200.205 (the DOS review of risk posed by applicants) is required for all selected competitive and non-competitive awards.

§ 600.315 Intangible property.

If the DOS obtains research data solely in response to a FOIA request, the DOS may charge the requester fees consistent with the FOIA and applicable DOS regulations and policies.

§ 600.407 Prior written approval (prior approval).

The non-Federal entity must seek the prior written approval for indirect or special or unusual costs prior to incurring such costs where DOS is the cognizant agency.

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

PART 135—[REMOVED]

■ 2. 22 CFR part 135 is removed.

PART 145—[REMOVED]

■ 3. 22 CFR part 145 is removed.

Corey Rindner,

Procurement Executive.

Agency for International Development

For the reasons stated in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below Title 2, Chapter VII and Title 22, Chapter II of the Code of Federal Regulations are amended as follows:

Title 2—Grants and Agreements

CHAPTER VII—AGENCY FOR INTERNATIONAL DEVELOPMENT

■ 1. Part 700 is added to read as follows:

PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

Subpart A—Acronyms and Definitions

700.1 Definitions

Subpart B—General Provisions

700.2 Adoption of 2 CFR part 200
700.3 Applicability
700.4 Exceptions
700.5 Supersession

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

700.6 Metric system of measurement
700.7 Advance Payment

Subpart D—Post Federal Award Requirements

700.8 Payment.
700.9 Property standards.
700.10 Cost sharing or matching.
700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
700.12 Contract provisions.
700.13 Additional Provisions for Awards to Commercial Organizations.

Remedies for Noncompliance

700.14 Termination.
700.15 Disputes.

USAID-Specific Requirements

700.16 Marking.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat 445, (22 U.S.C. 2381) as amended, E.O. 12163, Sept 29, 1979, 44 FR 56673; 2 CFR 1979 Comp., p. 435.

Subpart A—Acronyms and Definitions

§ 700.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

(a) *Activity* mean a set of actions through which inputs—such as commodities, technical assistance, training, or resource transfers—are mobilized to produce specific outputs, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. Activities are undertaken to achieve objectives that have been formally approved and notified to Congress.

(b) *Agreement Officer* means a person with the authority to enter into, administer, terminate and/or closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term ''Agreement Officer'' includes persons warranted as ''Grant Officers.'' It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

(c) *Apparently successful applicant(s)* means the applicant(s) for USAID funding recommended for an award after technical evaluation, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. Apparently successful applicants will be requested by the Agreement Officer to submit a Branding Strategy and Marking Plan. Apparently successful applicant status confers no right and constitutes no USAID commitment to an award, which still must be executed by the Agreement Officer.

(d) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants, cooperative agreements 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.

(e) *Branding strategy* means a strategy the apparently successful applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, describing how the program, project, or activity is named and positioned, as well as how it is promoted and communicated to beneficiaries and cooperating country citizens. It identifies all donors and explains how they will be acknowledged. A Branding Strategy is required even if a Presumptive Exception is approved in the Marking Plan.

(f) *Commodities* mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use in administration of the USAID funded grant, cooperative agreement, or other agreement or subagreement.

(g) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which USAID sponsorship ends.

(h) *Marking plan* means a plan that the apparently successful applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity. Recipients may request approval of Presumptive Exceptions to marking requirements in the Marking Plan.

(i) *Program* mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

(j) *Public communications* are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and the like.

(k) *Suspension* means an action by USAID that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award. Suspension of an award is a separate action from suspension under USAID regulations implementing E.O's 12549 and 12689, ''Debarment and Suspension.'' See 2 CFR part 780.

(l) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(m) *USAID* means the United States Agency for International Development.

(n) *USAID Identity* (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is ''from the American people.'' In exceptional circumstances, upon a written determination by the USAID Administrator, the definition of the USAID Identity may be amended to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency federal initiative that requires consistent and uniform branding and marking by all participating agencies. The USAID Identity (including any required presidential initiative or related identity) is available on the USAID Web site at *http://www.usaid.gov/branding* and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

Subpart B—General Provisions

§ 700.2 Adoption of 2 CFR part 200.

Under the authority listed above the Agency for International Development adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by this part, as the Agency for International Development (USAID) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part.

§ 700.3 Applicability.

Uniform administrative requirements and cost principles (Subparts A through E of 2 CFR part 200 as supplemented by this part) apply to for-profit entities.

§ 700.4 Exceptions.

(a) Consistent with 2 CFR 200.102(b):

(1) Exceptions on a case-by-case basis for individual non-Federal entities may

be authorized by USAID's Senior Deputy Assistant Administrator, Bureau for Management, except where otherwise required by law or where OMB or other approval is expressly required by this Part. No case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements of this Part.

(2) USAID's Senior Deputy Assistant Administrator, Bureau for Management is also authorized to approve exceptions, on a class or an individual case basis, to USAID program specific assistance regulations other than those which implement statutory and executive order requirements.

(3) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, required by Federal statutes or regulations except for the requirements in Subpart F—Audit Requirements of this part. A Federal awarding agency may apply less restrictive requirements when making awards at or below the simplified acquisition threshold, or when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of this part, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part.

§ 700.5 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 22 of the Code of Federal Regulations: 22 CFR part 226, ''Administration of Assistance Awards To U.S. Non-Governmental Organizations.''

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 700.6 Metric system of measurement.

(a) 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.

(b) Wherever measurements are required or authorized, they must be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the agreement officer in writing when it has been found that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, measurements may be expressed in both the metric and the traditional equivalent units, provided the metric units are listed first.

§ 700.7 Advance payment.

(a) Advance payment mechanisms include, but are not limited to, Letter of Credit, Treasury check and electronic funds transfer and should comply with applicable guidance in 31 CFR part 208.

Subpart D—Post Federal Award Requirements

§ 700.8 Payment.

(a) Use of resources before requesting advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. This paragraph is not applicable to such earnings which are generated as foreign currencies.

(b) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(1) Except for situations described in paragraph (b)(2) of this section, USAID does not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for receipt, obligation and expenditure of funds.

(2) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

§ 700.9 Property standards.

(a) *Real property.* Unless the agreement provides otherwise, title to real property will vest in accordance with 2 CFR 200.311.

(b) *Equipment.* Unless the agreement provides otherwise, title to equipment will vest in accordance with 2 CFR 200.313.

§ 700.10 Cost sharing or matching.

Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which would have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

§ 700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) 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. To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient must to the maximum extent possible provide the following information to the Office of Small Disadvantaged Business Utilization (OSDBU), USAID Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of the simplified acquisition threshold:

(1) Brief general description and quantity of goods or services;

(2) Closing date for receiving quotations, proposals or bids; and

(3) Address where solicitations or specifications can be obtained.

(b) [Reserved]

§ 700.12 Contract provisions.

(a) The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

(b) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by the non-Federal entity must include a provision to the effect that the non-Federal Entity, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, must 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.

§ 700.13 Additional Provisions for Awards to Commercial Organizations.

(a) This paragraph contains additional provisions that apply to awards to commercial organizations. These provisions supplement and make exceptions for awards to commercial organizations from other provisions of this part.

(1) Prohibition against profit. No funds will be paid as profit to any non-Federal entity that is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

(2) [Reserved]

(b) [Reserved]

Remedies for Noncompliance

§ 700.14 Termination.

If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is put into effect and the situation causing the suspension continues for 60 calendar days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

§ 700.15 Disputes.

(a) Any dispute under or relating to a grant or agreement will be decided by the USAID Agreement Officer. The Agreement Officer must furnish the recipient a written copy of the decision.

(b) Decisions of the USAID Agreement Officer will be final unless, within 30 calendar days of receipt of the decision, the recipient appeals the decision to USAID's Senior Deputy Assistant Administrator, Bureau for Management. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review of the record by the USAID's Senior Deputy Assistant Administrator, Bureau for Management, the recipient will be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Senior Deputy Assistant Administrator, Bureau for Management, will be final.

USAID—Specific Requirements

§ 700.16 Marking.

(a) USAID policy is that all programs, projects, activities, public communications, and commodities, specified further at paragraphs (c)–(f) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward must be marked appropriately overseas with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's or any other third party's identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) To ensure that the marking requirements ''flow down'' to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards are required to include a USAID-approved marking provision in any USAID funded subaward, as follows: As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity.

(b) Subject to § 700.15 (a), (h), and (j), program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), must be marked with the USAID Identity. Temporary signs or plaques should be erected early in the construction or implementation phase. When construction or implementation is complete, a permanent, durable sign, plaque or other marking must be installed.

(c) Subject to § 700.15 (a), (h), and (j), technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID must be marked with the USAID Identity.

(1) Any ''public communications'' as defined in § 700.1, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient must provide the Agreement Officer's Representative (AOR) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient must submit one electronic and/or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(d) Subject to § 700.15(a), (h), and (j), events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, must be marked appropriately with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients are encouraged otherwise to acknowledge USAID and the American people's support.

(e) Subject to § 700.15(a), (h), and (j), all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, must be marked with the USAID Identity.

(f) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Branding Strategy, defined in § 700.1. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer will review for adequacy the proposed Branding Strategy, and will negotiate, approve and include the Branding Strategy in the award. Failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award.

(g) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Marking Plan, defined in § 700.1. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (h) of this

section. All estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and the like, must be included in the total cost estimate of the grant or cooperative agreement or other assistance award, and are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer will review for adequacy the proposed Marking Plan, and will negotiate, approve and include the Marking Plan in the award. Failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files. Agreement Officer's Representatives will be assigned responsibility to monitor marking requirements on the basis of the approved Marking Plan.

(h) *Presumptive exceptions:* (1) The above marking requirements in § 700.15(a) through (e) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government ''ownership'' of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as ''by'' or ''from'' a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) These exceptions are presumptive, not automatic and must be approved by the Agreement Officer. Apparently successful applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(i) In cases where the Marking Plan has not been complied with, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated non-compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.338 through 2 CFR 200.342, and 2 CFR 700.13.

(j)(1) USAID Principal Officers, defined for purposes of this provision at § 700.1, may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity, or in exceptional circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the AOR. No marking is required while a waiver determination is pending. The waiver determination on safety or security grounds must be made in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, as well as any information supplied by the AOR or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers ''flow down'' to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers' determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity.* Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance as defined in 2 CFR 200.77 but before closeout as defined in 2 CFR 200.16., the USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the date of completion of the affected programs, projects, activities, public communications or commodities.

(k) The USAID Identity and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward must be followed when applying for reimbursement of additional marking costs.

Title 22—Foreign Relations

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT

PART 226—[REMOVED]

■ 1. Remove part 226.

Angelique M. Crumbly,
Agency Regulatory Official.

Department of Veterans Affairs

For the reasons set out in the preamble, under the authority of 5 U.S.C. 301; 38 U.S.C. 501, the Department of Veterans Affairs amends 2 CFR part 802 and 38 CFR parts 41 and 43 as follows:

Title 2—Grants and Agreements

CHAPTER VIII—DEPARTMENT OF VETERANS AFFAIRS

■ 1. Add 2 CFR part 802 to read as follows:

PART 802—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 38 U.S.C. 501, 2 CFR part 200, and as noted in specific sections.

§ 802.101 Applicable regulations.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Department of Veterans Affairs.

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS

PART 41—[REMOVED]

■ 1. Remove Part 41.

PART 43—[REMOVED]

■ 2. Remove Part 43.

Jose D. Riojas,
Chief of Staff.

Department of Energy

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter IX and 10 CFR chapters II and III are amended as follows:

■ 1. Part 910 of Title 2, Chapter IX of the Code of Federal Regulations is added to read as follows:

PART 910—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.
910.120 Adoption of 2 CFR part 200.
910.122 Applicability.
910.124 Eligibility.
910.126 Competition.
910.128 Disputes and appeals.
910.130 Cost sharing (EPACT).
910.132 Research misconduct.

Subpart C [Reserved]

Subpart D—Post Award Federal Requirements for For-Profit Entities

910.350 Applicability of 2 CFR part 200.
910.352 Cost principles.
910.354 Payments.
910.356 Audits.
910.358 Profit or fee for SBIR/STTR.
910.360 Real property and equipment.
910.362 Intellectual property.

Appendix A to Subpart D—Patents and Data Provisions for For-Profit Organizations

Subpart E—Cost Principles

910.401 Application to M&O's.

Subpart F—Audit Requirements for For-Profit Entities

General

910.500 Purpose.

Audits

910.501 Audit requirements.
910.502 Basis for determining DOE awards expended.
910.503 Relation to other audit requirements.
910.504 Frequency of audits.
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Auditees

910.508 Auditee responsibilities.
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910.510 Financial statements.
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Federal Agencies

910.513 Responsibilities.

Auditors

910.514 Scope of audit.
910.515 Audit reporting.
910.516 Audit findings.
910.517 Audit documentation.
910.518 Major program determination. (Not applicable).
910.519 Criteria for Federal program risk.
910.520 Criteria for a low-risk auditee.

Management Decisions

910.521 Management decision.

Authority: 42 U.S.C. 7101, *et seq.;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.;* 2 CFR part 200.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 910.120 Adoption of 2 CFR part 200.

(a) Under the authority listed above, the Department of Energy adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the following additions. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The additions include: Expanding the definition of non-Federal entity for DOE to include For-profit entities; adding back additional coverage from 10 CFR part 600 required by DOE statute; adding back coverage specific for For-Profit entities which existed in 10 CFR part 600 which still applies.

§ 910.122 Applicability.

(a) For DOE, unless otherwise noted in Part 910, the definition of Non-Federal entity found in 2 CFR 200.69 is expanded to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

§ 910.124 Eligibility.

(a) *Purpose and scope.* This section implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

(b) *Definitions.* The definitions in Subpart A of 2 CFR part 200, including the definition of the term ''Federal financial assistance,'' are applicable to this section. In addition, as used in this section:

Act means the Energy Policy Act of 1992.

Company means any business entity other than an organization of the type described in section 501(c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)).

Covered program means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is

maintained and published by the Department of Energy.)

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

(c) *What must DOE determine.* A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(1) Consistent with § 910.124(d), the company's participation in a covered program would be in the economic interest of the United States; and

(2) The company is either—

(i) A United States-owned company; or

(ii) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(A) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(B) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(C) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(d) *Determining the economic interest of the United States.* In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under § 910.124(c)(1), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(1) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(2) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(3) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(i) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(ii) To procure parts and materials from competitive suppliers.

(e) Information an applicant must submit.

(1) Any applicant for Federal financial assistance under a covered program shall submit with the application for Federal financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under § 910.124 (c)(1) and findings concerning ownership status under § 910.124(c)(2).

(2) If an applicant for Federal financial assistance is submitting evidence relating to future undertakings, such as an agreement under § 910.124(d)(3) to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a representation affirming acceptance of these undertakings. The applicant should also briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(3) If an applicant for Federal financial assistance is claiming to be a United States-owned company, the applicant must submit a representation affirming that it falls within the definition of that term provided in § 910.124(b).

(4) DOE may require submission of additional information deemed necessary to make any portion of the determination required by § 910.124(b) 2.

(f) Other information DOE may consider.

In making the determination under § 910.124(c)(2)(ii), DOE may—

(1) Consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(2) Consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(i) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(ii) Local investment opportunities afforded to United States-owned companies; and

(iii) Protection of intellectual property rights of United States-owned companies;

(3) Seek and consider advice from other federal agencies, as appropriate; and

(4) Consider any publicly available information in addition to the information provided by the applicant.

§ 910.126 Competition.

(a) *General.* DOE shall solicit applications for Federal financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility.* If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the notice of funding opportunity or, program rule. Such restriction of eligibility shall be:

(1) Supported by a written determination initiated by the program office and;

(2) Concurred in by legal counsel and the Contracting Officer.

(c) *Noncompetitive Federal financial assistance.* DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be

supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a recent, current, or planned notice of funding opportunity, and if, as determined by DOE, a competitive notice of funding opportunity would not be appropriate.

(d) *Approval requirements.* Determinations of noncompetitive awards shall be:

(1) Documented in writing;

(2) Concurred in by the responsible program technical official and local legal counsel; and

(3) Approved, prior to award, by the Contracting Officer and an approver at least one level above the CO.

(e) *Definitions.* For purposes of this section, the following definitions are applicable:

Continuation Award—A financial assistance award authorizing a second or subsequent budget period within an existing project period.

Renewal Award—A financial assistance award authorizing the first budget period of an extended project period.

§ 910.128 Disputes and appeals.

(a) *Informal dispute resolution.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of Federal financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.

(b) *Alternative dispute resolution (ADR).* Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) *Final determination.* Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by DOE and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The appeal must be received by DOE within 90 days of the receipt of the final determination. The mailing address for the DOE SPE is Office of Acquisition and Project Management, 1000 Independence Ave., SW., Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition Management, National Nuclear Security Administration (NNSA), 1000 Independence Ave. SW., Washington, DC 20585.

(e) *Effect of appeal.* The filing of an appeal with the SPE shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to 2 CFR 200.207 Specific Conditions ;

(ii) DOE denial of a request for an Exception under 2 CFR 200.102;

(iii) DOE denial of a request for a budget revision or other change in the approved project under 2 CFR 200.308 or 200.403 or under another term or condition of the award;

(iv) Any DOE action authorized under 2 CFR 200.338, Remedies for Noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under 2 CFR 200.324 or under another term or condition of the award;

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the SPE shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award, in whole or in part, by DOE under 2 CFR 200.339 (a)(1)–(2);

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the SPE shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the SPE shall be the final decision of DOE.

§ 910.130 Cost sharing (EPACT).

In addition to the requirements of 2 CFR 200.306 the following requirements apply to research, development, demonstration and commercial application activities:

(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:

(1) An award under the small business innovation research program (SBIR) or the small business technology transfer program (STTR); or

(2) A program with cost sharing requirements defined by other than Section 988 of the Energy Policy Act of 2005 including other sections of the 2005 Act and the Energy Policy Act of 1992.

(b) A cost share of at least 20 percent of the cost of the activity is required for

research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of DOE, generally an Under Secretary; or

(2) The Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(c) A cost share of at least 50 percent of the cost of a demonstration or commercial application activity is required unless the Secretary has determined it is necessary and appropriate to reduce the cost sharing requirements, taking into consideration any technological risk relating to the activity.

(d) Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:

(1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;

(2) Include the following costs as allowable in accordance with the applicable cost principles:

(i) Cash;

(ii) Personnel costs;

(iii) The value of a service, other resource, or third party in-kind contribution determined in accordance with Subpart E—Cost Principles—of 2 CFR part 200. For recipients that are for-profit organizations as defined by 2 CFR 910.122, the Cost Principles which apply are contained in 48 CFR 31.2. See § 910.352 for further information;

(iv) Indirect costs or facilities and administrative costs; and/or

(v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);

(3) Exclude the following costs:

(i) Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(ii) Proceeds from the prospective sale of an asset of an activity; or

(iii) Other appropriated Federal funds.

(iv) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.

(e) For purposes of this section, the following definitions are applicable:

Demonstration means a project designed to determine the technical feasibility and economic potential of a technology on either a pilot or prototype scale.

Development is defined in 2 CFR 200.87.

Research is also defined in 2 CFR 200.87.

§ 910.132 Research misconduct.

(a) A recipient is responsible for maintaining the integrity of research of any kind under an award from DOE including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this section.

(b) For purposes of this section, the following definitions are applicable:

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(c) Unless otherwise instructed by the Contracting Officer, the recipient must conduct an initial inquiry into any allegation of research misconduct. If the recipient determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the recipient must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) Inform the Contracting Officer if an initial inquiry supports an investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the recipient will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the recipient's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response to the recommendations (if any).

(3) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(d) DOE may elect to act in lieu of the recipient in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this section;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the recipient's

good faith administration of this section and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) In conducting the activities in paragraph (c) of this section, the recipient and DOE, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The recipient shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the recipient without suffering retribution. Safeguards include: Protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The recipient shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and expertise.* The recipient shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The recipient shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) *Remediation and sanction.* If the recipient finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The recipient must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The recipient must coordinate remedial actions with the Contracting Officer. The recipient must also consider whether personnel sanctions are appropriate. Any such sanction must be consistent with any applicable personnel laws, policies, and procedures, and must take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(g) By executing this agreement, the recipient provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements and definitions of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of allegations of research misconduct.

(h) The recipient must insert or have inserted the substance of this section, including paragraph (g), in subawards at all tiers that involve research.

Subpart C—[RESERVED]

Subpart D—Post Award Federal Requirements for For-Profit Entities

§ 910.350 Applicability of 2 CFR part 200.

(a) As stated in 2 CFR 910.122, unless otherwise noted in part 910, the definition of Non-Federal entity found in 2 CFR 200.69 is expanded for DOE to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

(c) Subpart D of 2 CFR part 910 contains specific changes to 2 CFR part 200 that apply only to For-Profit Recipients and, unless otherwise specified, subrecipients. In some cases, the coverage in Subpart D will replace the language in a specific section of 2 CFR part 200.

§ 910.352 Cost Principles.

For For-Profit Entities, the Cost Principles contained in 48 CFR 31.2 (Contracts with Commercial Organizations) must be followed in lieu of the Cost principles contained in 2 CFR 200.400 through 200.475, except that patent prosecution costs are not allowable unless specifically authorized in the award document. This applies to For-Profit entities whether they are recipients or subrecipients.

§ 910.354 Payment.

(a) For-Profit Recipients are an exception to 2 CFR 200.305(b)(1) which requires that non-Federal entities be paid in advance as long as certain conditions are met.

(b) For For-Profit Recipients who are paid directly by DOE, reimbursement is the preferred method of payment. Under the reimbursement method of payment, the Federal awarding agency must reimburse the non-Federal entity for its actual cash disbursements. When the reimbursement method is used, the Federal awarding agency must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency reasonably believes the request to be improper.

§ 910.356 Audits.

See Subpart F of this part (Sections 910.500 through 910.521) for specific DOE regulations which apply to audits of DOE's For-Profit Recipients. For-Profit entities are an exception to the Single Audit requirements contained in Subpart F of 2 CFR 200 and therefore the regulations contained in 2 CFR 910 Subpart F apply instead.

§ 910.358 Profit or fee for SBIR/STTR.

(a) As authorized by 2 CFR 200.400 (g), DOE may expressly allow non-federal entities to earn a profit or fee resulting from Federal financial assistance.

(b) DOE allows a profit or fee to be paid under two of its financial assistance programs only: Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR).

(c) Awards under these programs will contain a specific provision which allows a profit or fee to be paid.

(d) Profit or Fee is unallowable for all other DOE programs which award grants and cooperative agreements.

§ 910.360 Real property and equipment.

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the contracting officer.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;

(2) Not encumber the property without approval of the contracting officer; and

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the requirements in 2 CFR 200.306 and 2 CFR 910.360. If a resulting award includes such property as a portion of the recipient's cost share, the Government has a financial interest in the property, (*i.e.,* a share of the property value equal to the Federal participation in the project). The property is considered as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section and to the provisions of 2 CFR 200.313(d)(1) through (3).

(d) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with DOE funds as provided to property owned by the recipient.

(e) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award and the award does not specify that title vests unconditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases or if the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the receipt must proceed with disposition of the real property or equipment, in accordance with paragraph (f) of this section.

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(f) *Disposition.* If an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than $5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment, subject to the approval of the contracting officer.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(i) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred.

(ii) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (f)(2)(ii)(B) of this section.

§ 910.362 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement made to a For-Profit entity by DOE.

(b) *Patents right—small business concerns.* In accordance with 35 U.S.C. 202, if the recipient is a small business concern and receives a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are ''exceptional circumstances'' as described in 35 U.S.C. 202(e), the award must contain the standard clause in appendix A to this subpart, entitled ''Patents Rights (Small Business Firms and Nonprofit Organizations'' which provides to the recipient the right to

elect ownership of inventions made under the award.

(c) *Patent rights—other than small business concerns, e.g., large businesses—*

(1) *No Patent Waiver.* Except as provided by paragraph (c)(2) of this section, if the recipient is a for-profit organization other than a small business concern, as defined in 35 U.S.C. 201(h) and receives an award or a subaward for research, development, and demonstration activities, then, pursuant to statute, the award must contain the standard clause in appendix A to this subpart, entitled ''Patent Rights (Large Business Firms)—No Waiver'' which provides that DOE owns the patent rights to inventions made under the award.

(2) *Patent Waiver Granted.* Paragraph (c)(1) of this section does not apply if:

(i) DOE grants a class waiver for a particular program under 10 CFR part 784;

(ii) The applicant requests and receives an advance patent waiver under 10 CFR part 784; or

(iii) A subaward is covered by a waiver granted under the prime award.

(3) *Special Provision.* Normally, an award will not include a background patent and data provision. However, under special circumstances, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of third parties to background inventions, limited rights data and/or restricted computer software, may be included. Inclusion of a background patent and/or a data provision to assure commercialization will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. An award may include the right to license the Government and third party contractors for special Government purposes when future availability of the technology would also benefit the government, *e.g.,* clean-up of DOE facilities. The scope of any such background patent and/or data licensing provision is subject to negotiation.

(d) *Rights in data—general rule.* (1) Subject to paragraphs (d)(2) and (3) of this section, and except as otherwise provided by paragraphs (e) and (f) of this section or other law, any award under this subpart must contain the standard clause in appendix A to this subpart, entitled ''Rights in Data—General''.

(2) Normally, an award will not require the delivery of limited rights data or restricted computer software. However, if the contracting officer, in consultation with DOE patent counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, the contracting officer, after negotiation with the applicant, may insert in the award the standard clause as modified by Alternates I and/or II set forth in appendix A to this subpart.

(3) If software is specified for delivery to DOE, or if other special circumstances exist, *e.g.,* DOE specifying ''open-source'' treatment of software, then the contracting officer, after negotiation with the recipient, may include in the award special provisions requiring the recipient to obtain written approval of the contracting officer prior to asserting copyright in the software, modifying the retained Government license, and/or otherwise altering the copyright provisions.

(e) *Rights in data—programs covered under special protected data statutes.* (1) If a statute, other than those providing for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs, provides for a period of time, typically up to five years, during which data produced under an award for research, development, and demonstration may be protected from public disclosure, then the contracting officer must insert in the award the standard clause in appendix A to this subpart entitled ''Rights in Data—Programs Covered Under Special Protected Data Statutes'' or, as determined in consultation with DOE patent counsel and the DOE program official, a modified version of such clause which may identify data or categories of data that the recipient must make available to the public.

(2) An award under paragraph (e)(1) of this section is subject to the provisions of paragraphs (d)(2) and (3) of this section.

(f) *Rights in data—SBIR/STTR programs.* If an applicant receives an award under the SBIR or STTR program, then the contracting officer must insert in the award the standard data clause in the General Terms and Conditions for SBIR Grants, entitled ''Rights in Data—SBIR Program''.

(g) *Authorization and consent.* (1) Work performed by a recipient under a grant is not subject to authorization and consent to the use of a patented invention, and the Government assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.

(2) Work performed by a recipient under a cooperative agreement is subject to authorization and consent to the use of a patented invention consistent with the principles set forth in 48 CFR 27.201–1.

(3) The contracting officer, in consultation with patent counsel, may also include clauses in the cooperative agreement addressing other patent matters related to authorization and consent, such as patent indemnification of the Government by recipient and notice and assistance regarding patent and copyright infringement. The policies and clauses for these other patent matters will be the same or consistent with those in 48 CFR part 927.

Appendix A to Subpart D—Patent and Data Provisions

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

1. Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization is defined in 2 CFR 200.70.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to

each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: ''This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention.''

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 2 CFR 910.362(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

(End of clause)

2. Patent Rights (Large Business Firms)—No Waiver

(a) Definitions

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

Invention, as used in this clause, means any invention or discovery which is or may be patentable of otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of Principal Rights

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); ''march-in rights'' as set forth in 37 CFR 401.14(a)(J)); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(50); and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any,

within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writhing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of Records Relating to Inventions

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—(i) Any such inventions are subject inventions; (ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; (iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/Contract

(1) The recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient: (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and (ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic Energy

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication

It is recognized that during the course of the work under this agreement, the Recipient

or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) Forfeiture of Rights in Unreported Subject Inventions

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient: (i) Files or causes to be filed a United States or foreign patent application thereon; or (ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient: (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or (ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of the Contracting Officer; or (iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

3. Rights in Data—General

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any

copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery or such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at any time during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I:

(g)(2) Notwithstanding paragraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following ''Limited Rights Notice'' to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No. __ (and subaward/contract No. ___, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(3) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(4) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II:

(g)(3)(i) Notwithstanding paragraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following ''Restricted Rights Notice'' to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice.

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No.____ (and subaward/contract ____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copies for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer or which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Recipients in accordance with paragraph (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated, in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in agreement No. _____ (and subaward/contract_____, If appropriate) with _____(name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: ''Unpublished—rights reserved under the Copyright Laws of the United States.''

(End of clause)

4. Rights in Data—Programs Covered Under Special Data Statutes

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means

(i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and

(ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a party to the award.

Protected rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) The Recipient shall have the right to—

(i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in paragraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Receipt shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Rights to Protected Data

(1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed ''protected data'' will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

Protected Rights Notice

These protected data were produced under agreement no. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until (Note:) The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

(a) For evaluation purposes under the restriction that the ''Protected Data'' be retained in confidence and not be further disclosed; or

(b) To subcontractors or other team members performing work under the Government's (insert name of program or other applicable activity) program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.

(a) At the end of the protected period;

(b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;

(c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or

(d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data. (Note: It is expected that this paragraph will specify certain types of mutually agreed upon data that will be available to the public and will not be asserted by the recipient/contractor as limited rights or protected data).

(5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of Limited Rights Data

When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at any time during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(h)(2) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following ''Limited Rights Notice'' to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No.___ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(3) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(4) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II

(h)(3)(i) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following ''Restricted Rights Notice'' to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No._____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copies for use in a backup computer if any computer for which it was acquired is inoperative

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with paragraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No._____ (and subaward/contract_____, if appropriate) with_____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: ''Unpublished—rights reserved under the Copyright Laws of the United States.''

(End of clause)

Subpart E—Cost Principles

§ 910.401 Application to M&O's.

In accordance with 48 CFR 970.3002–1 and 970.3101–00–70, a Federally Funded Research Center (FFRDC) which is also a designated DOE Management and Operating (M&O) contract must follow the cost accounting standards (CAS) contained in 48 CFR part 30 and must follow the appropriate Cost Principles contained in 48 CFR part 31.

Subpart F—Audit Requirements for For-Profit Entities

General

§ 910.500 Purpose.

This Part follows the same format as 2 CFR 200.500. We purposely did not renumber the paragraphs within this part so that auditors and recipients can compare this to the single audit requirements contained in 2 CFR 200.500.

Audits

§ 910.501 Audit requirements.

(a) *Audit required.* A for–profit entity that expends $750,000 or more during the non-Federal entity's fiscal year in DOE awards must have a compliance audit conducted for that year in accordance with the provisions of this Part.

(b) *Compliance audit.* (1) If a for-profit entity has one or more DOE awards with expenditures of $750,000 or more during the for-profit entity's fiscal year, they must have a compliance audit for each of the awards with $750,000 or more in expenditures. The remaining awards do not require, individually or in the aggregate, a compliance audit.

(2) If a for-profit entity receives more than one award from DOE with a sum total of expenditures of $750,000 or more, but does not have any single award with expenditures of $750,000 or more; the entity must determine whether any or all of the awards have common compliance requirements (*i.e.,* are considered a cluster of awards) and determine the total expenditures of the awards with common compliance requirements. A compliance audit is required for the largest cluster of awards (if multiple clusters of awards exist) or the largest award not in a cluster of awards, whichever corresponding expenditure total is greater. The remaining awards do not require, individually or in the aggregate, a compliance audit;

(3) If a for-profit entity receives one or more awards from DOE with a sum total of expenditures less than $750,000, no compliance audit is required;

(4) If the for-profit entity is a sub-recipient, 2 CFR 200.501(h) requires that the pass-through entity establish appropriate monitoring and controls to ensure the sub-recipient complies with award requirements. These compliance audits must be conducted in accordance with 2 CFR 200.514 Scope of audit

(c) *Program-specific audit election.* Not applicable.

(d) *Exemption when Federal awards expended are less than $750,000.* A for-profit entity that expends less than $750,000 during the for-profit's fiscal year in DOE awards is exempt from DOE audit requirements for that year, except as noted in § 910.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this Part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient are subject to audit under this Part. The payments received for goods or services provided as a contractor are not Federal awards. Section 2 CFR 200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this Part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients to DOE Federal award requirements. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 2 CFR 200.331 Requirements for pass- through entities.

§ 910.502 Basis for determining DOE awards expended.

Determining DOE awards expended. The determination of when a DOE award is expended should be based on when the activity related to the DOE award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of DOE awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement

of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the for-profit entity to an interest subsidy; and the period when insurance is in force.

(a) *Loan and loan guarantees (loans).* Loan and loan guarantees issued by the DOE Loan Program Office corresponding to Title XVII of the Energy Policy Act of 2005, as amended, 42 U.S.C. 16511–16516 (''Title XVII'') are exempt from these provisions.

(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) *Endowment funds.* The cumulative balance of DOE awards for endowment funds that are federally restricted are considered DOE awards expended in each audit period in which the funds are still restricted.

(e) *Free rent.* Free rent received by itself is not considered a DOE award expended under this Part. However, free rent received as part of a DOE award to carry out a DOE program must be included in determining DOE awards expended and subject to audit under this Part.

(f) *Valuing non-cash assistance.* DOE non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by DOE.

(g) Not applicable.

(h) Not applicable.

(i) Not applicable.

§ 910.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this Part must be in lieu of any financial audit of DOE awards which a for-profit entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides DOE with the information it requires to carry out its responsibilities under Federal statute or regulation, DOE must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, DOE, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this Part do not authorize any for-profit entity to constrain, in any manner, DOE from carrying out or arranging for such additional audits, except that DOE must plan such audits to not be duplicative of other audits of DOE. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this Part do not limit the authority of DOE to conduct, or arrange for the conduct of, audits and evaluations of DOE awards, nor limit the authority of any Federal agency Inspector General or other Federal official.

(d) DOE to pay for additional audits. If DOE conducts or arranges for additional audits it must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Not applicable.

§ 910.504 Frequency of audits.

Audits required by this Part must be performed annually.

(a) Not applicable.

(b) Not applicable.

§ 910.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this Part, DOE and pass-through entities must take appropriate action as provided in 2 CFR 200.338 Remedies for noncompliance.

§ 910.506 Audit costs.

See 2 CFR 200.425 Audit services.

§ 910.507 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(1) *Program-specific audit guide not available.* When a program-specific audit guide is not available, the auditee and auditor must conduct the compliance audit in accordance with GAAS and GAGAS.

(2) If audited financial statements are available, for-profit recipients should submit audited financial statements to DOE as a part of the compliance audit. (If the recipient is a subsidiary for which separate financial statements are not available, the recipient may submit the financial statements of the consolidated group.)

(3) The auditor must:

(i) Not applicable.

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the DOE program consistent with the requirements of § 910.514 Scope of audit.,

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of DOE awards that could have a direct and material effect on the DOE program consistent with the requirements of § 910.514 Scope of audit.

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 910.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 910.516 Audit findings.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this Part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) (if available) of the DOE program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the DOE program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of DOE awards which could have a direct and material effect on the DOE program; and

(iv) A schedule of findings and questioned costs for the DOE program that includes a summary of the auditor's results relative to the DOE program in a format consistent with § 910.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the

requirements of § 910.515 Audit reporting, paragraph (d)(3).

(5) *Report submission for program-specific audits.* The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(6) When a program-specific audit guide is available, the compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(7) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The compliance audit must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(b) Other sections of this Part may apply. Program-specific audits are subject to:

(1) 910.500 Purpose through 910.503 Relation to other audit requirements, paragraph (d);

(2) 910.504 Frequency of audits through 910.506 Audit costs;

(3) 910.508 Auditee responsibilities through 910.509 Auditor selection;

(4) 910.511 Audit findings follow-up;

(5) 910.512 Report submission, paragraphs (e) through (h);

(6) 910.513 Responsibilities;

(7) 910.516 Audit findings through 910.517 Audit documentation;

(8) 910.521 Management decision, and

(9) Other referenced provisions of this Part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 910.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this Part in accordance with § 910.509 Auditor selection, and ensure it is properly performed and submitted when due in accordance with § 910.512 Report submission.

(b) Submit appropriate financial statements (if available).

(c) Submit the schedule of expenditures of DOE awards in accordance with § 910.510 Financial statements.

(d) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 910.511 Audit findings follow-up, paragraph (b) and § 910.511 Audit findings follow-up, paragraph (c), respectively.

(e) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this Part.

§ 910.509 Auditor selection.

(a) *Auditor procurement.* When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the for-profit entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in 2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this Part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this Part if they comply fully with the requirements of this Part.

§ 910.510 Financial statements.

(a) *Financial statements.* If available, the auditee must submit financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this Part. However, for-profit entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 910.514 Scope of audit, paragraph (a) and prepare separate financial statements.

(b) *Schedule of expenditures of DOE awards.* The auditee must prepare a schedule of expenditures of DOE awards for the period covered by the auditee's fiscal year which must include the total DOE awards expended as determined in accordance with § 910.502 Basis for determining DOE awards expended. While not required, the auditee may choose to provide information requested by DOE and pass- through entities to make the schedule easier to use. For example, when a DOE program has multiple DOE award years, the auditee may list the amount of DOE awards expended for each DOE award year separately. At a minimum, the schedule must:

(1) List individual DOE programs. For a cluster of programs, provide the cluster name, list individual DOE programs within the cluster of programs. For R&D, total DOE awards expended must be shown by individual DOE award and major subdivision within DOE. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) Not applicable.

(3) Provide total DOE awards expended for each individual DOE program and the CFDA number For a cluster of programs also provide the total for the cluster.

(4) Not applicable.

(5) Not applicable.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the for-profit entity elected to use the 10% de minimis cost

rate as covered in 2 CFR 200.414 Indirect (F&A) costs.

§ 910.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 910.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in DOE's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to DOE;

(ii) DOE is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 910.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

§ 910.512 Report submission.

(a) *General.* (1) The audit must be completed and the reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* See paragraph (b)(1) of this section:

(1) A senior level representative of the auditee (*e.g.,* director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the reporting package that says that the auditee complied with the requirements of this Part, the reporting package does not include protected personally identifiable information, and the information included in its entirety is accurate and complete.

(2) Not applicable.

(3) Not applicable.

(c) *Reporting package.* The reporting package must include the:

(1) Financial statements (if available) and schedule of expenditures of DOE awards discussed in § 910.510 Financial statements, paragraphs (a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 910.511 Audit findings follow-up, paragraph (b);

(3) Auditor's report(s) discussed in § 910.515 Audit reporting; and

(4) Corrective action plan discussed in § 910.511 Audit findings follow-up, paragraph (c).

(d) *Submission to DOE.* The auditee must electronically submit the compliance reporting package described in paragraph (c) of this section compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to DOE.

(g) Not applicable.

(h) Not applicable.

Federal Agencies

§ 910.513 Responsibilities.

(a)(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(i) Not applicable.

(ii) Not applicable.

(iii) Not applicable.

(iv) Not applicable.

(v) Not applicable.

(vi) Not applicable.

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(b) Not applicable

(1) Not applicable

(2) Not applicable

(c) *DOE responsibilities.* DOE must perform the following for the awards it makes (See also the requirements of 2 CFR 200.210 Information contained in a Federal award):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this Part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the DOE must:

(i) Issue a management decision as prescribed in § 910.521 Management decision;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see 2 CFR 200.25 Cooperative audit resolution) to improve DOE program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the DOE's process to follow-up on audit findings and on the effectiveness of Compliance Audits in improving non-Federal entity accountability and their use by DOE in making award decisions.

(4) Not applicable.

(5) Not applicable:

(i) Not applicable

(ii) Not applicable

(6) Not applicable

(7) Not applicable

(i) Not applicable

(ii) Not applicable.

(iii) Not applicable.

(iv) Not applicable

(v) Not applicable

(vi) Not applicable

(vii) Not applicable.

(viii) Not applicable

Auditors

§ 910.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered DOE awards during such audit period, provided that each such audit must encompass the schedule of expenditures of DOE awards for each such department, agency, and other organizational unit, which must be considered to be a for-profit entity. The financial statements (if available) and schedule of expenditures of DOE awards must be for the same audit period.

(b) *Financial statements.* If financial statements are available, the auditor must determine whether the schedule of expenditures of DOE awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(1) *Internal control.* The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control— Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS the auditor must perform procedures to obtain an understanding of internal control over DOE programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance to support a low assessed level of control risk for the assertions relevant to the compliance requirements.

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 910.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(5) *Compliance.* In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect.

(6) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(7) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this Part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should follow the compliance supplement's guidance for programs not included in the supplement.

(8) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(c) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 910.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures.

§ 910.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this Part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements (if available) are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of DOE awards is fairly stated in all material respects in relation to the financial statements (if available) as a whole.

(b) A report on internal control over financial reporting and compliance with Federal statutes, regulations, and the terms and conditions of the DOE award, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance and report and internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or modified opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of DOE awards which could have a direct and material effect and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued (if applicable)on whether the financial statements (if available)

audited were prepared in accordance with GAAP (*i.e.,* unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements (if available);

(iii) A statement (if applicable) as to whether the audit disclosed any noncompliance that is material to the financial statements (if available) of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance (*i.e.,* unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 910.516 Audit findings paragraph (a);

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(2) Findings relating to the financial Statements (if available) which are required to be reported in accordance with GAGAS.

(i) Findings and questioned costs for DOE awards which must include audit findings as defined in § 910.516 Audit findings, paragraph (a).Audit findings (*e.g.,* internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue should be presented as a single audit finding.

(ii) Audit findings that relate to both the financial statements (if available) and DOE awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this Part precludes combining of the audit reporting required by this section with the reporting required by § 910.512 Report submission, paragraph (b) Data Collection when allowed by GAGAS.

§ 910.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of DOE awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of DOE awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a DOE program. which is not audited as a major program. Except for audit follow-up, the auditor is not required under this Part to perform audit procedures for such a DOE program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a DOE program that is not audited as a major program (*e.g.,* as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) Not applicable.

(6) Known or likely fraud affecting a DOE award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for DOE awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 910.511 Audit findings follow-up, paragraph (b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for DOE to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, and Federal award identification number and year. When information, such as the CFDA title and number or DOE award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the DOE awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and DOE to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable DOE award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 910.512 Report submission, paragraph (b) to allow for easy referencing of the audit findings during follow-up.

§ 910.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by DOE or the cognizant agency for indirect costs to extend the retention period. When the auditor is aware that the Federal agency or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant agency for indirect cost, DOE, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this Part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 910.518 [Reserved]

§ 910.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the DOE program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular DOE program with auditee management and DOE.

(1) *Current and prior audit experience.* Weaknesses in internal control over DOE programs would indicate higher risk. Consideration should be given to the control environment over DOE programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of DOE awards and the competence and experience of personnel who administer the DOE programs.

(i) A DOE program administered under multiple internal control structures may have higher risk. The auditor must consider whether weaknesses are isolated in a single operating unit (*e.g.,* one college campus) or pervasive throughout the entity.

(ii) When significant parts of a DOE program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a DOE program or have not been corrected.

(3) DOE programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(4) *Oversight exercised by DOE.* Oversight exercised by DOE could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(5) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(6) *Inherent risk of the Federal program.* The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of 2 CFR 200.430 Compensation—personal services, but otherwise be at low risk.

(7) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(8) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(9) Programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 910.520 Criteria for a low-risk auditee.

(a) An auditee that meets all of the following conditions for each of the preceding two audit periods may qualify as a low-risk auditee and be eligible for reduced audit coverage. Compliance audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form to DOE within the timeframe specified in § 910.512 Report submission. A for-profit entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements (if available) were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of DOE awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the DOE programs had audit findings from any of the following in either of the preceding two audit periods:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control as required under § 910.515 Audit reporting, paragraph (c);

(2) Not applicable.

(3) Not applicable.

Management Decisions

§ 910.521 Management decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected

auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, DOE agency may also issue a management decision on findings relating to the financial statements (if they were available) which are required to be reported in accordance with GAGAS.

(b) As provided in § 910.513 Responsibilities, paragraph (c)(3), DOE is responsible for issuing a management decision for findings that relate to DOE awards it makes to for-profit entities.

(c) Not applicable.

(d) *Time requirements.* DOE must issue a management decision within six months of acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 910.516 Audit findings paragraph (c).

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

■ 1. The authority citation for part 602 continues to read as follows:

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; and 31 U.S.C. 6301–6308.

§ 602.1 [Amended]

■ 2. Section 602.1 is amended to remove ''Office of Health, Safety, and Security'' in the first sentence and add in its place ''Office of Environment, Health, Safety, and Security''.

§ 602.2 [Amended]

■ 3. Section 602.2 (b) is amended to remove ''10 CFR part 600 (DOE Financial Assistance Rules)'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910 (DOE Financial Assistance Regulation)''.

§ 602.3 [Amended]

■ 4. Section 602.3 is amended to remove ''10 CFR part 600'' in the introductory text and add in its place ''2 CFR part 200 and 2 CFR part 910''.

■ 5. Amend § 602.4 as follows:

■ a. Revise the section heading.

■ b. Remove ''deviations'' from paragraph (a) and add in its place ''exceptions''.

■ c. Remove ''Health, Safety, and Security'' from paragraph (a) and add in its place ''Environment, Health, Safety, and Security''.

■ d. Remove ''10 CFR part 600'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

The revision reads as follows:

§ 602.4 Exceptions.

* * * * *

§ 602.5 [Amended]

■ 6. Section 602.5(a) is amended to remove ''Office of Health, Safety, and Security'' in the first sentence and add in its place ''Office of Environment, Health, Safety, and Security''.

§ 602.8 [Amended]

■ 7. Section 602.8 (b)(4)(ii) is amended to remove ''10 CFR part 600'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

§ 602.9 [Amended]

■ 8. Amend § 602.9 as follows:

■ a. Remove ''Office of Health, Safety, and Security'' from paragraph (g) and add in its place ''Office of Environment, Health, Safety, and Security''.

■ b. Remove ''10 CFR part 600'' from paragraph (b) and add in its place ''2 CFR 200 as amended by 2 CFR 910''.

■ c. Remove ''Office of Health, Safety, and Security'' from the second sentence of paragraph (b) and add in its place ''Office of Environment, Health, Safety, and Security''.

§ 602.14 [Amended]

■ 9. Amend § 602.14 as follows:

■ a. Remove ''10 CFR part 600'' wherever it appears and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

§ 602.18 [Amended]

■ 10. Section 602.18 (c) is amended to remove ''in accordance with the applicable provisions of 10 CFR part 600''.

PART 605—THE OFFICE OF SCIENCE FINANCIAL ASSISTANCE PROGRAM

■ 11. The authority citation for part 605 continues to read as follows:

Authority: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

■ 12. The heading of part 605 is revised to read as set forth above.

§ 605.1 [Amended]

■ 13. Section 605.1(d) is amended to remove ''Office of Energy Research (ER) and the Science and Technology Advisor (STA) Organization'' and add in its place ''Office of Science (SC)''.

§ 605.2 [Amended]

■ 14. Section 605.2(b) is amended to remove ''10 CFR part 600'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''

§ 605.3 [Amended]

■ 15. Amend § 605.3 as follows:

■ a. Remove ''10 CFR part 600'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

■ b. Remove ''ER/STA'' in the definition of *Related conference''* and add in its place ''SC''.

■ 16. Amend § 605.4 as follows:

■ a. The section heading is revised.

■ b. Remove ''deviations'' in the first sentence and add in its place ''exceptions''.

■ c. Remove ''ER'' in the first sentence and add in its place ''SC''.

■ d. Remove ''deviation'' wherever it appears and add in its place ''exception''.

■ e. Remove ''10 CFR part 600'' in the third sentence and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

The revision reads as follows:

§ 605.4 Exceptions.

* * * * *

■ 17. Amend § 605.5 as follows:

■ a. Revise the section heading.

■ b. Remove ''Energy Research'' in paragraph (a) and add in its place ''Science''.

■ c. Remove ''ER'' in paragraph (c) and add in its place ''SC''.

The revision reads as follows:

§ 605.5 The Office of Science Financial Assistance Program.

* * * * *

§ 605.8 [Amended]

■ 18. Amend § 605.8 as follows:

■ a. Remove ''Energy Research, ER–64'' in paragraph (c) and add in its place ''Science, SC''.

■ b. Remove ''Energy Research'' in the introductory text of paragraph (d) and add in its place ''Science''.

§ 605.9 [Amended]

■ 19. Amend § 605.9 as follows:
■ a. Remove ''10 CFR part 600'' wherever it appears and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.
■ b. Remove ''10 CFR parts 600 and 605'' in paragraph (b)(5) and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

§ 605.10 [Amended]

■ 20. Amend § 605.10 as follows:
■ a. Remove ''10 CFR part 600'' in paragraph (b) and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.
■ b. Remove ''ER's'' in the first sentence of paragraph (g) and add in its place ''SC's''.

§ 605.12 [Amended]

■ 21. Section 605.12(b) is amended to remove ''ER'' and add in its place ''SC''.

§ 605.15 [Amended]

■ 22. Amend § 605.15 as follows:
■ a. Remove ''10 CFR part 600'' wherever it appears and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.
■ b. Remove ''ER'' in paragraph (a)(2) and add in its place ''SC''.
■ c. Remove ''deviation'' in paragraph (a) introductory text and add in its place ''exception''.

§ 605.18 [Amended]

■ 23. Section 605.18 is amended to remove ''ER's'' in the first sentence and add in its place ''SC's''.

§ 605.19 [Amended]

■ 24. Section 605.19(a)(1) is amended to remove ''ER'' in the second sentence and add in its place ''SC''.

§ 605.20 [Amended]

■ 25. Section 605.20(c) is amended to remove ''10 CFR part 600'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

Appendix A to Part 605 [Amended]

■ 26. Amend Appendix A to Part 605 as follows:
■ a. Remove ''ER'' in paragraph 2.(a) and add in its place ''SC''.
■ b. Remove ''Energy Research'' in paragraph 2.(a) and add in its place ''Science''.

CHAPTER III—DEPARTMENT OF ENERGY

PART 733—ALLEGATIONS OF RESEARCH MISCONDUCT

■ 27. The authority citation for part 733 continues to read as follows:

Authority: 42 U.S.C. 2201; 7254; 7256; 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

■ 28. Amend § 733.3 as follows:
■ a. Revise the definition for Contract.
■ b. In the definition for Financial assistance agreement, remove ''10 CFR part 600'' and add in its place ''2 CFR part 200 as amended by 2 CFR part 910''.

The revision reads as follows:

§ 733.3 Definitions.

* * * * *

Contract is defined in 2 CFR 200.22.

* * * * *

Paul Bosco,

Director, Office of Acquisition and Project Management.

Department of Treasury

For the reasons stated in the preamble, the Department of the Treasury amends Title 2 to add chapter X of the Code of Federal Regulations to read:

Title 2—Grants and Agreements

CHAPTER X—DEPARTMENT OF TREASURY

PART 1000—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
1000.10 Applicable regulations.
1000.306 Cost sharing or matching.
1000.336 Access to records.

Authority: 5 U.S.C. 301; 31 U.S.C. 301; 2 CFR part 200.

§ 1000.10 Applicable regulations.

Except for the deviations set forth elsewhere in this Part, the Department of the Treasury adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth at 2 CFR part 200.

§ 1000.306 Cost sharing or matching.

Notwithstanding 2 CFR 200.306(e), Low Income Taxpayer Clinic grantees may use the rates found in 26 U.S.C. 7430 so long as:

(a) The grantee is funded to provide controversy representation;

(b) The services are provided by a qualified representative, which includes any individual, whether or not an attorney, who is authorized to represent taxpayers before the Internal Revenue Service or an applicable court;

(c) The qualified representative is not a student; and

(d) The qualified representative is acting in a representative capacity and is advocating for a taxpayer.

§ 1000.336 Access to records.

The right of access under 2 CFR 200.336 shall not extend to client information held by attorneys or federally authorized tax practitioners under the Low Income Taxpayer Clinic program.

Nani Coloretti,

Assistant Secretary for Management.

Department of Defense,

Office of the Secretary

For the reasons set forth in the common preamble, Part 1103 of Title 2, Chapter XI of the Code of Federal Regulations is added to read as follows:

PART 1103—INTERIM GRANTS AND COOPERATIVE AGREEMENTS IMPLEMENTATION OF GUIDANCE IN 2 CFR PART 200, ''UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS''

Subpart A—Interim Implementation of Guidance in 2 CFR Part 200

Sec.
1103.100 Applicability of 2 CFR part 200 to requirements for recipients in DoD Components' terms and conditions.

Subpart B—Pre-Existing Policies Continuing in Effect During Interim Implementation

1103.200 Exception for small awards.
1103.205 Timing of payments made using the reimbursement method.
1103.210 Management of federally owned property for which a recipient is accountable.
1103.215 Intangible property developed or produced under an award or subaward.
1103.220 Debarment and suspension requirements related to recipients' procurements.
1103.225 Debt collection.

Subpart C—Definitions of Terms Used in This Part

1103.300 DoD Components.
1103.305 DoD Grant and Agreement Regulations.
1103.310 Small award.

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

Subpart A—Interim Implementation of Guidance in 2 CFR Part 200

§ 1103.100 Applicability of 2 CFR part 200 to requirements for recipients in DoD Components' terms and conditions.

Effective December 26, 2014, and on an interim basis pending update of the DoD Grant and Agreement Regulations to implement Office of Management and Budget (OMB) guidance published in 2 CFR part 200:

(a) The guidance in 2 CFR part 200 as modified and supplemented by

provisions of Subpart B of this part governs the administrative requirements, cost principles, and audit requirements to be included in terms and conditions of DoD Components' new grant and cooperative agreement awards to:

(1) Institutions of higher education, hospitals, and other nonprofit organizations included in the definition of ''recipient'' in part 32 of the DoD Grant and Agreement Regulations (32 CFR part 32).

(2) States, local governments, and Indian tribal governments.

(b) The following class deviations from selected provisions of the DoD Grant and Agreement Regulations therefore are approved for DoD Components' new grant and cooperative agreement awards made on or after December 26, 2014:

(1) Awards to institutions of higher education, hospitals, and other nonprofit organizations included in the definition of ''recipient'' in part 32 of the DoD Grant and Agreement Regulations (32 CFR part 32) are not subject to the administrative requirements, cost principles, and audit requirements specified in 32 CFR part 32.

(2) Awards to States, local governments, and Indian tribal governments are not subject to the administrative requirements, cost principles, and audit requirements specified in part 33 of the DoD Grant and Agreement Regulations (32 CFR part 33).

(3) References in other parts of the DoD Grant and Agreement Regulations that cite part 32 or part 33 as the source of administrative requirements, cost principles, and audit requirements for awards to the types of recipient entities described in paragraphs (b)(1) and (2) of this section therefore do not apply to those new awards.

(c) Provisions of the DoD Grant and Agreement Regulations other than those listed in paragraph (b) of this section continue to be in effect, with applicability as stated in those provisions.

Subpart B—Pre-Existing Policies Continuing in Effect During Interim Implementation

§ 1103.200 Exception for small awards.

For small awards to institutions of higher education, hospitals, and other nonprofit organizations, DoD Components' terms and conditions may apply less restrictive requirements to recipients than the OMB guidance in 2 CFR part 200 specifies, except for requirements that are statutory. This exception maintains long-standing policy established in 32 CFR 32.4.

§ 1103.205 Timing of payments made using the reimbursement method.

In DoD Components' awards to institutions of higher education, hospitals, and other nonprofit organizations, the terms and conditions implementing the provisions of 2 CFR 200.305(b)(3) concerning timing of payments when the reimbursement method is used must specify that the DoD payment office generally makes payment within 30 calendar days after receipt of the request for reimbursement by the office designated to receive the request, unless the request is reasonably believed to be improper. This substitution of ''generally makes payment'' for ''must make payment'' maintains long-standing policy established in 32 CFR 32.22(e)(1).

§ 1103.210 Management of federally owned property for which a recipient is accountable.

In award terms and conditions implementing the guidance in 2 CFR 200.313(d) on procedural requirements for a recipient's equipment management system, DoD Components must:

(a) For any award to an institution of higher education, hospital, or other nonprofit organization, broaden the requirements of 2 CFR 200.313(d) to also apply to any federally owned property for which the recipient is accountable under its award. Doing so maintains long-standing policy established in 32 CFR 32.34(f).

(b) For any award to a State, local government, or Indian tribal government (as defined in 32 CFR part 33), specify that the recipient must manage federally owned equipment in accordance with the DoD Components' rules and procedures. Doing so maintains long-standing policy established in 32 CFR 33.32(f).

§ 1103.215 Intangible property developed or produced under an award or subaward.

In DoD Components' awards to institutions of higher education, hospitals, and other nonprofit organizations, the award terms and conditions implementing the guidance in 2 CFR 200.315(a) on intangible property must exclude intangible property developed or produced under an award or subaward. Doing so maintains long-standing policy established in 32 CFR 32.36(e).

§ 1103.220 Debarment and suspension requirements related to recipients' procurements.

In award terms and conditions implementing the guidance in 2 CFR 200.318(h) on awarding contracts only to responsible entities, DoD Components must require recipients to comply with DoD's implementation in 2 CFR part 1125 of OMB guidance on nonprocurement debarment and suspension (2 CFR part 180). Doing so maintains long-standing policy established in 2 CFR parts 180 and 1125 and in 32 CFR 32.44(d), as well as compliance with Executive Orders 12549 and 12689.

§ 1103.225 Debt collection.

In award terms and conditions implementing the guidance in 2 CFR 200.345 on collection of amounts due, DoD Components must inform recipients that DoD post-award administration offices follow procedures set forth in 32 CFR 22.820 for issuing demands for payment and transferring debts for collection, and that a recipient will be informed about specific procedures and timeframes affecting it through the written notices of grants officers' decisions and demands for payment. Doing so maintains long-standing policy established in 32 CFR 32.73(c).

Subpart C—Definitions of Terms Used in This Part

§ 1103.300 DoD Components.

The Office of the Secretary of Defense, the Military Departments, and all Defense Agencies, DoD Field Activities, and other entities within the Department of Defense that are authorized to award or administer grants, cooperative agreements, and other non-procurement transactions subject to the DoD Grants and Agreement Regulations.

§ 1103.305 DoD Grant and Agreement Regulations.

The regulations in Chapter I, Subchapter C of Title 32, Code of Federal Regulations, and Chapter XI of Title 2, Code of Federal Regulations.

§ 1103.310 Small award.

An award not exceeding the simplified acquisition threshold.

Patricia L. Toppings,

Office of the Secretary of Defense, Federal Register Liaison Officer, Department of Defense.

Department of Transportation

Office of the Secretary

For the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, 49 U.S.C. 322, and the authorities listed below, Part 1201 of title 2 of the Code of Federal Regulations is added, and Parts 18 and

19 of title 49 of the Code of Federal Regulations are removed, as follows:

Title 2—Grants and Agreements

CHAPTER XII—DEPARTMENT OF TRANSPORTATION

■ 1. Add Part 1201 to read as follows:

PART 1201—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
1201.1 What does this part do?
1201.2 Definitions.
1201.80 Program income.
1201.102 Exceptions.
1201.106 DOT Component implementation.
1201.107 DOT Headquarters responsibilities.
1201.108 Inquiries.
1201.109 Review date.
1201.112 Conflict of interest.
1201.206 Standard application requirements.
1201.313 Equipment.
1201.317 Procurements by States.
1201.319 Competition.
1201.327 Financial reporting.
1201.330 Subrecipient and contractor determinations.

Authority: 49 U.S.C. 322(a); 2 CFR 200.106.

§ 1201.1 What does this part do?

Except as otherwise provided in this part, the Department of Transportation adopts the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). This part supersedes and repeals the requirements of the Department of Transportation Common Rules (49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19—Uniform Administrative Requirements—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), except that grants and cooperative agreements executed prior to December 26, 2014 shall continue to be subject to 49 CFR parts 18 and 19 as in effect on the date of such grants or agreements. New parts with terminology specific to the Department of Transportation follow.

§ 1201.2 Definitions.

Throughout this part, the term ''DOT Component'' refers to any Division, Office, or Mode (*e.g.,* the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Office of Inspector General (OIG), Office of the Secretary of Transportation (OST), Pipeline and Hazardous Materials Safety Administration (PHMSA), St. Lawrence Seaway Development Corporation (SLSDC), and the Surface Transportation Board (STB)) within the Department of Transportation awarding Federal financial assistance. In addition, the term ''DOT Headquarters'' refers to the Secretary of Transportation or any office designated by the Secretary to fulfill headquarters' functions within any office under the Secretary's immediate supervision.

§ 1201.80 Program income.

Notwithstanding 2 CFR 200.80, *program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See 2 CFR 200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them.

§ 1201.102 Exceptions.

DOT Headquarters may grant exceptions to Part 1201 on a case-by-case basis. Such exceptions will be granted only as determined by the Secretary of Transportation.

§ 1201.106 DOT Component implementation.

The specific requirements and responsibilities for grant-making DOT Components are set forth in this part. DOT Components must implement the language in this part unless different provisions are required by Federal statute or are approved by DOT Headquarters. DOT Components making Federal awards to non-Federal entities must implement the language in the Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this Part through Subpart F—Audit Requirements of this Part in codified regulations unless different provisions are required by Federal statute or are approved by DOT Headquarters.

§ 1201.107 DOT Headquarters responsibilities.

DOT Headquarters will review DOT Component implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by DOT Headquarters. Exceptions will only be made in particular cases where adequate justification is presented.

§ 1201.108 Inquiries.

Inquiries regarding Part 1201 should be addressed to the DOT Component making the award, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entities as appropriate. DOT Components will, in turn, direct the inquiry to the Office of Chief Financial Officer, Department of Transportation.

§ 1201.109 Review date.

DOT Headquarters will review this part at least every five years after December 26, 2014.

§ 1201.112 Conflict of interest.

The DOT Component making a financial assistance award must establish conflict of interest policies for Federal awards, including policies from DOT Headquarters. The non-Federal entity must disclose in writing any potential conflict of interest to the DOT Component or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 1201.206 Standard application requirements.

The requirements of 2 CFR 200.206 do not apply to formula grant programs, which do not require applicants to apply for funds on a project basis.

§ 1201.313 Equipment.

Notwithstanding 2 CFR 200.313, subrecipients of States shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award.

§ 1201.317 Procurements by States.

Notwithstanding 2 CFR 200.317, subrecipients of States shall follow such policies and procedures allowed by the

State when procuring property and services under a Federal award.

§ 1201.327 Financial reporting.

Notwithstanding 2 CFR 200.327, recipients of FHWA and NHTSA financial assistance may use FHWA, NHTSA or State financial reports.

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation

PART 18—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 18.

PART 19—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 19.

Anthony R. Foxx,

Secretary of Transportation.

Department of Commerce

Office of the Secretary

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, Part 1327 of Title 2, Chapter XIII of the Code of Federal Regulations is added, and Parts 14 and 24 of Title 15, Subtitle A of the Code of Federal Regulations are amended, as follows:

Title 2—Grants and Agreements

CHAPTER XIII—DEPARTMENT OF COMMERCE

■ 1. Add Part 1327, consisting of § 1327.101, to Chapter XIII to read as follows:

PART 1327—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 38 U.S.C. 501; 2 CFR part 200.

§ 1327.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Commerce adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Title 15—Commerce and Foreign Trade

Subtitle A—Office of the Secretary of Commerce

PART 14—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 14.

PART 24—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 24.

Barry Berkowitz,

Director of Acquisition Management.

Department of the Interior

Office of the Secretary

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. part 301 and the authorities listed below, part 1402 in Chapter XIV of title 2 is added, and part 12 of title 43 of the Code of Federal Regulations is amended, as follows:

Title 2—Grants and Agreements

CHAPTER XIV—DEPARTMENT OF THE INTERIOR

■ 1. Add Part 1402 to Chapter XIV to read as follows:

PART 1402—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
1402.100 Purpose.
1402.101 To whom does this part apply?
1402.102 Do DOI financial assistance policies include any exceptions to 2 CFR part 200?
1402.103 Does DOI have any other policies or procedures award recipients must follow?

Authority: 5 U.S.C. 301; 38 U.S.C. 501, 2 CFR part 200.

§ 1402.100 Purpose.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform guidance applies in full except as stated in §§ 1402.102 and 1402.103.

§ 1402.101 To whom does this part apply?

This part, and through it 2 CFR part 200, subparts A through E. applies to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI Federal financial assistance award, cooperative agreement or grant after the effective date of December 26, 2014.

§ 1402.102 Do DOI financial assistance policies include any exceptions to 2 CFR part 200?

This chapter applies to Federally recognized Indian tribal governments, except for those awards made pursuant to the authority of the Indian Self-Determination and Education Assistance Act (P.L. 93–638, 88 Stat. 2204), as amended. However, Sec. 9 of P.L. 93–638 does provide for use of a grant agreement or cooperative agreement when mutually agreed to by the Secretary of the Interior and the tribal organization involved.

§ 1402.103 Does DOI have any other policies or procedures award recipients must follow?

Award recipients must follow bureau/office program specific or technical merit policies and procedures that will be published in the **Federal Register**, Grants.gov, or bureau Web site.

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior

PART 12—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 12.

Kristen J. Sarri,

Principal Assistant Secretary for Policy, Management and Budget.

Environmental Protection Agency

For the reasons stated in the preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR part 1500 and 40 CFR parts 33, 35, 40, 45, 46 and 47 are amended as follows:

Title 2—Grants and Agreements

CHAPTER XV—ENVIRONMENTAL PROTECTION AGENCY

■ 1. Part 1500 is added to chapter XV to read as follows:

PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions [Reserved]

Subpart B—General Provisions

1500.1 Adoption of 2 CFR part 200.
1500.2 Applicability.
1500.3 Exceptions.
1500.4 Supersession.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

1500.5 Fixed Amount Awards.

Subpart D—Post Federal Award Requirements.

Standards for Financial and Program Management

1500.6 Retention requirements for records.
1500.7 Program Income.
1500.8 Revision of budget and program plans.

Procurement Standards

1500.9 General Procurement Standards.
1500.10 Use of the same architect or engineer during construction.

Performance and Financial Monitoring and Reporting

1500.11 Quality Assurance.

Subpart E—Disputes.

1500.12 Purpose and scope of this subpart.
1500.13 Definitions.
1500.14 Submission of Appeal.
1500.15 Notice of receipt of Appeal to Affected Entity.
1500.16 Determination of Appeal.
1500.17 Request for review.
1500.18 Notice of receipt of request for review.
1500.19 Determination of request for review.

Authority: 42 U.S.C. 241, 242b, 243, 246, 1857 *et seq.,* 33 U.S.C. 1251 *et seq.,* 42 U.S.C. 7401 *et seq.,* 42 U.S.C. 6901 *et seq.,* 42 U.S.C. 300f *et seq.,* 7 U.S.C. 136 *et seq.,* 15 U.S.C. 2601 *et seq.,* 42 U.S.C. 9601 *et seq.,* 20 U.S.C. 4011 *et seq.,* and 33 U.S.C. 1401 *et seq.;* 2 CFR 200.

Subpart A—Acronyms and Definitions [Reserved]

Subpart B—General Provisions

§ 1500.1 Adoption of 2 CFR Part 200.

Under the authority listed above the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. EPA also has programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

§ 1500.2 Applicability.

Uniform administrative requirements and cost principles (Subparts A through E of 2 CFR part 200 as supplemented by this part) apply to foreign public entities or foreign organizations, except where EPA determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

§ 1500.3 Exceptions.

Consistent with 2 CFR 200.102(b):

(a) In the EPA, the Director, Office of Grants and Debarment or designee, is authorized to grant exceptions on a case-by-case basis for non-Federal entities.

(b) The EPA Director or designee is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements.

§ 1500.4 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 40 of the Code of Federal Regulations:

(a) 40 CFR part 30, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations.''

(b) 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 1500.5 Fixed Amount Awards.

In the EPA, programs awarding fixed amount awards will do so in accordance with guidance issued from the Office of Grants and Debarment. (See 2 CFR 200.201(b)).

Subpart D—Post Federal Award Requirements.

Standards for Financial and Program Management

§ 1500.6 Retention requirements for records.

(a) In the EPA, some programs require longer retention requirements for records by statute.

(b) When there is a difference between the retention requirements for records of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200.333) and the applicable statute, the non-federal entity will follow to the retention requirements for records in the statute.

§ 1500.7 Program Income.

(a) Governmental revenues. Permit fees are governmental revenue and not program income. (See 2 CFR 200.307(c))

(b) Use of Program Income. The default use of program income for EPA awards is addition. The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2))

(c) Brownfields Revolving Loan. To continue the mission of the Brownfields Revolving Loan fund, recipients may use grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

§ 1500.8 Revision of budget and program plans.

Pre-award Costs. EPA award recipients may incur allowable project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of EPA. All costs incurred before EPA makes the award are at the recipient's risk. EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs.

Procurement Standards

§ 1500.9 General Procurement Standards.

(a) *Payment to consultants.* EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (Recipient's may, however, pay consultants more than this amount with non EPA funds.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. Contracts with firms for services which are awarded using the procurement standards in Subpart D of 2 CFR part 200 are not affected by this limitation.

(b) Subawards with firms for services which are awarded using the procurement standards in 2 CFR

200.317 through 2 CFR 200.326 are not affected by this limitation.

§ 1500.10 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(2) The award official approves noncompetitive procurement under 2 CFR 200.320(f) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(3) The recipient attests that:

(i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subaward for services during construction; and

(ii) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subawards.

(b) However, if the recipient uses the procedures in paragraph (a) of this section to retain an architect or engineer, any Step 3 subawards between the architect or engineer and the grantee must meet all of the other procurement provisions in 2 CFR 200.317 through 200.326.

Performance and Financial Monitoring and Reporting

§ 1500.11 Quality Assurance.

(a) Quality assurance applies to all assistance agreements that involve environmentally related data operations, including environmental data collection, production or use.

(b) Recipients shall develop a written quality assurance system commensurate with the degree of confidence needed for the environmentally related data operations.

(c) If the recipient complies with EPA's quality policy, the system will be presumed to be in compliance with the quality assurance system requirement. The recipient may also comply with the quality assurance system requirement by complying with American National Standard ANSI/ASQ E4:2014: Quality management systems for environmental information and technology programs.

(d) The recipient shall submit the written quality assurance system for EPA review. Upon EPA's written approval, the recipient shall implement the EPA-approved quality assurance system.

(e) EPA Quality Policy is available at: *http://www.epa.gov/quality*.

(f) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

The material is available for inspection at the Environmental Protection Agency's Headquarters Library, Room 3340, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, (202) 566–0556. A copy is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibrlocations.html*.

(1) American Society for Quality, 600 North Plankinton Avenue, Milwaukee, WI 53201, 1–800–248–1946, *http://asq.org*.

(i) American National Standard ANSI/ASQ E4:2014: Quality management systems for environmental information and technology programs—Requirements with guidance for use, approved February 4, 2014.

(ii) Reserved.

(2) Reserved.

Subpart E—Disputes

§ 1500.12 Purpose and scope of this subpart.

(a) This section provides the process for the resolution of pre-award and post-award assistance agreement disputes as described in § 1500.13, except for:

(1) Assistance agreement competition-related disputes; and

(2) Any appeal process relating to an award official's determination that an entity is not qualified for award that may be developed pursuant to guidance implementing Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417, as amended).

(b) Pre-award and post-award disagreements between affected entities and EPA related to an assistance agreement should be resolved at the lowest level possible. If an agreement cannot be reached, absent any other applicable statutory or regulatory dispute provisions, affected entities must follow the dispute procedures outlined in this subpart.

(c) Determinations affecting assistance agreements made under other Agency decision-making processes are not subject to review under the procedures in this Subpart or the Agency's procedures for resolving assistance agreement competition-related disputes. These determinations include, but are not limited to:

(1) Decisions on requests for exceptions under § 1500.3;

(2) Bid protest decisions under 2 CFR 200.318(k)

(3) National Environmental Policy Act decisions under 40 CFR part 6;

(4) Policy decisions of the EPA Internal Audit Dispute Resolution Process (formerly known as Audit Resolution Board); and

(5) Suspension and Debarment Decisions under 2 CFR parts 180 and 1532.

§ 1500.13 Definitions.

As used in this subpart:

(a) *Action Official (AO)* is the EPA official who authors the Agency Decision to the Affected Entity regarding a pre-award or post-award matter.

(b) *Affected Entity* is an entity that applies for and/or receives Federal financial assistance from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.

(c) *Agency Decision* is the Agency's initial pre-award or post-award determination. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights including appealing the Agency Decision to the DDO. Assistance Agreement Appeal (or Appeal) is the letter an Affected Entity submits to the DDO to challenge an Agency Decision.

(d) *Dispute* is a disagreement by an Affected Entity with a specific Agency Decision regarding a pre-award or post-award action.

(e) *Disputes Decision Official (DDO)* is the designated agency official responsible for issuing a decision resolving an Appeal.

(1) The DDO for a Headquarters Assistance Agreement Appeal is the Director of the Grants and Interagency Agreement Management Division in the

Office of Grants and Debarment or designee. To help provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Headquarters DDO and the DDO cannot serve as the Review Official for the Appeal decision.

(2) The DDO for a Regional Assistance Agreement Appeal is the official designated by the Regional Administrator to issue the written decision resolving the Appeal. To help provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO and the DDO cannot serve as the Review Official for the Appeal decision. Request for Review is the letter an Affected Entity submits to the designated Review Official to challenge the DDO's Appeal decision.

(f) *Review Official* is the EPA official responsible for issuing a decision resolving an Affected Entity's request for review of a DDO's Appeal decision.

(1) For a Headquarters DDO Appeal decision, the Review Official is the Director of the Office of Grants and Debarment or designee.

(2) For a Regional DDO Appeal decision, the Review Official is the Regional Administrator or designee.

§ 1500.14 Submission of Appeal.

An Affected Entity or its authorized representative may dispute an Agency Decision by electronically submitting an Appeal to the DDO identified in the Agency Decision. In order for the DDO to consider the Appeal, it must satisfy the following requirements:

(a) *Timeliness.* The DDO must receive the Appeal no later than 30 calendar days from the date the Agency Decision is electronically sent to the Affected Entity. The DDO will dismiss any Appeal received after the 30-day period unless the DDO grants an extension of time to submit the Appeal. The Affected Entity must submit a written request for extension to the DDO before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation, which may include the unusual complexity of the Appeal or because of exigent circumstances.

(b) *Method of submission.* The Affected Entity must submit the Appeal electronically via email to the DDO, with a copy to the AO, using the email addresses specified in the Agency Decision within the 30-day period stated in paragraph (a) of this section.

(c) *Contents of Appeal.* The Appeal submitted to the DDO must include:

(1) A copy of the disputed Agency Decision;

(2) A detailed statement of the specific legal and factual grounds for the Appeal, including copies of any supporting documents;

(3) The specific remedy or relief the Affected Entity seeks under the Appeal; and

(4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Appeal.

§ 1500.15 Notice of receipt of Appeal to Affected Entity.

Within 15 calendar days of receiving the Appeal, the DDO will provide the Affected Entity a written notice, sent electronically, acknowledging receipt of the Appeal.

(a) *Timely Appeals.* If the Appeal was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Appeal. The notice should provide no more than 30 calendar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to Appeal resolution.

(b) *Untimely Appeals.* If the DDO did not receive the Appeal within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Appeal is being dismissed as untimely and the Agency Decision of the AO becomes final. The notification will also identify the Review Official. The dismissal of an untimely Appeal constitutes the final agency action, unless further review is sought in accordance with the requirements of § 1500.16. In limited circumstances, the DDO may, as a matter of discretion, consider an untimely Appeal if doing so would be in the interests of fairness and equity.

§ 1500.16 Determination of Appeal.

(a) *Record on Appeal.* In determining the merits of the Appeal, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Appeal, any additional documentation submitted by the Affected Entity in response to the DDO's request under § 1500.14(a), and any other information the DDO determines is relevant to the Appeal provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents.

(b) *Appeal decision.* The DDO will issue the Appeal decision within 180 calendar days from the date the Appeal is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180 day period and if feasible will indicate when the decision is expected to be issued. The Appeal decision will also identify the Review Official. The DDO will issue the Appeal decision electronically. The DDO's decision will constitute the final agency action unless the Affected Entity files a timely request for review in accordance with the Request for Review procedures in § 1500.17.

§ 1500.17 Request for review.

An Affected Entity may file an electronic written request for review of the DDO's Appeal decision to the appropriate Review Official within 15 calendar days from the date the Appeal decision is electronically sent to the Affected Entity. The request for review must comply with the following requirements:

(a) *Submission of request for review.* The request must be submitted to the Review Official identified in the Appeal decision as follows:

(1) If a Headquarters DDO issued the Appeal decision, the request must be electronically submitted to the Director of the Office of Grants and Debarment, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(2) If the Appeal decision was issued by a DDO located in an agency Regional Office, the request for review must be electronically submitted to the Regional Administrator, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(b) *Contents and grounds of request for review.* The request for review must include a copy of the DDO's Appeal decision and provide a detailed statement of the factual and legal grounds warranting reversal or modification of the Appeal decision. The only ground for review of a DDO's Appeal decision is that there was a clear and prejudicial error of law, fact or application of agency policy in deciding the Appeal.

(c) *Conducting the review.* In reviewing the Appeal decision, the Review Official will only consider the information that was part of the Appeal decision unless:

(1) The Affected Entity provides new information in the request for review that was not available to the DDO for the Appeal decision; and

(2) The Review Official determines that the new information is relevant and

should be considered in the interests of fairness and equity.

§ 1500.18 Notice of receipt of request for review.

Timeliness. The Review Official will provide the Affected Entity electronic written notice acknowledging receipt of the review request within 15 calendar days of receiving the request. The Review Official will further provide a copy of the notice to the DDO.

(a) If the request was submitted in accordance with § 1500.17, the notice of acknowledgment will also advise the Affected Entity that the Review Official expects to issue a decision within 45 calendar days from the date they received the request.

(b) If the request for review was not submitted within the required 15 calendar day period, or does not allege reviewable grounds consistent with § 1500.17, the Review Official will notify the Affected Entity that the request is denied as untimely and/or for failing to state a valid basis for review. In limited circumstances, the Review Official may, as a matter of discretion, consider an untimely review if doing so would be in the interest of fairness and equity.

§ 1500.19 Determination of request for review.

(a) Within 15 calendar days of receiving a copy of the notice acknowledging the receipt of a timely and reviewable Request for Review, the DDO will submit the Appeal record to the Review Official.

(b) The Review Official will issue a final written decision within 45 calendar days of the submission of the request for review unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented.

(1) The Review Official will notify the Affected Entity if the expected decision will not be issued within the 45-day period and if feasible will indicate when the decision is expected to be issued.

(2) The Review Official's decision constitutes the final agency action and is not subject to further review within the agency.

Title 40—Environmental Protection

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 30—[Removed]

■ 1. Remove part 30.

PART 31—[Removed]

■ 2. Remove part 31.

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

■ 3. The authority citation for part 33 is revised to read as follows:

Authority: 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198, 2 CFR part 200.

■ 4. Section 33.103 is amended by revising the first sentence of the introductory text and the definition for ''Equipment'' to read as follows:

§ 33.103 What do the terms in this part mean?

* * * Terms not defined below shall have the meaning given to them in 2 CFR part 200 and 1500, and 40 CFR part 35 as applicable. * * *

* * * * *

Equipment means items procured under a financial assistance agreement as defined by 2 CFR 200.33.

* * * * *

■ 5. Section 33.105 is amended by revising the introductory text to read as follows:

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 2 CFR 200.338, Remedies for noncompliance, or 40 CFR part 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*). Examples of the remedial actions under 2 CFR 200.338 or 40 CFR part 35 include, but are not limited to:

* * * * *

■ 6. Section 33.303 is amended by revising the second sentence to read as follows:

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

* * * This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 2 CFR part 200 Subpart D—Post Federal Award Requirements, Procurement Standards, or 40 CFR part 35 subpart O, as applicable.

■ 7. Section 33.502 is amended by revising the second sentence to read as follows:

§ 33.502 What are the reporting requirements of this part?

* * * Recipients of Continuing Environmental Program Grants under 40 CFR part 35, subpart A, recipients of Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B; General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements, will report on MBE and WBE participation on an annual basis. * * *

PART 35—STATE AND LOCAL ASSISTANCE

■ 8. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 7401 *et seq.;* 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 300f *et seq.;* 42 U.S.C. 6901 *et seq.;* 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 42 U.S.C. 13101 *et seq.;* Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997), 2 CFR 200.

■ 9. Section 35.001 is amended by revising the second sentence to read as follows:

§ 35.001 Applicability.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500.

Subpart A—Environmental Program Grants

■ 10. Section 35.100 is amended by revising the second sentence to read as follows:

§ 35.100 Purpose of the subpart.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500. * * *

■ 11. Section 35.104 is amended by revising paragraph (a) to read as follows:

§ 35.104 Components of a complete application.

* * * * *

(a) Meet the requirements in 2 CFR part 200, subpart C.

* * * * *

■ 12. Section 35.111 is amended by revising paragraph (a)(1) to read as follows:

§ 35.111 Criteria for approving an application.

(a) * * *

(1) The application meets the requirements of this subpart and 2 CFR part 200, subpart C.

* * * * *

■ 13. Section 35.113 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.113 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 2 CFR parts 200 and 1500, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. * * *

* * * * *

§ 35.114 [Amended]

■ 14. Section 35.114 introductory text is amended by removing the first sentence.

■ 15. Section 35.115 is amended by revising paragraph (a) third sentence and paragraph (c) to read as follows:

§ 35.115 Evaluation of performance.

(a) * * * The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 2 CFR 200.328.

* * * * *

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 2 CFR 200.338. The recipient may request review of the Regional Administrator's decision under the dispute processes in 2 CFR part 1500, subpart E.

* * * * *

■ 16. Section 35.360 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.360 Purpose.

(a)* * * These sections do not govern Water Quality Cooperative Agreements to other entities eligible under section 104(b)(3).

* * * * *

■ 17. Section 35.380 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.380 Purpose.

(a) * * * These sections do not govern Water Quality Cooperative Agreements to other entities eligible under section 104(b)(3).

* * * * *

Subpart B—Environmental Program Grants for Tribes

■ 18. Section 35.500 is amended by revising the second sentence to read as follows:

§ 35.500 Purpose of this subpart.

* * * These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500.* * *

■ 19. Section 35.503 is revised to read as follows:

§ 35.503 Deviation from this subpart.

EPA will consider and may approve requests for an official deviation from non-statutory provisions of this regulation in accordance with 2 CFR 1500.3.

■ 20. Section 35.505 is amended by revising paragraph (a) to read as follows:

§ 35.505 Components of a complete application.

* * * * *

(a) Meet the requirements in 2 CFR part 200, subpart C.

* * * * *

■ 21. Section 35.511 is amended by revising paragraph (a)(1) to read as follows:

§ 35.511 Criteria for approving an application.

(a) * * *

(1) The application meets the requirements of this subpart and 2 CFR part 200, subpart C.

* * * * *

■ 22. Section 35.513 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.513 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 2 CFR parts 200 and 1500, EPA may reimburse recipients for pre-award costs incurred from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period.* * *

* * * * *

§ 35.514 [Amended]

■ 23. Section 35.514 is amended by removing the first sentence of the introductory text.

■ 24. Section 35.515 is amended by revising paragraph (a) third sentence, and paragraph (c) to read as follows:

§ 35.515 Evaluation of performance.

(a) * * * The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 2 CFR 200.328.

* * * * *

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 2 CFR 200.338. The recipient may request review of the Regional Administrator's decision under the dispute processes in 2 CFR part 1500, subpart E.

* * * * *

■ 25. Section 35.588 is amended by revising paragraph (a)(1) to read as follows:

§ 35.588 Award limitations.

(a) * * *

(1) All monitoring and analysis activities performed by the Tribe or Intertribal Consortium meets the applicable quality assurance and quality control requirements in 2 CFR 1500.11.

* * * * *

■ 26. Section 35.600 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.600 Purpose.

(a) * * * These sections do not govern Water Quality Cooperative Agreements under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502.

* * * * *

■ 27. Section 35.610 is amended by revising paragraph (a) to read as follows:

§ 35.610 Purpose.

(a) *Purpose of section.* Sections 35.610 through 35.615 govern wetlands development grants to Tribes and Intertribal Consortia under section 104(b)(3) of the Clean Water Act. These sections do not govern wetlands development grants under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502.

* * * * *

Subpart E—[RESERVED]

■ 28. Remove and reserve part 35 subpart E.

Subpart H—[RESERVED]

■ 29. Remove and reserve part 35 subpart H.

Subpart I—Grants for Construction of Treatment Works

■ 30. Section 35.2000 is amended by revising paragraph (b) first sentence, and paragraph (c) to read as follows:

§ 35.2000 Purpose and policy.

* * * * *

(b) This subpart supplements EPA's Uniform Relocation and Real Property

Acquisition Policies Act regulation (part 4 of this chapter), its National Environmental Policy Act (NEPA) regulation (part 6 of this chapter), its public participation regulation (part 25 of this chapter), its intergovernmental review regulation (part 29 of this chapter), its general grant regulation (2 CFR parts 200 and 1500), and its debarment regulation (2 CFR part 1532), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. * * *

(c) EPA's policy is to delegate administration of the construction grants program on individual projects to State agencies to the maximum extent possible. Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates review of projects for compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency.

* * * * *

■ 31. Section 35.2005 is amended by revising paragraph (a) to read as follows:

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 2 CFR part 200, subpart A—Acronyms and Definitions.

* * * * *

■ 32. Section 35.2035 is amended by revising paragraph (c) to read as follows:

§ 35.2035 Rotating biological contractor (RBC) replacement grants.

* * * * *

(c) The modification/replacement project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR part 35, and 2 CFR parts 200, 1500 and 1532.

* * * * *

■ 33. Section 35.2036 is amended by revising paragraphs (a)(4), (b)(1) and (b)(3) to read as follows:

§ 35.2036 Design/build project grants.

(a) * * *

(4) The grantee obtains bonds from the contractor in an amount the Regional Administrator determines adequate to protect the Federal interest in the treatment works (see 2 CFR 200.325);

* * * * *

(b) * * *(1) Grantee procurement for developing or supplementing the facilities plan to prepare the pre-bid package, as well as for designing and building the project and performing construction management and contract administration, will be in accordance with the procurement standards at 2 CFR 200.317 through 200.326 and 2 CFR 1500.9 through 1500.10.

* * * * *

(3) The grantee may use the same architect or engineer that prepared the facilities plan to provide any or all of the pre-bid, construction management, and contract and/or project administration services provided the initial procurement met EPA requirements (see 2 CFR 1500.10).

* * * * *

■ 34. Section 35.2040 is amended by revising the second sentence of the introductory text, paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(1), (c) introductory text, (d) introductory text, (e) introductory text, (f) introductory text, and (g) introductory text to read as follows:

§ 35.2040 Grant Application.

* * * In addition to the information required in 2 CFR parts 200 and 1500, applicants shall provide the following information:

* * * * *

(a) *Step 2+3: Combined design and building of a treatment works and building related services and supplies.* An application for Step 2+3 grant assistance shall include:

(1) A facilities plan prepared in accordance with this subpart;

* * * * *

(b) *Step 3: Building of a treatment works and related services and supplies* An application for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with this subpart;

* * * * *

(c) *Training facility project.* An application for a grant for construction and support of a training facility, facilities or training programs under section 109(b) of the Act shall include:

* * * * *

(d) *Advances of allowance.* State applications for advances of allowance to small communities shall be on government wide Application for Federal Assistance (SF–424). The application shall include:

* * * * *

(e) *Field Testing of Innovative and Alternative Technology.* An application for field testing of I/A projects shall include a field testing plan containing:

* * * * *

(f) *Marine CSO Fund Project.* An application for marine CSO grant assistance under § 35.2024(b) shall include:

* * * * *

(g) *Design/build project grant (Step 7).* An application for a design/build project grant shall include:

* * * * *

■ 35. Section 35.2042 is amended by revising paragraph (c) to read as follows:

§ 35.2042 Review of grant applications.

* * * * *

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the Act and § 35.2025 will be reviewed in accordance with 2 CFR parts 200 and 1500.

* * * * *

■ 36. Section 35.2105 is revised to read as follows:

§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 2 CFR 200.113 and 2 CFR part 1532. If the applicant indicates it has used the services of a debarred individual or firm, EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under 2 CFR parts 200 and 1500 or be the subject of possible debarment or suspension under 2 CFR part 1532.

■ 37. Section 35.2200 is revised to read as follows:

§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (*http://www.epa.gov/ogd/tc.htm*), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2218.

■ 38. Section 35.2212 is amended by revising paragraph (a) second sentence, and paragraph (d) to read as follows:

§ 35.2212 Project initiation.

(a) * * * Failure to promptly initiate and complete a project may result in the imposition of sanctions under 2 CFR 200.338.

* * * * *

(d) The grantee shall notify the Regional Administrator immediately upon award of the subagreement(s) for building all significant elements of the project.

* * * * *

■ 39. Section 35.2250 is revised to read as follows:

§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, 2 CFR part 200, subpart E—Cost Principles and Appendix A of this subpart.

■ 40. Section 35.2300 is amended by revising paragraph (a) and paragraph (d) second sentence to read as follows:

§ 35.2300 Grant payments.

* * * * *

(a) * * * The Regional Administrator may at any time review and audit request for payment and payments and make appropriate adjustments as provided in 2 CFR 200.305.

* * * * *

(d) * * * The requirements in 2 CFR 200.305 apply to any advances of funds for assistance payments.

* * * * *

■ 41. Appendix A to Subpart I of Part 35—Determination of Allowable Costs is amended by revising paragraphs (a), A.1.b., A.1.c., A.1.g.(2)(ii) and E.2.a to read as follows:

Appendix A to Subpart I of Part 35—Determination of Allowable Costs

(a) * * * The information in this appendix represents Agency policies and procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles of 2 CFR part 200 and reasonableness.

* * * * *

A. * * *

1. * * *

b. The costs of complying with the procurement standards in 2 CFR 200.317 through 200.326 and 2 CFR 1500.9 and 1500.10.

c. The cost of legal and engineering services incurred by grantees in deciding procurement protests and defending their decisions in protest appeals in 2 CFR 200.318.

* * * * *

g. * * *

(2) * * *

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the model subagreement clauses required under § 33.1030 of this subchapter.

* * * * *

E. * * *

2. * * *

a. The costs of equipment or material procured in violation of the procurement standards in 2 CFR 200.317 through 2 CFR 200.326 and 2 CFR 1500.9 and 1500.10.

* * * * *

Subpart J—Construction Grants Program Delegation to States

■ 42. Section 35.3025 is amended by revising paragraph (c) sixth sentence to read as follows:

§ 35.3025 Overview of State performance under delegation.

(c) * * * The Regional Administrator may terminate or annual any section 205(g) financial assistance for cause in accordance with 2 CFR 200.338 through 2 CFR 200.342 Remedies for Noncompliance.

* * * * *

■ 43. Section 35.3030 is amended by revising paragraph (c) to read as follows:

§ 35.3030 Right of review of State decision.

* * * * *

(c) The Region shall determine whether the State's review is comparable to a dispute decision official's (DDO) review pursuant to 2 CFR part 1500, subpart E. If the State's review is comparable, Regional review of the State's decision will be conducted by the Regional Administrator. If the State's review is not comparable, the DDO will review the State's decision and issue a written decision. Review of either a Regional Administrator or DDO decision may be requested pursuant to 2 CFR part 1500, subpart E.

* * * * *

Subpart K—State Water Pollution Control Revolving Funds

■ 44. Section 35.3105 is amended by revising the introductory text to read as follows:

§ 35.3105 Definitions.

Words and terms that are not defined below and that are used in this rule shall have the same meaning they are given in 2 CFR part 200 Subpart A—Acronyms and Definitions and 40 CFR part 35, subpart I.

* * * * *

■ 45. Section 35.3140 is amended by revising paragraph (b) second sentence to read as follows:

§ 35.3140 Environmental review requirements.

* * * * *

(b) * * * The State may elect to apply the procedures at 40 CFR part 6, subpart I and related subparts, or apply its own ''NEPA-like'' SERP for conducting environmental reviews, provided that the following elements are met.

* * * * *

Subpart L—Drinking Water State Revolving Funds

■ 46. Section 35.3500 is amended by revising paragraph (b) second sentence to read as follows:

§ 35.3500 Purpose, policy, and applicability.

* * * * *

(b) * * * This subpart also supplements EPA general assistance regulations in 2 CFR parts 200 and 1500 which contain administrative requirements that apply to governmental recipients of Environmental Protection Agency (EPA) grants and subgrants.* * *

* * * * *

■ 47. Section 35.3510 is amended by revising paragraph (b) second sentence to read as follows:

§ 35.3510 Establishment of the DWSRF program.

* * * * *

(b) * * * The State agency that is awarded the capitalization grant (*i.e.,* grantee) is accountable for the use of the funds provided in the capitalization grant agreement under 2 CFR part 200 and the EPA general assistance regulations in 2 CFR part 1500.

* * * * *

■ 48. Section 35.3540 is amended by revising paragraph (a) to read as follows:

§ 35.3540 Requirements for funding set-aside activities.

(a) * * * If a State makes a grant or enters into a cooperative agreement with an assistance recipient to conduct set-aside activities, the recipient must comply with 2 CFR part 200 and the EPA general assistance regulations in 2 CFR part 1500.

* * * * *

■ 49. Section 35.3550 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.3550 Specific capitalization grant agreement requirements.

(a) * * * A State must agree to comply with this subpart, 2 CFR part 200, the EPA general assistance regulations in 2 CFR part 1500 and the specific conditions of the grant.* * *

* * * * *

■ 50. Section 35.3570 is amended by revising paragraph (a)(3)(xiv) and (b)(1) to read as follows:

§ 35.3570 Reports and audits.

(a) * * *

(3) * * *

(xiv) Complied with 2 CFR part 200, the EPA general assistance regulations

in 2 CFR part 1500 and the specific conditions of the grant.

* * * * *

(b) * * *

(1) A State must comply with the provisions of the Single Audit Act Amendments of 1996, 31 U.S.C. 7501–7, 2 CFR part 200 and the Office of Management and Budget's Compliance Supplement.

* * * * *

■ 51. Section 35.3585 is amended by revising paragraphs (a) and (d) to read as follows:

§ 35.3585 Compliance assurance procedures.

(a) * * * The RA may take action under this section and the remedies of noncompliance of 2 CFR 200.338 through 200.342, if a determination is made that a State has not complied with its capitalization grant agreement, other requirements under section 1452 of the Act, this subpart, 2 CFR parts 200 and 1500, or has not managed the DWSRF program in a financially sound manner (*e.g.,* allows consistent and substantial failures of loan repayments).

* * * * *

(d) * * * A State or an assistance recipient that has been adversely affected by an action or omission by EPA may request a review of the action or omission under 2 CFR part 1500, subpart E.

Subpart M—Grants for Technical Assistance

■ 52. Section 35.4011 is revised to read as follows:

§ 35.4011 Do the general grant regulations apply to TAGs?

Yes, the regulations at 2 CFR part 200 and 2 CFR Part 1500 apply to TAGs. 2 CFR part 200, as supplemented by 2 CFR part 1500, establishes the uniform administrative requirements for Federal grants.

■ 53. Section 35.4012 is revised to read as follows:

§ 35.4012 If there appears to be a difference between the requirements of 2 CFR Parts 200 and 1500 and this subpart, which regulations should my group follow?

You should follow the regulations in 2 CFR part 200 and 2 CFR part 1500, except for the following provisions from which this subpart deviates:

(a) 2 CFR 200.305(b)(1) and (2), Payment

(b) 2 CFR 200.324(b)(2), Federal awarding agency or pass-through entity review

(c) 2 CFR part 1500 Subpart E—Disputes.

■ 54. Section 35.4020 is amended by revising paragraph (a)(2) to read as follows:

§ 35.4020 Is my community group eligible for a TAG?

(a) * * *

(2) Your group meets the minimum administrative and management capability requirements found in 2 CFR 200.302 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and

* * * * *

■ 55. Section 35.4050 is amended by revising paragraph (b) first sentence to read as follows:

§ 35.4050 Must my group contribute toward the cost of a TAG?

* * * * *

(b) Under 2 CFR 200.306, your group may use ''cash'' and/or ''in-kind contributions'' (for example, your board members can count their time toward your matching share) to meet the matching funds requirement. * * *

■ 56. Section 35.4075 is amended by revising paragraphs (d), (e) and (i)(2) to read as follows:

§ 35.4075 Are there things my group can't spend TAG money for?

* * * * *

(d) Political activity and lobbying that is unallowable under 2 CFR part 200 Subpart E—Cost Principles, (this restriction includes activities such as attempting to influence the outcomes of any Federal, State or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, or publicity, or attempting to influence the introduction or passage of Federal or state legislation; this regulation is available at *http://www.ecfr.gov.*)

(e) Other activities that are unallowable under the cost principles stated in 2 CFR part 200 Subpart E—Cost Principles (such as costs of amusement, diversion, social activities, fund raising and ceremonials);

* * * * *

(i) * * *

(2) Disputes with EPA under its dispute resolution procedures set forth 2 CFR Part1500 Subpart E (see § 35.4245); and

* * * * *

■ 57. Section 35.4125 is amended by revising paragraph (c) first sentence to read as follows:

§ 35.4125 What else does my group need to do?

* * * * *

(c) Assurances, certifications and other preaward paperwork as 2 CFR part 200 requires. * * *

■ 58. Section 35.4175 is amended by revising paragraph (c) to read as follows:

§ 35.4175 What other reporting and record keeping requirements are there?

* * * * *

(c) Comply with any reporting and record keeping requirements in 2 CFR parts 200 and 1500.

■ 59. Section 35.4210, paragraph (a), is amended by revising entry (4) of the table to read as follows:

§ 35.4210 Must my group solicit and document bids for our procurements?

(a) * * *

If the aggregate amount of the.	Then your group.
* * * * *	
(4) proposed contract is greater than $100,000.	must follow the procurement regulations in 2 CFR Parts 200 and 1500 (these regulations outline the standards for your group to use when contracting for services with Federal funds; they also contain provisions on: codes of conduct for the award and administration of contracts; competition; procurement procedures; cost and price analysis; procurement records; contract administration; and contracts generally).
* * * * *	

* * * * *

■ 60. Section 35.4230 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 35.4230 What are my group's contractual responsibilities once we procure a contract?

* * * * *

(a) Is responsible for resolving all contractual and administrative issues arising out of contracts you enter into under a TAG; you must establish a procedure for resolving such issues with your contractor which complies with the provisions of 2 CFR 200.318 (k).* * *

* * * * *

■ 61. Section 35.4235 is amended by revising paragraphs (f) and (g) to read as follows:

§ 35.4235 Are there specific provisions my group's contract(s) must contain?

* * * * *

(f) The following clauses from 2 CFR part 200 Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which are available at *http://www.ecfr.gov.*):

* * * * *

(g) The following clauses from 2 CFR part 200:

(1) Remedies for breaches of contract (2 CFR part 200 Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards)

(2) Termination by the recipient (2 CFR part 200 Appendix II—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards); and

(3) Access to records (2 CFR 200.336); and

* * * * *

■ 62. Section 35.4245 is revised to read as follows:

§ 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?

The regulations at 2 CFR part 1500 Subpart E will govern disputes except that, before you may obtain judicial review of the dispute, you must have requested the Regional Administrator to review the dispute decision official's determination under 2 CFR 1500.17.

■ 63. Section 35.4250 is amended by revising paragraph (b) to read as follows:

§ 35.4250 Under what circumstances would EPA terminate my group's TAG?

* * * * *

(b) EPA may also terminate your grant with your group's consent in which case you and EPA must agree upon the termination conditions, including the effective date as 2 CFR 200.339 describes.

■ 64. Section 35.4260 is amended by revising the introductory text to read as follows:

§ 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?

EPA may take one or more of the following actions, under 2 CFR 200.338, depending on the circumstances:

* * * * *

■ 65. Section 35.4270 is amended by revising the definition ''Allowable cost'' to read as follows:

§ 35.4270 Definitions.

* * * * *

Allowable cost means those project costs that are: eligible, reasonable, allocable to the project, and necessary to the operation of the organization or the performance of the award as provided in the appropriate Federal cost principles, in most cases 2 CFR part 200 Subpart E—Cost Principles, and approved by EPA in the assistance agreement.

* * * * *

■ 66. Section 35.4275 is amended by revising the section heading to read as follows:

§ 35.4275 Where can my group get the documents this subpart references (for example Whitehouse OMB circulars, eCFR and tag Web site, EPA HQ/Regional offices, grant forms)?

* * * * *

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

■ 67. Section 35.6005 is amended by revising paragraph (b) to read as follows:

§ 35.6005 Purpose and scope.

* * * * *

(b) 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities,'' establishes consistency and uniformity among Federal agencies in the administration of grants and Cooperative Agreements to non-federal entities. For CERCLA-funded Cooperative Agreements, this subpart supplements the requirements contained in 2 CFR parts 200 and 1500 for States, political subdivisions thereof, and Indian Tribes. This subpart references those sections of 2 CFR parts 200 and 1500 that are applicable to CERCLA-funded Cooperative Agreements.

* * * * *

■ 68. Section 35.6015 is amended by revising paragraph (b) to read as follows:

§ 35.6015 Definitions.

* * * * *

(b) Those terms not defined in this section shall have the meanings set forth in section 101 of CERCLA, 2 CFR part 200, and 40 CFR part 300 (the National Contingency Plan).

■ 69. Section 35.6020 is revised to read as follows:

§ 35.6020 Requirements for both applicants and recipients.

Applicants and recipients must comply with the applicable requirements of 2 CFR part 1532, ''Nonprocurement Debarment and Suspension and of 2 CFR part 1536, ''Requirements for Drug-Free Workplace (Financial Assistance).''

■ 70. Section 35.6025 is amended by revising the second sentence to read as follows:

§ 35.6025 Deviation from this subpart.

* * * Refer to the requirements regarding additions and exceptions described in 2 CFR 1500.3.

■ 71. Section 35.6055 is amended by revising paragraphs (a)(3) and (b)(2)(i) to read as follows:

§ 35.6055 State-lead pre-remedial Cooperative Agreements.

(a) * * *

(3) *Other applicable forms and information* authorized by 2 CFR part 200 Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

* * * * *

(b) * * *

(2) * * *

(i) The recipient must comply with the quality assurance requirements described in 2 CFR 1500.11.

* * * * *

■ 72. Section 35.6105 is amended by revising paragraphs (a)(2)(vi)(A), (a)(3) and (b)(5) to read as follows:

§ 35.6105 State-lead remedial Cooperative Agreements.

* * * * *

(a) * * *

(2) * * *

(vi) * * * (A) * * * If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 2 CFR 1500.11.

* * * * *

(3) *Other applicable forms and information* authorized by 2 CFR part 200 Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

* * * * *

(b) * * *

(5) * * * If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f) of the NCP. The State must provide this assurance even if it intends to transfer this interest to a third party, or to allow a political subdivision to accept transfer on behalf of the State. If the political subdivision is accepting the transferred interest in real property, the State must guarantee that it will accept transfer of such interest in the event of default by the political subdivision. If the State or political subdivision

disposes of the transferred real property, it shall comply with the requirements for real property in 2 CFR 200.311. (*See* § 35.6400 for additional information on real property acquisition requirements.)

■ 73. Section 35.6230 is amended by revising paragraph (d) to read as follows:

§ 35.6230 Application requirements.

* * * * *

(d) *Other applicable forms and information* authorized by 2 CFR part 200 Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards.

■ 74. Section 35.6270 is amended by revising paragraph (a)(1) third sentence, paragraph (a)(2) and paragraph (b)(3) second sentence to read as follows:

§ 35.6270 Standards for financial management systems.

(a)(1) * * * The recipient must allow an EPA review of the adequacy of the financial management system as described in 2 CFR 200.302.

(2) * * * The recipient's systems must comply with the appropriate allowable cost principles described in 2 CFR part 200 Subpart E—Cost Principles.

* * * * *

(b) * * *

(3)) * * * The recipient must comply with the requirements regarding source documentation described in 2 CFR 200.302.

* * * * *

■ 75. Section 35.6275 is amended by revising paragraph (a) to read as follows:

§ 35.6275 Period of availability of funds.

The recipient must comply with the requirements regarding the availability of funds described in 2 CFR parts 200 and 1500.

* * * * *

■ 76. Section 35.6280 is amended by revising paragraphs (a) introductory text, (a)(2), paragraph (b)(1) first sentence, paragraph (b)(2) second sentence and paragraph (b)(3) fourth sentence to read as follows:

§ 35.6280 Payments.

(a) * * * In addition to the following requirements, the recipient must comply with the requirements regarding payment described in 2 CFR 200.305.

* * * * *

(2) * * * The interest a recipient earns on an advance of EPA funds is subject to the requirements of 2 CFR 200.305.

(b) * * *

(1) * * * In order to receive payment by the letter of credit method, the recipient must comply with the requirements regarding letter of credit described in 2 CFR 200.305.* * *

(2) * * * The recipient must comply with the requirements regarding reimbursement described in 2 CFR 200.305.

(3) * * * In such cases, the recipient must comply with the requirements regarding working capital advances described in 2 CFR 200.305.

■ 77. Section 35.6285 is amended by revising paragraph (b) second sentence and paragraph (e) first sentence to read as follows:

§ 35.6285 Recipient payment of response costs.

* * * * *

(b) * * * The recipient must comply with the requirements regarding in-kind and donated services described in 2 CFR 200.306.

* * * * *

(e) * * * The recipient must comply with the requirements regarding cost sharing described in 2 CFR 200.306.* * *

* * * * *

■ 78. Section 35.6290 is amended by revising the first sentence to read as follows:

§ 35.6290 Program income.

The recipient must comply with the requirements regarding program income described in 2 CFR 200.307 and 2 CFR part 1500.* * *

■ 79. Section 35.6405 is revised to read as follows:

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 2 CFR 200.311.

■ 80. Section 35.6450 is amended by revising the first sentence to read as follows:

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 2 CFR part 200.315.* * *

■ 81. Section 35.6550 is amended by revising paragraph (a)(1) first sentence, paragraph (a)(3), paragraph (a)(6) first sentence and paragraph (a)(7) to read as follows:

§ 35.6550 Procurement system standards.

(a)(1) * * * In addition to the procurement standards described in 2 CFR 200.317 through 200.326 and 2 CFR part 1500, the State shall comply with the requirements in the following: Paragraphs (a)(5), (a)(9), and (b) of this section, §§ 35.6555(c), 35.6565 (the first sentence in this section, the first sentence in paragraph (b) of this section, and all of paragraph (d) of this section), 35.6570, 35.6575, and 35.6600.

* * * * *

(3) * * * The recipient must comply with the requirements of 2 CFR 200.318 (c)(1) which describes standards of conduct for employees, officers, and agents of the recipient.

* * * * *

(6) * * * The recipient may award a contract only to a responsible contractor, as described in 2 CFR 200.318 (h) and must ensure that each contractor performs in accordance with all the provisions of the contract. (*See* also § 35.6020.)

* * * * *

(7) * * * The recipient must comply with the requirements described in 2 CFR 200.318 (k) regarding protest procedures.

* * * * *

■ 82. Section 35.6555 is amended by revising paragraph (b)(2) to read as follows:

§ 35.6555 Competition.

* * * * *

(b) * * *

(2) * * * Any contract or subcontract awarded by an Indian Tribe or Indian intertribal consortium shall comply with the requirements of the Indian Self Determination Act.

* * * * *

■ 83. Section 35.6565 is amended by revising the first sentence of the introductory text to read as follows:

§ 35.6565 Procurement methods.

The recipient must comply with the requirements for payment to consultants described in 2 CFR 1500.9. * * *

* * * * *

■ 84. Section 35.6570 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 35.6570 Use of the same engineer during subsequent phases of response.

* * * * *

(b) * * *

(1) * * *

(i) That it complied with the procurement requirements in § 35.6565 when it selected the engineer and the code of conduct requirements described in 2 CFR 200.318(c)(1).

* * * * *

■ 85. Section 35.6590 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.6590 Bonding and insurance.

(a) * * * The recipient must meet the requirements regarding bonding described in 2 CFR 200.325.

* * * * *

■ 86. Section 35.6595 is amended by revising paragraph (b)(2) second sentence and paragraph (b)(3) to read as follows:

§ 35.6595 Contract provisions.

* * * * *

(b) * * *

(2) * * * This notice shall also include EPA requirements and regulations pertaining to copyrights and rights to data contained in 2 CFR 200.315.

(3) * * * The recipient must comply with Appendix II to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

* * * * *

■ 87. Section 35.6610 is amended by revising paragraph (e) to read as follows:

§ 35.6610 Contracts awarded by a contractor.

* * * * *

(e) The Federal cost principles in 2 CFR part 200 subpart E.

* * * * *

■ 88. Section 35.6650 is amended by revising paragraph (a) second sentence to read as follows:

§ 35.6650 Progress reports.

(a) * * * Notwithstanding the requirements of 2 CFR 200.327 and 200.328, the reports shall be due within 60 days after the reporting period.

* * * * *

■ 89. Section 35.6670 is amended by revising paragraph (a) and paragraph (b)(2)(i) second sentence to read as follows:

§ 35.6670 Financial reports.

(a) * * * The recipient must comply with the requirements regarding financial reporting described in 2 CFR 200.327.

(b) * * *

(2) * * *

(i) * * * If quarterly or semiannual Financial Status Reports are required, reports are due in accordance with 2 CFR 200.327;

* * * * *

■ 90. Section 35.6705 is amended by revising paragraph (d) to read as follows:

§ 35.6705 Records retention.

* * * * *

(d) * * * The recipient must comply with the requirements regarding the starting dates for records retention described in 2 CFR 1500.6.

■ 91. Section 35.6710 is amended by revising paragraphs (a) and (c) to read as follows:

§ 35.6710 Records access.

(a) * * * The recipient must comply with the requirements regarding records access described in 2 CFR 200.336.

* * * * *

(c) * * * The recipient must require its contractor to comply with the requirements regarding records access described in 2 CFR 200.336.

* * * * *

■ 92. Section 35.6750 is revised to read as follows:

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the Cooperative Agreement described by subject in 2 CFR part 200.

■ 93. Section 35.6755 is revised to read as follows:

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 2 CFR 200.328.

■ 94. Section 35.6760 is revised to read as follows:

§ 35.6760 Enforcement and termination.

The recipient must comply with all terms and conditions in the Cooperative Agreement, and is subject to the requirements regarding enforcement of the terms of an award and termination described in 2 CFR 200.338 and 200.339.

■ 95. Section 35.6765 is revised to read as follows:

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 2 CFR part 200 subpart F.

■ 96. Section 35.6770 is revised to read as follows:

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 2 CFR part 1500 subpart E.

■ 97. Section 35.6780 is amended by revising paragraph (b) to read as follows:

§ 35.6780 Closeout.

* * * * *

(b) The recipient must comply with the closeout requirements described in 2 CFR 200.343 and 200.344.

* * * * *

■ 98. Section 35.6785 is revised to read as follows:

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 2 CFR 200.345 regarding collection of amounts due.

■ 99. Section 35.6790 is revised to read as follows:

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose specific conditions on the award as described in 2 CFR 200.207 or restrictions on the award as described in 2 CFR 200.338.

■ 100. Section 35.6815 is amended by revising paragraph (a)(2) to read as follows:

§ 35.6815 Administrative requirements.

* * * * *

(a) * * *

(2) * * * The State and/or political subdivision must comply with the requirements described in 2 CFR 200.345 regarding collection of amounts due.

* * * * *

Subpart P—Financial Assistance for the National Estuary Program

■ 101. Section 35.9000 is amended by revising the second sentence to read as follows:

§ 35.9000 Applicability.

* * *These provisions supplement the EPA general assistance regulations in 2 CFR parts 200 and 1500.

■ 102. Section 35.9040 is amended by revising the second sentence to read as follows:

§ 35.9040 Application for assistance.

* * *In addition to meeting applicable requirements contained in 2 CFR parts 200 and 1500, a complete application must contain a discussion of performance to date under an existing award, the proposed work program, and a list of all applicable EPA-approved State strategies and program plans, with a statement certifying that the proposed work program is consistent with these elements.* * *

■ 103. Section 35.9045 is amended by revising paragraph (a) first sentence to read as follows:

§ 35.9045 EPA action on application.

(a) * * * The Regional Administrator will approve the application only if it satisfies the requirements of CWA section 320; the terms, conditions, and limitations of this subpart; and the applicable provisions of 2 CFR parts 200 and 1500, and other EPA assistance regulations. * * *

* * * * *

■ 104. Section 35.9055 is amended by revising the sixth sentence to read as follows:

§ 35.9055 Evaluation of recipient performance.

* * *If agreement is not reached, the Regional Administrator may impose sanctions under the applicable provisions of 2 CFR parts 200 and 1500.

PART 40— RESEARCH AND DEMONSTRATION GRANTS

■ 105. The authority citation for part 40 is revised to read as follows:

Authority: 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2609 *et seq.;* 33 U.S.C. 1254 *et seq.* and 1443; 42 U.S.C. 241 *et seq.,* 300f *et seq.,* 1857 *et seq.,* 1891 *et seq.,* and 6901 *et seq.,* 2 CFR part 200.

■ 106. Section 40.105 is revised to read as follows:

§ 40.105 Applicability and scope.

This part establishes mandatory policies and procedures for all EPA research and demonstration grants. The provisions of this part supplement the EPA general grant regulations and procedures in 2 CFR parts 200 and 1500. Accordingly, all EPA research and demonstration grants are awarded subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (2 CFR part 200) and to the applicable provisions of this part 40.

■ 107. Section 40.125–2 is amended by revising the introductory text to read as follows:

§ 40.125–2 Limitations on assistance.

In addition to the cost-sharing requirements pursuant to 2 CFR 200.306, research and demonstration grants shall be governed by the specific assistance limitations listed below:

* * * * *

■ 108. Section 40.130 is amended by revising the introductory text to read as follows:

§ 40.130 Eligibility.

Except as otherwise provided below, grants for research and demonstration projects may be awarded to any responsible applicant in accordance with 2 CFR part 200.

* * * * *

■ 109. Section 40.135–2 is amended by revising the introductory text to read as follows:

§ 40.135–2 Application requirements.

All applications for research and demonstration grants shall be submitted to the Environmental Protection Agency, in accordance with 2 CFR 200.206.

* * * * *

■ 110. Section 40.145 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 40.145 Supplemental grant conditions.

In addition to the EPA General Grant Conditions (*http://www.epa.gov/ogd/tc.htm*), all grants are awarded subject to the following requirements:

* * * * *

(b) In addition to the notification of project changes required pursuant to 2 CFR 200.308, prior written approval by the grants officer is required for project changes which may alter the approved scope of the project, substantially alter the design of the project, or increase the amount of Federal funds needed to complete the project. No approval or disapproval of a project change pursuant to 2 CFR 200.308 or this section shall commit or obligate the United States to an increase in the amount of the grant or payments thereunder, but shall not preclude submission or consideration of a request for a grant amendment pursuant to 2 CFR 200.308.

* * * * *

■ 111. Section 40.145–3 is amended by revising paragraph (k) to read as follows:

§ 40.145–3 Projects involving construction.

* * * * *

(k) In addition to the notification of project changes pursuant to 2 CFR 200.308, a copy of any construction contract or modifications thereof, and of revisions to plans and specifications must be submitted to the grants officer.

■ 112. Section 40.155 is amended by revising paragraph (b) and (c) to read as follows:

§ 40.155 Availability of information.

* * * * *

(b) An assertion of entitlement to confidential treatment of part or all of the information in an application may be made using the procedure described in 2 CFR 200.211. See also §§ 2.203 and 2.204 of this chapter.

(c) All information and data contained in the grant application will be subject to external review unless deviation is approved for good cause pursuant to 2 CFR 1500.3.

■ 113. Section 40.160–2 is revised to read as follows:

§ 40.160–2 Financial status report.

A financial status report must be prepared and submitted within 90 days after completion of the budget and project periods in accordance with 2 CFR 200.327.

■ 114. Section 40.160–3 is amended by revising introductory text to read as follows:

§ 40.160–3 Reporting of inventions.

Immediate and full reporting of all inventions to the Environmental Protection Agency is required. In addition:

* * * * *

PART 45—TRAINING ASSISTANCE

■ 115. The authority citation for part 45 is revised to read as follows:

Authority: Sec. 103 of the Clean Air Act, as amended (42 U.S.C. 7403), secs. 104(g), 109, and 111 of the Clean Water Act, as amended (33 U.S.C. 1254(g), 1259, and 1261), secs. 7007 and 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6977 and 6981); sec. 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1). 2 CFR 200.

■ 116. Section 45.100 is revised to read as follows:

§ 45.100 Purpose and scope.

This part establishes the policies and procedures for the award of training assistance by the Environmental Protection Agency (EPA). The provisions of this part supplement EPA's general grant regulations and procedures 2 CFR parts 200 and 1500.

■ 117. Section 45.115 is amended by revising the introductory text to read as follows:

§ 45.115 Definitions.

The following definitions supplement the definitions in 2 CFR part 200, subpart A.

* * * * *

■ 118. Section 45.130 is amended by revising paragraph (a) introductory text to read as follows:

§ 45.130 Evaluation of applications.

(a) Consistent with 2 CFR 200.204, the appropriate EPA program office staff will review training applications in accordance with the following criteria:

* * * * *

■ 119. Section 45.145 is amended by revising paragraph (a) to read as follows:

§ 45.145 Allocability and allowability of costs.

(a) Allocability and allowability of costs will be determined in accordance with 2 CFR part 200, subpart E.

* * * * *

■ 120. Section 45.150 is amended by revising paragraph (a) to read as follows:

§ 45.150 Reports.

(a) Recipients must submit the reports required in 2 CFR 200.327 and 200.328.

* * * * *

PART 46—FELLOWSHIPS

■ 121. The authority citation for part 46 is revised to read as follows:

Authority: Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5)); sections 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B)); section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1); section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981); section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609); section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660). 2 CFR part 200.

Subpart D—During the Fellowship

■ 122. Section 46.205 is amended by revising the second sentence to read as follows:

§ 46.205 Intangible property.

* * * EPA's requirements for dealing with such intangible property are found at 2 CFR 200.315.

■ 123. Section 46.220 is amended by revising paragraph (b) third sentence to read as follows:

§ 46.220 Disputes.

* * * * *

(b) * * * The dispute procedures outlined at 2 CFR part 1500 subpart E, will apply.

PART 47—NATIONAL ENVIRONMENTAL EDUCATION ACT GRANTS

■ 124. The authority citation for part 47 is revised to read as follows:

Authority: 20 U.S.C. 5505. 2 CFR part 200.

■ 125. Section 47.100 is amended by revising the third sentence to read as follows:

§ 47.100 Purpose and scope.

* * * Projects funded under this part are also subject to 2 CFR parts 200 and 1500. * * *

■ 126. Section 47.105 is amended by revising paragraph (g) to read as follows:

§ 47.105 Definitions.

* * * * *

(g) Refer to 2 CFR part 200, subpart A and 40 CFR 35.6015 for definitions for budget period, project period, cooperative agreement, grant agreement, and other Federal assistance terms.

■ 127. Section 47.130 is amended by revising paragraph (c) to read as follows:

§ 47.130 Performance of grant.

* * * * *

(c) Procurement procedures for all recipients are described in 2 CFR part 200 subpart D—Post Federal Award Requirements, Procurement Standards (2 CFR 200.317 through 200.326). These procedures include provisions for small purchase procedures.

■ 128. Section 47.135 is revised to read as follows:

§ 47.135 Disputes.

Disputes arising under these grants shall be governed by 2 CFR part 1500 subpart E.

Gina McCarthy,

Administrator.

National Aeronautics and Space Administration

For the reasons set forth in the common preamble, Part 1800 of Title 2, Chapter XVIII of the Code of Federal Regulations is added and 14 CFR parts 1260 and 1273 are removed to read as follows:

Title 2—Grants and Agreements

CHAPTER XVIII—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

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1800.2 Purpose.
1800.3 Applicability.
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Subpart A—Acronyms and Definitions

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1800.400 Policy guide.
Appendix A to Part 1800—Certifications, Assurances, and Representations
Appendix B to Part 1800—Terms and Conditions

Authority: 51 U.S.C. 20113 (e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

§ 1800.1 Authority.

The National Aeronautics and Space Administration (NASA) awards grants and cooperative agreements under the authority of 51 U.S.C. 20113 (e), the National Aeronautics and Space Act. This part 1800 is issued under the authority of 51 U.S.C. 20113 (e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

§ 1800.2 Purpose.

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through F of 2 CFR part 200, as supplemented by this part, as the NASA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part.

§ 1800.3 Applicability.

(a) This part establishes policies and procedures for grants and cooperative agreements awarded by NASA to non-Federal entities, commercial firms (when cost sharing is not required), and foreign organizations as allowed by 2 CFR 200.101 Applicability.

(b) Throughout this Part, the term ''grant'' includes ''cooperative agreement'' unless otherwise indicated.

(c) When commercial firms are required to provide cost sharing pursuant to 2 CFR 200.306, Cost Sharing, the terms and conditions of 14 CFR part 1274 apply.

(d)(1) In general, research with foreign organizations will not be conducted through grants, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA policy on performing research with foreign organizations on a no-exchange-of-funds basis is set forth at NASA FAR Supplement (NFS) 1835.016–70. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

(2) Grants to foreign organizations are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of International and Interagency Relations and the Headquarters Office of the General Counsel. Requests to award grants to foreign organizations are to be coordinated through the Office of Procurement, Program Operations Division.

(3) The requirements of this section do not apply to the purchase of supplies or services from non-U.S. sources by grant to U.S. recipients, when necessary to support research efforts.

(Authority: 14 CFR 1260.4(b), 14 CFR 1260.12(e)(1), 14 CFR 1260.12(e)(2), 14 CFR 1260.(e)(3), and 14 CFR 1260.(e)(5))

§ 1800.4 Amendment.

This Part 1800 will be amended by publication of changes in the **Federal Register**. Changes will be issued as final rules.

§ 1800.5 Publication.

The official site for accessing the NASA Grant and Cooperative Agreement Regulation, including current Grant Notices and internal guidance, is on the internet at: *http://www.hq.nasa.gov/office/procurement/grants/index.html*.

§ 1800.6 Deviations.

(a) A deviation is required for any of the following:

(1) When prescribed term or condition set forth verbatim in this Part 1800 is modified or omitted.

(2) When a term or condition is set forth in this Part, but not for use verbatim, and the Center substitutes a term or condition which is inconsistent with the intent, principle, and substance of the term or condition.

(3) When a form prescribed by this Part is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a grant term or condition, form, procedure, or any other grant action, are changed.

(5) When a form is created for recipient use that constitutes a ''Collection of Information'' within the meaning of the Paperwork Reduction Act (44 U.S.C. 35) and its implementation in 5 CFR part 1320.

(b) Requests for authority to deviate from this Part shall be submitted to the Office of Procurement, NASA Headquarters, Program Operations Division. Requests, signed by the procurement officer, shall contain:

(1) A full description of the deviation, the circumstances in which it will be used, and identification of the requirement from which a deviation is sought;

(2) The rationale for the request, pertinent background information, and the intended effect of the deviation;

(3) The name of the recipient, identification of the grant affected, and the dollar value;

(4) A statement as to whether the deviation has been requested previously, and, if so, details of that request; and

(5) A copy of legal counsel's concurrence or comments.

(c) Where it is necessary to obtain an exception from 2 CFR part 200, the Program Operations Division will process all necessary documents. (See 2 CFR 200.102.)

(Authority: 14 CFR 1260.7)

Subpart A—Acronyms and Definitions

§ 1800.10 Acronyms.

AO Announcement of Opportunity
CAN Cooperative Agreement Notice
HBCU Historically Black Colleges and Universities
NASA National Aeronautics and Space Administration
NFS NASA FAR Supplement
NPR NASA Procedural Requirements
NRA NASA Research Announcement
OMB Office of Management and Budget
ONR Office of Naval Research
RPPR Research Performance Progress Report
STI Program NASA Scientific and Technical Information Program

§ 1800.11 Definitions.

(a) The following definitions are a supplement to the subpart A definitions set forth at 2 CFR 200.2 through 200.99.

Administrative grant officer means a Federal employee delegated responsibility for grant administration; *e.g.,* a NASA grant officer who has retained grant administration responsibilities, or an Office of Naval Research (ONR) grant officer delegated grant administration by a NASA grant officer.

Commercial firm means any corporation, trust or other organization which is organized primarily for profit.

Effective date means the date work can begin. This date is the beginning of the period of performance and can be earlier or later than the date of signature on a basic award. Expenditures made prior to award of a grant are incurred at the recipient's risk.

Historically Black Colleges and Universities (HBCUs) means any historically Black college or university that was established prior to 1964, whose principal mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation.

Minority Institutions (MIs) means an institution of higher education whose enrollment of a single minority or a combination of minorities (minority meaning American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group under-represented in science and engineering.) exceeds 50 percent of the total enrollment.

Research misconduct is defined in 14 CFR 1275.101. NASA policies and procedures regarding Research misconduct are set out in 14 CFR part 1275, ''Investigation of Research Misconduct.''

Summary of research means a document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed.

Subpart B—Pre-Federal Award Requirements and Contents of Federal Awards

§ 1800.208 Certifications and representations.

The certifications and representations for NASA may be found at Appendix A of this Part and *http://www.hq.nasa.gov/office/procurement/grants/index.html*.

§ 1800.209 Pre-award costs.

NASA waives the approval requirement for pre-award costs of 90 days or less.

(Authority: 14 CFR 1260.125(3)(1))

§ 1800.210 Information contained in a Federal award.

The terms and conditions for NASA may be found at Appendix B of this Part and *http://www.hq.nasa.gov/office/procurement/grants/index.html*.

Subpart C—Post Federal Award Requirements

Standards for Financial and Program Management

§ 1800.305 Payment.

Payments under grants with commercial firms will be made based on incurred costs. Standard Form 425 is not required. Commercial firms shall not submit invoices more frequently than quarterly. Payments to be made on a more frequent basis require the written approval of the grant officer.

(Authority: 14 CFR 1260.4(b)(5))

§ 1800.306 Cost sharing or matching.

Where statute or section of NASA's Code of Federal Regulations requires cost sharing or matching, recipients must secure matching funds to receive the Federal award.

(Authority: 14 CFR 1260.54)

Property Standards

§ 1800.312 Federally owned and exempt property.

Under the authority of the Childs Act, 31 U.S.C. 6301 to 6308, NASA has determined to vest title to property acquired with Federal funds in the recipient without further obligation to NASA, including reporting requirements.

(Authority: 14 CFR 1260.133(b))

§ 1800.315 Intangible property.

Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the cooperative agreement by NASA or its contractors will initially vest with the creating party. Certain rights may be exchanged with the recipient.

(Authority: 14 CFR 1260.136(f))

Remedies for Noncompliance

§ 1800.339 Termination.

NASA reserves the ability to terminate a Federal award in accordance with 2 CFR 1800.921, Incremental Funding.

(Authority: 14 CFR 1260.52)

§ 1800.400 Policy guide.

Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is assistance. Therefore, the grants officer shall use a procurement contract, rather than assistance instrument, in all cases where fee or profit is to be paid to the recipient of the instrument or the instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives. Grants and cooperative agreements shall not provide for the payment of fee or profit to the recipient.

(Authority: 14 CFR 1260.4(b)(2); 1260.10(b)(1)(iv); 1260.14(e))

Appendix A to Part 1800—Certifications, Assurances, and Representations

A.1 Certifications, assurances, and representations.

A.2 Certification of Compliance on Proposal Cover Page.

A.3 Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs.

A.4 Certification Regarding Lobbying.

A.5 Certification Regarding Debarment, Suspension, and Other Matters of Responsibility.

A.6 Certifications to Implement Restrictions in Appropriations Acts.

A.1 Certifications, assurances, and representations.

Unless prohibited by statute or codified regulation, NASA will allow recipients to submit certain certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements. Recipients determine how annual representations affect their responsibility to obtain required certifications from pass-through entities.

A.2 Certification of Compliance on Proposal Cover Page.

(This certification is required for all awards.)

CERTIFICATION OF COMPLIANCE WITH APPLICABLE EXECUTIVE ORDERS AND U.S. CODE (MON/YEAR)

By submitting the proposal identified in the Cover Sheet/Proposal Summary in response to this Research Announcement, the Authorizing Official of the proposing organization (or the individual Proposer if there is no proposing organization) as identified below:

(a) Certifies that the statements made in this proposal are true and complete to the best of his/her knowledge;

(b) agrees to accept the obligation to comply with NASA award terms and conditions if an award is made as a result of this proposal; and

(c) confirms compliance with all applicable terms and conditions, rules, and stipulations set forth in the Certifications, Assurances, and Representations contained in this NRA or CAN. Willful terms and conditions of false information in this proposal and/or its supporting documents, or in reports required under an ensuing award, is a criminal offense (U.S. Code, Title 18, Section 1001).

A.3 Assurance of Compliance with the National Aeronautics and Space Administration Regulations Pursuant to Nondiscrimination in Federally Assisted Programs.

(This certification is required for all awards.)

ASSURANCE OF COMPLIANCE WITH THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION REGULATIONS PURSUANT TO NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (MON/YEAR)

''The Organization, corporation, firm, or other organization on whose behalf this assurance is made, hereinafter called ''Applicant:''

''HEREBY acknowledges and agrees that it must comply (and require any subgrantees, contractors, successors, transferees, and assignees to comply) with applicable provisions of National laws and policies prohibiting discrimination, including but not limited to:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin (42 U.S.C. 2000d *et seq.*), as implemented by NASA Title VI regulations, 14 CFR part 1250. As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, the Applicant must take reasonable steps to ensure that LEP persons have meaningful access to its programs in accordance with NASA Title VI LEP Guidance to Grant Recipients (68 FR 70039). Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The Applicant is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. Assistance and information regarding LEP obligations may be found at *http://www.lep.gov*.

2. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs or activities (20 U.S.C. 1681 *et seq.*) as implemented by NASA Title IX regulations, 14 CFR part 1253. If the Applicant is an educational institution:

a. The Applicant is required to designate at least one employee to serve as its Title IX coordinator (14 CFR 1253.135(a)).

b. The Applicant is required to notify all of its program beneficiaries of the name, office, address, and telephone number of the employee(s) designated to serve as the Title IX coordinators (14 CFR 1253.135(a)).

c. The Applicant is required to publish internal grievance procedures to promptly and equitably resolve complaints alleging illegal discrimination in its programs or activities (14 CFR 1253.135(b).

d. The Applicant is required to take specific steps to regularly and consistently notify program beneficiaries that The Applicant does not discriminate in the operation of its programs and activities (14 CFR 1253.140).

3. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits The Applicant from discriminating on the basis of disability (29 U.S.C. 794) as implemented by NASA Section 504 regulations, 14 CFR part 1251.

a. The Applicant is required to designate at least one employee to serve as its Section 504 coordinator (14 CFR 1251.106(a)).

b. The Applicant is required to notify all its program beneficiaries of the name, office, address, and telephone number of the employee(s) designated to serve as the Section 504 coordinator (14 CFR 1251.106(a)).

c. The Applicant is required to publish internal grievance procedures to promptly and equitably resolve complaints alleging illegal discrimination in its programs or activities (14 CFR 1251.106(b)).

d. The Applicant is required to take specific steps to regularly and consistently

notify program beneficiaries that the Applicant does not discriminate in the operation of its programs and activities (14 CFR 1251.107).

4. The Age Discrimination Act of 1975, as amended, which prohibits the Applicant from discriminating on the basis of age (42 U.S.C. 6101 *et seq.*) as implemented by NASA Age Discrimination Act regulations, 14 CFR part 1252.

The Applicant also acknowledges and agrees that it must cooperate with any compliance review or complaint investigation conducted by NASA and comply (and require any subgrantees, contractors, successors, transferees, and assignees to comply) with applicable terms and conditions governing NASA access to records, accounts, documents, information, facilities, and staff. The Applicant must keep such records and submit to the responsible NASA official or designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible NASA official or his designee may determine to be necessary to ascertain whether the Applicant has complied or is complying with relevant obligations and must immediately take any measure determined necessary to effectuate this agreement. The Applicant must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The United States shall have the right to seek judicial enforcement of these obligations. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign on behalf of the Applicant.''

Under penalty of perjury, the undersigned officials certify that they have read and understand their obligations as herein described, that the information submitted in conjunction with this document is accurate and complete, and that the recipient is in compliance with the nondiscrimination requirements set out above.

[End of Assurance]

A.4 Certification Regarding Lobbying.

(This certification is required for all awards.)

CERTIFICATION REGARDING LOBBYING (MON/YEAR)

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000, and not more than $100,000 for each such failure.

[End of Certification]

A.5 Certification Regarding Debarment, Suspension, and Other Matters of Responsibility.

(This certification is required for all awards.)

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER MATTERS OF RESPONSIBILITY (MON/YEAR)

Pursuant to Executive Order 12549, Debarment and Suspension, and implemented at 2 CFR parts 180 and 1880:

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[End of Certification]

A.6 Certifications to Implement Restrictions in Appropriations Acts. The text of these certifications is found at *http://www.hq.nasa.gov/office/procurement/grants/index.html.*

Appendix B to Part 1800—Terms and Conditions

1800.900 Terms and Conditions.
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1800.900 Terms and Conditions

(a) Unless otherwise noted in the prescriptive language grants with Non-Federal entities shall incorporate by reference the terms and conditions set forth in sections 1800.901 through 1800.920 of this appendix. Certain of these terms and conditions are prescribed on a ''substantially as'' basis. For example, the grant officer shall substitute § 1800.902, Technical Publications and Reports, with reporting requirements specified by the program office.

(b) Additional special terms and conditions may be included to the extent they are required and are not inconsistent with the other terms and conditions in this Appendix B. A deviation in accordance with 2 CFR 1800.6 is required before an inconsistent new term and condition can be included in a grants.

(c) Whenever the word ''grant'' appears in this Appendix, it shall be deemed to include, as appropriate, the term ''cooperative agreement.''

(d) Terms and conditions for research grants awarded to foreign organizations, when approved by Headquarters, will be provided in full text. Referenced handbooks, statutes, or other regulations, which the recipient may not have access to, must be made available when requested by the foreign organization.

(e) Grants awarded by NASA to commercial organizations where cost sharing is not required shall incorporate the terms and conditions set forth in this appendix.

(Authority: 14 CFR 1260.20)

1800.901 Compliance With OMB Guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

(This Term and Condition implements 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards herein referred to as the ''OMB Uniform Guidance.'' This term and condition shall be included in all grants with Recipients that are other than commercial firms. Alternate I to this term and condition shall be included in grants with commercial firms.)

COMPLIANCE WITH OMB GUIDANCE (MON/YEAR)

This grant is subject to the requirements set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards as adopted by NASA in Part 1800 of Title 2 of the Code of Federal Regulations. Specific terms and conditions set forth in this award document are provided to supplement and clarify, not replace, the OMB Uniform Guidance, except in circumstances where a waiver from OMB Uniform Guidance requirements has been obtained by NASA.

(End of Term and Condition)

COMPLIANCE WITH OMB GUIDANCE

Alternate I

(MON/YEAR)

(a) With the exception of Subpart E and F, this grant is subject to the requirements set forth in OMB Guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards at 2 CFR Chapter 1, and Chapter II Part 200 as adopted by NASA in Part 1800 of Title 2 of the Code of Federal Regulations. Specific terms and conditions set forth in this award document are provided to supplement and clarify, not replace, the Guidance, except in circumstances where a waiver from the Guidance requirements has been obtained by NASA.

(b) In lieu of Subparts E and F of 2 CFR part 200, the expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient shall be governed by the FAR cost principles implemented by FAR Parts 30, 31, and 48 CFR part 99. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined by the OMB Guidance at Subpart E and F of 2 CFR 200.)

(Authority: 14 CFR 1260.21)

(End of Term and Condition)

1800.902 Technical Publications and Reports

(This Term and Condition implements paragraph (d) of § 200.210 and shall be included on a ''substantially as'' basis in all grants. The requirements set forth under this Term and Condition may be modified by the grant officer based on specific report needs for the grant.)

TECHNICAL PUBLICATIONS AND REPORTS (MON/YEAR)

(a) NASA encourages the widest practicable dissemination of research results at any time during the course of the investigation.

(1) All information disseminated as a result of the grant shall contain a statement which acknowledges NASA's support and identifies the grant by number (*e.g.,* ''the material is based upon work supported by NASA under award No(s) GRNASM99G000001, etc.'').

(2) Except for articles or papers published in scientific, technical, or professional journals, the exposition of results from NASA supported research should also include the following disclaimer: ''Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration.''

(3) As a courtesy, any release of a NASA photograph or illustration should list NASA first on the credit line followed by the name of the Principal Investigator's Institution. An example follows: ''Photograph <or illustration, figure, etc.> courtesy of NASA <or NASA Center managing the mission or program> and the <Principal Investigator's institution>.''

(b) Reports shall be in the English language, informal in nature, and ordinarily not exceed three pages (not counting bibliographies, abstracts, and lists of other media). The recipient shall submit the following reports:

(1) A Progress Report for all but the final year of the grant. Each report is due 60 days before the anniversary date of the grant and shall briefly describe what was accomplished during the reporting period. A term or condition specifying more frequent reporting may be required.

(2) A Summary of Research or Educational Activity Report is due within 90 days after the expiration date of the grant, regardless of whether or not support is continued under another grant. This report shall be a comprehensive summary of significant accomplishments during the duration of the grant.

(c) Progress Reports, Summaries of Research, and Educational Activity Reports shall include the following on the first page:

(1) Title of the grant.

(2) Type of report.

(3) Name of the principal investigator.

(4) Period covered by the report.

(5) Name and address of the recipient's institution.

(6) Grant number.

(d) Progress Reports, Summaries of Research, and Educational Activity Reports shall be distributed as follows:

(1) The original report, in both hard copy and electronic format, to the Technical Officer.

(2) One copy to the NASA Grant Officer, with a notice to the Administrative Grant Officer, (when administration of the grant has been delegated to ONR), that a report was sent.

(Authority: 14 CFR 1260.23)

(End of Term and Condition)

1800.903 Extensions

(This Term and Condition shall be included in all grants. This Term and Condition does not have to be included in grants with commercial firms, and if included it may be used on a substantially as basis.)

EXTENSIONS (MON/YEAR)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research and educational activities, therefore, grants may be extended for additional periods of time when necessary to complete work that was part of the original award. NASA generally only approves such extensions within funds already made available. Any extension that would require additional funding must be supported by a proposal submitted at least three months in advance of the expiration date of the grant.

(b) Recipients may extend the expiration date of a grant if additional time beyond the established expiration date is required to assure adequate completion of the original scope of work within the funds already made available. For this purpose, the recipient may make a one-time no-cost extension, not to exceed 12 months, prior to the established expiration date. Written notification of such an extension, with the supporting reasons, must be received by the NASA Grant Officer at least ten days prior to the expiration of the award. A copy of the extension must also be forwarded to cognizant Office of Naval Research (ONR) office. NASA reserves the right to disapprove the extension if the requirements set forth at § 200.308(d)(2) are not met.

(c) Requests for approval for all other no-cost extensions must be submitted in writing to the NASA Grant Officer. Copies are to be forwarded to the cognizant ONR office.

(Authority: 14 CFR 1260.23)

(End of Term and Condition)

1800.904 Termination and Enforcement

(This Term and Condition implements § 200.338 through § 200.342 and shall be included in all grants.)

TERMINATION AND ENFORCEMENT (MON/YEAR)

Termination and enforcement conditions of this award are specified in §§ 200.338 through 200.342.

(Authority: 14 CFR 1260.24)

(End of Term and Condition)

1800.905 Change in Principal Investigator or Scope

(This Term and Condition shall be used in all grants. The section regarding changes in scope may be used if the Recipient is a commercial firm.)

CHANGE IN PRINCIPAL INVESTIGATOR OR SCOPE (MON/YEAR)

(a) The Recipient shall obtain the approval of the NASA Grant Officer for a change of the Principal Investigator, or for a significant absence of the Principal Investigator from the project, defined as a three month absence from the program or a 25 percent reduction in time devoted to the project. Significantly reduced availability of the services of the Principal Investigator(s) named in the grant instrument could be grounds for termination, unless alternative arrangements are made and approved in writing by the Grant Officer.

(b) Prior written approval is required from NASA if there is to be a significant change in the objective or scope.

(Authority: 14 CFR 1260.25)

End of Term and Condition)

1800.906 Financial Management

(This Term and Condition implements § 200.302 and shall be included in all grants except when the recipient is a commercial firm.)

FINANCIAL MANAGEMENT (MON/YEAR)

(a) Advance payments will be made by the Financial Management Office of the NASA Center assigned financial cognizance of the grant, using the Department of Health and Human Services' Payment Management System (DHHS/PMS), in accordance with procedures provided to the Recipient. The Recipient shall submit a Federal Cash Transactions Report (SF 425), and, when applicable, a Continuation Sheet (SF 425) electronically to DHHS/PMS within 30 working days following the end of each Federal Fiscal quarter (*i.e.,* December 31, March 31, June 30, and September 30).

(b) In addition, the Recipient shall submit a final SF 425 in electronic or paper form to NASA within 90 calendar days after the expiration date of the grant. The final SF 425 shall pertain only to the completed grant and shall include total disbursements from inception through completion. The report shall be marked ''Final.'' The final SF 425 shall be submitted to NASA per Exhibit G, Required Publications and Reports.

(c) By signing any report delivered under the grant, the authorizing official for the Recipient certifies to the best of his or her knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. The authorizing official by signing the report also certified he or she is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31 Section 3729–3733 and 3801–3812.)

(d) Unless otherwise directed by the Grant Officer, any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. This includes allowing the carryover of funds to the second and subsequent years of a multiple year grant. This Term and Condition also applies to subcontractors performing substantive work under the grant. For grant renewals, the estimated amount of unexpended funds shall be identified in the grant budget section of the Recipient's renewal proposal. NASA reserves the right to remove unexpended balances from grants when insufficient efforts have been made by the grantee to liquidate funding balances in a timely fashion.

(Authority: 14 CFR 1260.26, 2 CFR 200.415)

(End of Term and Condition)

1800.907 Equipment and Other Property

(This Term and Condition shall be included in all grants except when recipient is a commercial firm.)

EQUIPMENT AND OTHER PROPERTY (MON/YEAR)

(a) NASA permits acquisition of special purpose and general purpose equipment specifically required for use exclusively for research activities.

(1) Acquisition of special purpose or general purpose equipment costing in excess of $5,000 (unless a lower threshold has been established by the Recipient) and not included in the approved proposal budget, requires the prior approval of the NASA Grant Officer. Grant awards under the Federal Demonstration Partnership are exempt from this requirement. Requests to the NASA Grant Officer for the acquisition of equipment shall be supported by written documentation setting forth the description, purpose, and acquisition value of the equipment, and including a written certification that the equipment will be used exclusively for research, activities. (A change in the model number of a prior approved piece of equipment does not require resubmission for that item.)

(2) Special purpose and general purpose equipment costing in excess of $5,000 (unless a lower threshold has been established by the Recipient) acquired by the recipient under a grant for the purpose of research shall be titled to the Recipient as ''exempt'' without further obligation to NASA, including reporting of the equipment, in accordance with § 200.312(c). Special purpose or general purpose equipment costing in excess of $5,000 (unless a lower threshold has been established by the Recipient) acquired by the Recipient under a grant for non-research work shall be titled to the Recipient in accordance with § 200.313.

(3) Special purpose or general purpose equipment acquired by the Recipient with grant funds, valued under $5,000 (unless a lower threshold is established by the Recipient) are classified as ''supplies,'' do not require the prior approval of the NASA Grant Officer, shall vest in the Recipient and will be titled to the Recipient in accordance with § 200.314.

(4) Grant funds may be expended for the acquisition of land or interests therein or for the acquisition and construction of facilities only under a facilities grant.

(b) The Recipient shall submit an annual Inventory Report, to be received no later than October 15 of each year, which lists all reportable (non-exempt equipment and/or Federally owned property) in its custody as of September 30. Negative responses for annual Inventory Reports (when there is no reportable equipment) are not required. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the Recipient no later than 60 days after the expiration date of the grant. Negative responses for Final Inventory Reports are required.

(1) All reports will include the information listed in paragraph (d)(1) of § 200.313, Equipment. No specific report form or format is required, provided that all necessary information is provided.

(2) The original of each report shall be submitted to the Deputy Chief Financial Officer (Finance). Copies shall be furnished to the Center Industrial Property Officer and to ONR.

(Authority: 14 CFR 1260.27)

(End of Term and Condition)

1800.908 Patent Rights

(This Term and Condition shall be included in all grants except grants with large businesses.)

PATENT RIGHTS (MON/YEAR)

As stated at § 200.315, this award is subject to the provisions of 37 CFR 401.3(a) which requires use of the standard clause set out at 37 CFR 401.14 ''Patent Rights (Small Business Firms and Nonprofit Organizations)'' and the following:

(a) Where the term ''contract'' or ''Contractor'' is used in the ''Patent Rights'' clause, the term shall be replaced by the term ''grant'' or ''Recipient,'' respectively.

(b) In each instance where the term ''Federal Agency,'' ''agency,'' or ''funding Federal agency'' is used in the ''Patent Rights'' clause, the term shall be replaced by the term ''NASA.''

(c) The following item is added to the end of paragraph (f) of the ''Patent Rights'' clause: ''(5) The Recipient shall include a list of any Subject Inventions required to be disclosed during the preceding year in the performance report, technical report, or renewal proposal. A complete list (or a negative statement) for the entire award period shall be included in the summary of research.''

(d) The term ''subcontract'' in paragraph (g) of the ''Patent Rights'' clause shall include purchase orders.

(e) The NASA implementing regulation for paragraph (g)(2) of the ''Patent Rights'' clause is at 48 CFR 1827.304–3.

(f) The following requirement constitutes paragraph (l) of the ''Patent Rights'' clause:

''(l) Communications. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the Center Patent Counsel and the NASA Grant Officer in addition to any other submission requirements in the grant terms and conditions. If any reports contain information describing a ''subject invention'' for which the recipient has elected or may elect to retain title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series until an application filing date has been established, provided that the Recipient identify the information and the ''subject invention'' to which it relates at the time of submittal. If required by the NASA Grant Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any ''subject invention'' in any country in which the Recipient has applied for patents.''

(g) NASA Inventions. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this agreement and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

(h) In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by Contractor employees, the Contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and Executive Order 12591. In the event the Contractor decides not to pursue rights to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

(Authority: 14 CFR 1260.28)

(End of Term and Condition)

1800.909 Rights in Data

(The grant officer may revise the language under this Term and Condition to modify each party's rights based on the particular circumstances of the program and/or the recipient's need to protect specific proprietary information. Any modification to the standard language set forth under the Term and Condition requires the concurrence of the Center's Patent Counsel and that the Term and Condition be printed in full text.)

RIGHTS IN DATA (MON/YEAR)

(a) Fully funded efforts.

(1) ''Data'' means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work, including computer software and documentation thereof, in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant.

(2) The Recipient grants to the Federal Government, a royalty-free, nonexclusive and irrevocable license to use, reproduce, distribute (including distribution by transmission) to the public, perform publicly, prepare derivative works, and display publicly, data in whole or in part and in any manner for Federal purposes and to have or permit others to do so for Federal purposes only.

(3) In order that the Federal Government may exercise its license rights in data, the Federal Government, upon request to the Recipient, shall have the right to review and/or obtain delivery of data resulting from the performance of work under this grant, and authorize others to receive data to use for Federal purposes.

(b) Cost Sharing and/or Matching Efforts. When the Recipient cost shares

with the Government on the effort, the following paragraph applies:

''(1) In the event data first produced by Recipient in carrying out Recipient's responsibilities under an agreement is furnished to NASA, and Recipient considers such data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by the Government and its Contractors (under suitable protective conditions) only for experimental, evaluation, research and development purposes, by or on behalf of the Government for an agreed to period of time, and thereafter for Federal purposes as defined in § 1800.909(a)(2).''

(c) For Cooperative Agreements the following paragraph applies:

''(1) As to data first produced by NASA in carrying out NASA's responsibilities under a cooperative agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it has been obtained from the Recipient, such data will be marked with an appropriate legend and maintained in confidence for 5 years (unless a shorter period has been agreed to between the Government and Recipient) after development of the information, with the express understanding that during the aforesaid period such data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such data to any third party without NASA's written approval until the aforementioned restricted period expires.''

(Authority: 14 CFR 1260.30)

(End of Term and Condition)

1800.910 National Security

(This Term and Condition implements Executive Order 12829 and shall be included in all grants.)

NATIONAL SECURITY (MON/YEAR)

NASA grants do not involve classified information. However, if it is known in advance that a grant involves classified information or if the work on the grant is likely to develop classified information, individuals performing on the grant who will have access to the information must obtain the appropriate security clearance in advance of performing on the grant, in accordance with NASA Procedural Requirements (NPR) 1600.1, NASA Classified National Security Information (CNSI) w/Change 2. When access to classified information is not originally anticipated in the performance of a grant, but such information is subsequently sought or potentially developed by the grant Recipient, the NASA Grant Officer who issued the grant shall be notified immediately, and prior to work under the grant proceeding, to implement the appropriate clearance requirements.

(Authority: 14 CFR 1260.31)

(End of Term and Condition)

1800.911 Nondiscrimination

(This Term and Condition implements Executive Order 11246 and shall be included in all grants or awards with foreign recipients.)

NONDISCRIMINATION (MON/YEAR)

(a) To the extent provided by law and any applicable agency regulations, this award and any program assisted thereby are subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), Title IX of the Education amendments of 1972 (Pub. L. 92–318, 20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (Pub. L. 94–135), the implementing regulations issued pursuant thereto by NASA, and the assurance of compliance which the recipient has filed with NASA.

(b) The Recipient shall obtain from each organization that applies or serves as a subrecipient, Contractor or subcontractor under this award (for other than the Term and Condition of commercially available supplies, materials, equipment, or general support services) an assurance of compliance as required by NASA regulations.

(c) Work on NASA grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, 1252, and 1253).

(Authority: 14 CFR 1260.32)

(End of Term and Condition)

1800.912 Clean Air and Water

(This Term and Condition implements the Clean Air Act at 42 U.S.C. 7401 *et seq.* It is applicable only if the award exceeds $150,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)), and is listed by EPA, or if the award is not otherwise exempt.)

CLEAN AIR AND WATER (MON/YEAR)

The Recipient agrees to the following:

(a) Comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

(b) Ensure that no portion of the work under this award will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date that this award was effective unless and until the EPA eliminates the name of such facility or facilities from such listings.

(c) Use its best efforts to comply with clean air standards and clean water standards at the facility in which the award is being performed.

(d) Insert the substance of the terms and conditions of this clause into any nonexempt subaward or contract under the award.

(e) Report violations to NASA and to EPA.

(Authority: 14 CFR 1260.34)

(End of Term and Condition)

1800.913 Investigative Requirements

(This Term and Condition implements Executive Order 12829 and shall be included in all grants. The Term and Condition must be augmented to conform to the requirements of OMB Guidance M–05–24 ''Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors'' when a Recipient will require routine access to a Federal-controlled facility and/or information system.)

INVESTIGATIVE REQUIREMENTS (MON/YEAR)

(a) NASA reserves the right to perform security checks and to deny or restrict access to a NASA Center, facility, or computer system, or to NASA technical information, as NASA deems appropriate. To the extent the Recipient needs such access for performance of the work; the Recipient shall ensure that individuals needing such access provide the personal background and biographical information requested by NASA. Individuals failing to provide the requested information may be denied such access.

(b) All requests to visit a NASA Center or facility must be submitted in a timely manner in accordance with

instructions provided by that Center or facility.

(Authority: 14 CFR 1260.35)

(End of Term and Condition)

1800.914 Travel and Transportation

(This Term and Condition implements The Fly American Act, 49 U.S.C. 1517 and the Department of Transportation regulations on Hazardous materials. This Term and Condition shall be included in all grants.)

TRAVEL AND TRANSPORTATION (MON/YEAR)

(a) The Fly American Act, 49 U.S.C. 1517, requires the Recipient to use U.S. flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

(Authority: 14 CFR 1260.36)

(End of Term and Condition)

1800.915 Safety

(This Term and Condition implements NPR 8715.3C or its successor requirements document and shall be in all grants.)

SAFETY (MON/YEAR)

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant. The Recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify the NASA Grant Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property in performing this grant. The Recipient will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this grant involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this Term and Condition by subcontractors shall be the responsibility of the Recipient.

(Authority: 14 CFR 1260.37)

(End of Term and Condition)

1800.916 Buy American Encouragement

(This Term and Condition implements section 319 of Public Law 106–391, the NASA Authorization Act, and shall be included in all grants except awards with foreign recipients.)

BUY AMERICAN ENCOURAGEMENT (MON/YEAR)

As stated in Section 319 of Public Law 106–391, the NASA Authorization Act of 2000, Recipients are encouraged to purchase only American-made equipment and products.

(Authority: 14 CFR 1260.39)

(End of Term and Condition)

1800.917 Investigation of Research Misconduct

(This implements § 200.336 and shall be included in all grants.)

INVESTIGATION OF RESEARCH MISCONDUCT (MON/YEAR)

Recipients of this grant are subject to the requirements of 14 CFR part 1275, ''Investigation of Research Misconduct.''

(Authority: 14 CFR 1260.40)

(End of Term and Condition)

1800.918 Allocation of Risk/Liability

(This term and condition shall be included in all grants.)

ALLOCATION OF RISK/LIABILITY (MON/YEAR)

(a) With respect to activities undertaken under this agreement, the Recipient agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its contractors and subcontractor employees, or to the loss of its property or that of its Contractors and subcontractors, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) In addition, the Recipient agrees to indemnify and hold the U.S. Government and its Contractors and subcontractors harmless from any third party claim, judgment, or cost arising from the injury to or death of any person, or for damage to or loss of any property, arising as a result of its possession or use of any U.S. Government property.

(Authority: 14 CFR 1260.61)

(End of Term and Condition)

1800.919 Cooperative Agreement Special Condition

(This special term and condition shall apply when NASA awards a cooperative agreement.)

COOPERATIVE AGREEMENT SPECIAL CONDITION (MON/YEAR)

(a) This award is a cooperative agreement as it is anticipated there will be substantial NASA involvement during performance of the effort. NASA and the Recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort:

(Reference the approved proposal that contains a detailed description of the work and insert a concise statement of the exact nature of the cooperative interactions NASA will provide.)

(b) The terms ''grant'' and ''Recipient'' mean ''cooperative agreement'' and ''Recipient of cooperative agreement,'' respectively, wherever the language appears in terms and conditions included in this agreement.

(c) NASA's ability to participate and perform its collaborative effort under this cooperative agreement is subject to the availability of appropriated funds and nothing in this cooperative agreement commits the United States Congress to appropriate funds therefor.

(Authority: 14 CFR 1260.51)

(End of Term and Condition)

1800.920 Multiple Year Grant

(This term and condition shall be included when a multiple year grant is awarded. This term and conditions may be used on a ''substantially as'' basis.)

MULTIPLE YEAR GRANT OR (MON/YEAR)

This is a multiple-year grant Contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $____, Anticipated funding date____.

Third year $____, Anticipated funding date____.

(Periods may be added or omitted, as applicable)

(Authority: 14 CFR 1260.52)

(End of Term and Condition)

1800.921 Incremental Funding

(This term and condition shall be included when incremental funding is used. This may be used on a substantially as basis.)

INCREMENTAL FUNDING (MON/YEAR)

(a) Only $____ of the amount indicated on the face of this award is available for payment and allotted to this award. NASA contemplates making additional allotments of funds during performance of this effort. It is anticipated that these funds will be obligated as appropriated funds become available without any action required by

the Recipient. The Recipient will be given written notification by the NASA Grant Officer.

(b) The recipient agrees to perform work up to the point at which the total amount paid or payable by the Government approximates but does not exceed the total amount actually allotted to this grant. NASA is not obligated to reimburse the Recipient for the expenditure of amounts in excess of the total funds allotted by NASA to this grant. The Recipient is not authorized to continue performance beyond the amount allotted to this award.

(Authority: 14 CFR 1260.53)

(End of Term and Condition)

1800.922 Cost Sharing

(This term and condition shall be included when a grant involves cost sharing. This may be used on a substantially as basis.)

COST SHARING (MON/YEAR)

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a ____ percent Recipient basis.

(b) The funding and non-cash contributions by both parties are represented by the following dollar amounts:

Government Share

_____

Recipient Share

_____

Total Amount

_____

(c) Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by § 200.306, Cost Sharing or Matching. The applicable Federal cost principles are cited in Subpart E.

(d) The Recipient's share shall not be charged to the Government under this agreement or under any other contract or grant.

(Authority: 14 CFR 1260.54)

(End of Term and Condition)

1800.923 New Technology

(This Term and Condition shall be inserted in all grants with commercial firms other than those with small businesses, in place of the term and condition at § 1800.908, Patent Rights.)

NEW TECHNOLOGY (MON/YEAR)

(a) Definitions.

Administrator, as used in this term and condition, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Grant, as used in this term and condition, means any actual or proposed grant, cooperative agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this term and condition, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of grant performance.

Nonprofit organization, as used in this term and condition, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this term and condition, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this term and condition, means any invention, discovery, improvement, or innovation of the grantee, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA grant or in the performance of any work that is reimbursable under any Term and Condition in any NASA grant providing for reimbursement of costs incurred before the effective date of the grant. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectable under Title 17 of the United States Code.

Small business firm, as used in this term and condition, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations (see 13 CFR 121.401 *et seq.*) of the Administrator of the Small Business Administration.

Subject invention, as used in this term and condition, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the National Aeronautics and Space Act of 1958 (51 U.S.C. 20135) (hereinafter called ''the Act''), and that presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Grant Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this term and condition. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the Act.

(2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this term and condition is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (A) or (B) of section 20135(b)(1) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this term and condition.

(3) Waiver of rights.

(i) Section 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (A) or (B) of section 20135(b)(1) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the grant or within 30 days after execution of the grant, for advance waiver of rights to any or all of the inventions that may be made under a grant. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of the invention in accordance with paragraph (e)(2) of this term and condition, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Recipient.

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this term and condition. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Invention identification, disclosures, and reports.

(1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this New Technology term and condition within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this grant. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Grant Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Grant Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this New Technology term and condition or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the grant under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Grant Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Grant Officer) from the date of the grant, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this term and condition have been followed.

(ii) A final report, within 3 months after completion of the grant work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Grant Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a

patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this term and condition.

(f) Examination of records relating to inventions.

(1) The Grant Officer or any authorized representative shall, until 3 years after final payment under this grant, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this grant to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this term and condition; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Grant Officer learns of an unreported Recipient grantee invention that the Grant Officer believes may be a subject invention, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this grant, the Grant Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this grant, whichever is less, shall have been set aside if, in the Grant Officer's opinion, the Recipient fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this term and condition;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this term and condition;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this term and condition; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this term and condition.

(2) Such reserve or balance shall be withheld until the Grant Officer has determined that the Recipient has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by the grant.

(3) Final payment under the grant shall not be made before the Recipient delivers to the Grant Officer all disclosures of reportable items required by paragraph (e)(2) of this provision, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this provision.

(4) The Grant Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (g)(1) of this term and condition. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other terms and conditions of the grant. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) Unless otherwise authorized or directed by the Grant Officer, the Recipient shall—

(i) Include the clause at NASA FAR Supplement (NFS) 1852.227–70, New Technology, (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227–11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Grant Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Grant Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Recipient agree that the mutual obligations of the parties created by this term and condition constitute a contract between the subcontractor and NASA with respect to those matters covered by this grant.

(4) The Recipient shall promptly notify the Grant Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Grant Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Recipient in paragraph (h)(1)(i) or (ii) of this term and condition, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Recipient that receives title to any subject invention and no assignee of any such Recipient shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Recipient or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(Authority: 14 CFR 1260.57)

(End of Term and Condition)

1800.924 Designation of New Technology Representative and Patent Representative

(This Term and Condition shall be inserted in all grants with commercial firms other than those with small businesses, in place of the term and condition at § 1800.908, Patent Rights.)

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (MON/YEAR)

(a) For purposes of administration of the term and condition of this grant entitled ''New Technology,'' the following named representatives are hereby designated by the Grant Officer to administer such term and condition:

Title, Office Code, Address (including zip code)

New Technology Representative
Patent Representative

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the term and condition, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquires or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This term and condition shall be included in any subcontract hereunder requiring a ''New Technology'' Term and Condition or ''Patent Rights—Retention by the Contractor (Short Form)'' clause, unless otherwise authorized or directed by the Grant Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305–270 of the NASA FAR Supplement.

(Authority: 14 CFR 1260.58)

(End of Term and Condition)

1800.925 Invention Reporting and Rights

INVENTION REPORTING AND RIGHTS (MON/YEAR)

(a) As used in this term and condition:

(1) The term ''invention'' means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) The term ''made'' when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(b) The Recipient shall report promptly to the grant officer each invention made in the performance of work under this grant. The report of such invention shall—

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) Reporting shall be made on NASA Form 1679 Disclosure of Invention and New Technology (Including Software).

(d) The Recipient hereby grants to the Government of the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, the full rights, title, and interest in and to each such invention throughout the world.

(Authority: 14 CFR 1260.59)

(End of Term and Condition)

1800.926 Equipment and Other Property Under Grants With Commercial Firms

(This term and condition shall be included in grants with commercial firms that have property.)

EQUIPMENT AND OTHER PROPERTY UNDER GRANTS WITH COMMERCIAL FIRMS (MON/YEAR)

(a) This grant permits acquisition of special purpose equipment required for the conduct of research. Acquisition of special purpose equipment costing in excess of $5,000 and not included in the approved proposal budget requires the prior approval of the Grant Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) Recipients may not purchase, as a direct cost to the grant, items of general purpose equipment, examples of which include but are not limited to office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment. If the Recipient requests an exception, the Recipient shall submit a written request for Grant Officer approval, prior to purchase by the Recipient, stating why the Recipient cannot charge the general purpose equipment to indirect costs.

(c) Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(d) The Government shall have title to equipment and other personal property acquired with Government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603.

(e) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.

(f) The Recipient shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.

(g) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer (Finance) with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

(h) The requirements set forth in this term and condition supersedes grant Term and Condition 1800.907, Equipment and Other Property.

(Authority: 14 CFR 1260.67)

(End of Term and Condition)

1800.927 Listing of reportable equipment and other property.

(This term and condition shall be included in grants with property.)

LISTING OF REPORTABLE EQUIPMENT AND OTHER PROPERTY (MON/YEAR)

(a) Title to federally-owned property provided to the Recipient remains vested in the Federal Government, and shall be managed in accordance with § 200.312. The following items of federally-owned property are being provided to the recipient for use in performance of the work under this grant:

{List property or state ''not applicable.''}

(b) The following specific items of equipment acquired by the Recipient have been identified by NASA for transfer of title to the Government when no longer required for performance under this grant. This equipment will be managed in accordance with 200.313, and shall be transferred to NASA or NASA's designee in accordance with the procedures set forth at 200.313(e):

{List property or state ''not applicable.''}

(Authority: 14 CFR 1260.66)

(End of Term and Condition)

1800.928 Invoices and Payments Under Grants With Commercial Firms

(This term and condition shall be included in all grants with commercial firms.)

INVOICES AND PAYMENTS UNDER GRANTS WITH COMMERCIAL FIRMS (MON/YEAR)

(a) Invoices for payment of actual incurred costs shall be submitted by the Recipient no more frequently than on a_XX__basis.

(b) Invoices shall be submitted by the Recipient to the following offices:

(1) The original invoice shall be sent directly to the payment office designated on the grant cover page.

(2) Copies of the invoice shall be sent to the NASA Technical Officer and NASA Grant Officer.

(c) All invoices shall reference the grant number.

(d) The final invoice shall be marked ''Final'' and shall be submitted within 90 days of the expiration of the grant.

(e) The requirements set forth in this term and condition supersedes grant Term and Condition 1800.906, Financial Management.

(Authority: 14 CFR 1260.68)

(End of Term and Condition)

1800.929 Electronic Funds Transfer Payment Methods

(This term and condition shall be included in all grants with commercial firms.)

ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (MON/YEAR)

(a) Payments under this grant will be made by the Government by electronic funds transfer through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Grant Officer or other Government official, as directed.

(b) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account (''C'' for checking, ''S'' for savings).

(4) If the Recipient is a new enrollee to the ACH system, a ''Payment Information Form,'' SF 3881, must be completed before payment can be processed.

(d) In the event the Recipient, during the performance of this grant, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(e) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and grant number.

(f) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(g) The requirements set forth in this term and condition supersedes grant Term and Condition 1800.906, Financial Management.

(Authority: 14 CFR 1260.69)

(End of Term and Condition)

Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Title 14—Aeronautics and Space

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1260 [REMOVED AND RESERVED]

■ 1. Part 1260 is removed and reserved.

PART 1273 [REMOVED AND RESERVED]

■ 2. Part 1273 is removed and reserved.

William P. McNally,

Assistant Administrator for Procurement.

Corporation for National and Community Service

For the reasons set forth in the common preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR Chapter XXII, and 45 CFR Chapters XII and XXV, are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

■ 1. Part 2205 is added to Title 2, Chapter XXII to read as follows:

PART 2205—IMPLEMENTATION OF AND EXEMPTIONS TO 2 CFR

PART 200

Sec.
2205.100 Adoption of 2 CFR part 200.
2205.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.
2205.306 Cost sharing or matching.
2205.332 Fixed amount subawards.
2205.414 Indirect (F&A) costs.

Authority: 42 U.S.C. 12571(d), 12571(e)(2)(B), 12581(l), 12581a(a), 12616(c)(2), 12651c(c), 12651d(h), 12651g(b), 12653(a), 12653(h), 12653o(a), and 12657(a); 2 CFR part 200; 45 CFR 2521.95, and 2540.110.

§ 2205.100 Adoption of 2 CFR Part 200.

Under the authority listed above, the Corporation for National and Community Service adopts the Office of Management and Budget's (OMB) Guidance in 2 CFR part 200, except as specified in this part. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance for recipients of awards from the Corporation.

§ 2205.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The Corporation will determine the appropriate instrument in accordance with its authorities under the national service laws, and in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308), as appropriate.

(b) The Corporation and pass through entities may also provide fixed amount awards in the manner and in the amounts permitted under the national service laws.

§ 2205.306 Cost sharing or matching.

(a) Shared costs or matching funds must meet the criteria of 2 CFR 200.306(b), with the exception of 2 CFR 200.306(b)(5). Federal funds from other agencies may be used as match or cost sharing as authorized by 42 U.S.C. 12571(e) under the national service laws.

§ 2205.332 Fixed amount subawards.

Fixed amount subawards may be made in the manner and in amounts determined under the national service laws, as authorized by the Corporation, without respect to the Simplified Acquisition Threshold.

§ 2205.414 Indirect (F&A) costs.

Administrative costs for programs funded under subtitles B and C of the National and Community Service Act of 1990, as amended, shall be subject to 45 CFR 2521.95 and 2540.110.

Title 45—Public Welfare

CHAPTER XII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

PART 1235—LOCALLY GENERATED CONTRIBUTIONS IN OLDER AMERICAN VOLUNTEER PROGRAMS

■ 2. The authority citation for part 1235 continues to read as follows:

Authority: 42 U.S.C. 5024; 42 U.S.C. 5060.

■ 3. Revise § 1235.2(c) to read as follows:

§ 1235.2 Implementation guidance.

* * * * *

(c) That all expenditures in support of a Federal award can be audited by the responsible Federal Agency or by independent auditors performing audits pursuant to 2 CFR part 200.

■ 4. Remove the Appendix to Part 1235

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

PART 2510—OVERALL PURPOSES AND DEFINITIONS

■ 5. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12511

■ 6. Revise § 2510.20 revise the definition of ''Administrative Costs'' to read as follows:

§ 2510.20 Definitions.

* * * * *

Administrative costs. The term *administrative costs* means general or centralized expenses of overall administration of an organization that receives assistance under the Act and does not include program costs.

(1) For organizations that have an established indirect cost rate for Federal awards, administrative costs mean those costs that are included in the organization's indirect cost rate. Such costs are generally identified with the organization's overall operation and are further described in 2 CFR part 200.

(2) For organizations that do not have an established indirect cost rate for Federal awards, administrative costs include:

(i) Costs for financial, accounting, auditing, contracting, or general legal services except in unusual cases when they are specifically approved in writing by the Corporation as program costs.

(ii) Costs for internal evaluation, including overall organizational management improvement costs (except for independent evaluations and internal evaluations of a program or project).

(iii) Costs for general liability insurance that protects the organization(s) responsible for operating a program or project, other than insurance costs solely attributable to a program or project.

* * * * *

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

■ 7. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 8. Revise § 2520.60 to read as follows:

§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?

You must follow OMB Guidance published at 2 CFR part 200 and Corporation implementing regulations at 2 CFR Chapter XXII. In particular, see 2 CFR 200.442—Fundraising and Investment Management Costs.

PART 2541—[REMOVED AND RESERVED]

■ 9. Remove and reserve Part 2541, consisting of §§ 2541.10 to 2541.520.

PART 2543—[REMOVED AND RESERVED]

■ 10. Remove and reserve Part 2543, consisting of §§ 2543.1 to 2543.88.

PART 2551—SENIOR COMPANION PROGRAM

■ 11. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 12. Revise § 2551.93 to read as follows:

§ 2551.93 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 13. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 14. Revise § 2552.93 to read as follows:

§ 2552.93 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at

the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 15. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 16. Revise § 2553.73 to read as follows:

§ 2553.73 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for a change in the approved service area.

Valerie Green,

General Counsel.

Social Security Administration

For the reasons set forth in the common preamble, 2 CFR chapter XXIII is amended and, under the authority of 5 U.S.C. 301, parts 435 and 437 of title 20, chapter III of the Code of Federal Regulations are removed to read as follows:

Title 2—Grants and Agreements

Subtitle B—Federal Agency Regulations for Grants and Agreements

CHAPTER XXIII—SOCIAL SECURITY ADMINISTRATION

■ 1. Part 2300 of title 2 of the Code of Federal Regulations is added to read as follows:

PART 2300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 2 CFR part 200, and as noted in specific sections.

§ 2300.10 Applicable regulations.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Social Security Administration.

§§ 2300.11–2300.2335 [Reserved]

Title 20—Employee Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION

PART 435—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 435.

PART 437—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 437.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

Department of Housing and Urban Development

For the reasons described in the common preamble, and under the authority of 42 U.S.C. 3535(d), HUD amends the Code of Federal Regulations, Title 2, Subtitle B, chapter XXIV, and Title 24 CFR parts 84 and 85, as follows:

Title 2—Grants and Agreements

CHAPTER XXIV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■ 1. Add new part 2400 in Subtitle B, Chapter XXIV, to read as follows:

PART 2400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIRMENTS FOR FEDERAL AWARDS

Authority: 42 U.S.C. 3535(d); 2 CFR part 200.

§ 2400.101 Applicable regulations.

Unless excepted under 24 CFR chapters I through IX, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR part 200, shall apply to Federal Awards made by the Department of Housing and Urban Development to non-Federal entities.

Title 24—Housing and Urban Development

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

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

■ 2. The authority citation for part 84 continues to read as follows:

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

■ 3. Remove the heading of subpart A.

■ 4. Revise § 84.1 to read as follows:

§ 84.1 Applicability of and cross reference to 2 CFR part 200.

(a) Federal awards to institutions of higher education, hospitals and other non-profit organizations are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200.

(b) Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 84 (2013 edition) or as provided under the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200.

§§ 84.2 through 84.5 [Removed]

■ 5. Remove §§ 84.2 to 84.5.

Subpart B [Removed]

■ 6. Remove subpart B, consisting of §§ 84.10 through 84.17.

Subpart C [Removed]

■ 7. Remove subpart C, consisting of §§ 84.20 through 84.62.

Subpart D [Removed]

■ 8. Remove subpart D, consisting of §§ 84.70 through 84.73.

Subpart E [Removed]

■ 9. Remove subpart E, consisting of §§ 84.80 through 84.87.

Appendix A to part 84 [Removed]

■ 10. Remove Appendix A to part 84.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBES

■ 11. The authority citation for part 85 continues to read as follows:

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

■ 12. Remove the heading of subpart A.

■ 13. Revise § 85.1 to read as follows:

§ 85.1 Applicability of and cross reference to 2 CFR part 200.

(a) Federal awards with State, local and Indian tribal governments are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200.

(b) Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 85 (2013 edition) or as provided by the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200.

§§ 85.2 through 85.6 [Removed]

■ 14. Remove §§ 85.2 to 84.6.

Subpart B [Removed]

■ 15. Remove subpart B, consisting of §§ 85.10 through 85.12.

Subpart C [Removed]

■ 16. Remove subpart C, consisting of §§ 85.20 through 85.44.

Subpart D [Removed]

■ 17. Remove subpart D, consisting of §§ 85.50 through 85.52.

Subpart E [Removed]

■ 18. Remove subpart E.

Julián Castro,

Secretary.

National Science Foundation

For the reasons set forth in the common preamble, under the authority of 42 U.S.C. 1861, *et seq.* and 2 CFR part 200, the National Science Foundation (NSF) amends Part 2500 of Title 2, Chapter XXV, and Part 602 of Title 45, chapter VI of the Code of Federal Regulations as follows:

Title 2—Grants and Agreements

CHAPTER XXV—NATIONAL SCIENCE FOUNDATION

■ 1. Part 2500 is added to Title 2 Chapter XXVI is revised to read as follows:

PART 2500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

2500.100 Adoption of 2 CFR Part 200.

Authority: 42 U.S.C. 1861, *et seq.;* 2 CFR part 200.

§ 2500.100 Adoption of 2 CFR Part 200.

Under the Authority cited above, NSF has formally adopted 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (''the Uniform Guidance''). The Foundation's implementation document, the NSF Proposal & Award Policies & Procedures Guide, may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=papp.*

NSF's implementation includes the following deviation from the Uniform Guidance:

Award Cash Management System—NSF is continuing collection of award financial information through the implementation of the Award Cash Management Service (ACM$) and the Program Income Worksheet. ACM$ replaced the NSF Federal Financial Report (FFR) and the NSF FastLane Cash Request process with a single web based user interface. ACM$ is used to collect award level detail financial information at the time of each payment request submitted by the awardee institution. The Program Income Worksheet is used to collect program income financial information from awardee institutions on an annual basis. ACM$ and the Program Income Worksheet utilize approved government-wide data elements from the FFR for the collection of financial information as provided for in the Uniform Guidance paragraph 505(c) and prescribed in 2 CFR 200.327. The requirement for Federal agencies to use the FFR data elements for cash management and financial reporting was publically announced in **Federal Register** on August 13, 2008.

Title 45—Public Welfare

CHAPTER VI—NATIONAL SCIENCE FOUNDATION

PART 602—[Removed]

■ 2. Remove 45 CFR part 602.

Lawrence Rudolph,

General Counsel.

National Archives and Records Administration

For the reasons set forth in the common preamble, NARA amends 2 CFR Chapter XXVI and 36 CFR Chapter XII as follows:

Title 2—Grants and Agreements

CHAPTER XXVI—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

■ 1. Part 2600 of Title 2, Chapter XXVI, is revised to read as follows:

PART 2600—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

2600.100 Adoption of 2 CFR part 200.

2600.101 Indirect costs exception to 2 CFR 200.414.

2620.102 Additional NARA grant administration policies.

Authority: 5 U.S.C. 301; 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506; 75 FR 66317 (Oct. 28, 2010); 2 CFR 200.

§ 2600.100 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Archives and Records Administration (NARA), through its National Historical Publications and Records Commission (NHPRC), adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except regarding indirect costs (see § 2600.101). Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for NARA and NHPRC.

§ 2600.101 Indirect costs exception to 2 CFR 200.414.

As approved by the Archivist of the United States, the National Archives does not permit grant recipients to use allocated funds from NARA or NHPRC for indirect costs. Grant recipients may use cost sharing to cover indirect costs

instead. NARA's policies on indirect costs are located at *http://www.archives.gov/nhprc*, and are included in grant opportunity announcements.

(Authority: 44 U.S.C. 2103–04, 2 CFR part 200)

§ 2600.102 Additional NARA grant administration policies.

Grant recipients must also follow NARA grant administration policies and procedures set out in 36 CFR parts 1202, 1206, 1208, 1211, and 1212.

Title 36—Parks, Forests, and Public Property

CHAPTER XII—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

■ 2. Revise the authority citation for part 1206 to read as follows:

Authority: 5 U.S.C. 301; 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506; 2 CFR 200, and as noted in specific sections.

§ 1206.3 [Amended]

■ 3. Amend § 1206.3 by adding the sentence ''For a more detailed definition, see 2 CFR 306.'' at the end of the definition paragraphs for ''Cost sharing,'' ''Indirect costs,'' and ''State''.

§ 1206.8 [Amended]

■ 4. Amend § 1206.8(c) by adding a comma and the words ''available on the NHPRC Web site at *http://www.archives.gov/nhprc*'' to the end of the paragraph.

§ 1206.12 [Amended]

■ 5. Amend § 1206.12(a) by adding the phrase ''and 2 CFR part 200'' to the end of the sentence.

§ 1206.24 [Amended]

■ 6. Amend § 1206.24(b) by adding the phrase ''and the NHPRC Web site'' to the end of the sentence.

§ 1206.45 [Amended]

■ 7. Amend § 1206.45(b) by adding a comma and the words ''including those in 2 CFR parts 230 and 2600'' to the end of the sentence.

§ 1206.50 [Amended]

■ 8. Amend § 1206.50 by revising paragraph (b)(3) to read as follows:

§ 1206.50 What types of funding and cost sharing arrangements does the Commission make?

* * * * *

(b) * * *

(3) As indicated in 2 CFR part 2600, we do not pay indirect costs from grant funds, but allow indirect costs to be used for cost sharing.

§ 1206.72 [Amended]

■ 9. Revise § 1206.72 to read as follows:

§ 1206.72 Where can I find the regulatory requirements that apply to NHPRC grants?

(a) In addition to this Part 1206, NARA has issued other regulations that apply to NHPRC grants in 36 CFR parts 1202, 1208, 1211, 1212 and 2 CFR part 2600 (which incorporates OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards guidance at 2 CFR part 200).

(b) The Commission provides additional policy guidance related to Title VI of the Civil Rights Act of 1964, regarding persons with limited English proficiency, at *http://www.archives.gov/nhprc/* and from the NHPRC staff.

PART 1207 [Removed]

■ 10. Remove 36 CFR part 1207.

PART 1210 [Removed]

■ 11. Remove 36 CFR part 1210.

David S. Ferriero,

Archivist of the United States.

Small Business Administration

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, Part 2701 of Title 2, Chapter XXVII of the Code of Federal Regulations is added and 13 CFR chapter I is amended to read as follows:

Title 2—Grants and Agreements

CHAPTER XXVII—SMALL BUSINESS ADMINISTRATION

PART 2701—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

2701.1 Adoption of 2 CFR part 200.
2701.74 Pass-through entity.
2701.92 Subaward.
2701.93 Subrecipient.
2701.112 Conflict of Interest.
2701.414 Indirect (F&A) Costs.
2701.503 Relation to other audit requirements.
2701.513 Responsibilities.
2701.600 Other regulatory guidance.

Authority: 15 U.S.C. 634(b)(6), 2 CFR part 200.

§ 2701.1 Adoption of 2 CFR Part 200.

(a) Under the authority listed above, the U.S. Small Business Administration adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.74, 200.92, and 200.93. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Administration.

§ 2701.74 Pass-through entity.

SBA will only make awards to pass-through entities where expressly authorized by statute.

§ 2701.92 Subaward.

SBA will only permit pass-through entities to make awards to subrecipients where expressly authorized by statute.

§ 2701.93 Subrecipient.

SBA will only permit non-Federal entities to receive subawards where expressly authorized by statute.

§ 2701.112 Conflict of Interest.

The following conflict of interest policies apply to all SBA awards of financial assistance:

(a) Where an employee or contractor of a non-Federal entity providing assistance under an SBA award also provides services in exchange for pay in her or his private capacity, that employee or contractor may not accept as a client for her or his private services any individual or firm she or he assists under an SBA award.

(b) No non-Federal entity providing assistance under an SBA award (nor any subrecipient, employee, or contractor of such an entity) may give preferential treatment to any client referred to it by an organization with which it has a financial, business, or other relationship.

(c) Except where otherwise provided for by law, no non-Federal entity may seek or accept an equity stake in any firm it assists under the auspices of an SBA award. Additionally, no principal, officer, employee, or contractor of such an entity (nor any of their Close or Secondary Relatives as those terms are defined by 13 CFR 108.50) may seek or accept an equity stake or paid position in any firm the entity assists under an SBA award.

§ 2701.414 Indirect (F&A) Costs.

(a) When determining whether a deviation from a negotiated indirect cost rate is justified, SBA will consider the following factors:

(1) The degree to which a non-Federal entity has been able to defray its overhead expenses via those indirect costs it has recovered under other, concurrent SBA awards;

(2) The amount of funding that must be devoted to conducting program activities in order for a project to result in meaningful outcomes; and

(3) The amount of project funds that will remain available for conducting program activities after a negotiated rate is applied.

(b) After conducting the analysis required in paragraph (a) above, the head of each SBA grant program office will determine in writing whether there is sufficient justification to deviate from a negotiated indirect cost rate.

(c) Where SBA determines that deviation from a negotiated rate is justified, it will provide a copy of that determination to OMB and will inform potential applicants of the deviation in the corresponding funding announcement.

§ 2701.503 Relation to other audit requirements.

Non-Federal entities that are not subject to the requirements of the Single Audit Act and that are performing projects under SBA awards will be required to submit copies of their audited financial statements for their most recently completed fiscal year. Costs associated with the auditing of a non-Federal entity's financial statements may be included in its negotiations for an indirect cost rate agreement in accordance with 2 CFR 200.425.

§ 2701.513 Responsibilities.

For SBA, the Single Audit Senior Accountable Official is the Chief Administrative Officer. The Single Audit Liaison is the Director, Office of Grants Management.

§ 2701.600 Other regulatory guidance.

(a) In addition to the general regulations set forth above and those contained in 2 CFR part 200, the program-specific regulations governing the operation of SBA's individual grant programs may be found in title 13 of the Code of Federal Regulations beginning at the sections noted below:

(1) New Markets Venture Capital program—13 CFR 108.2000.

(2) Program for Investment in Microentrepreneurs (PRIME)—13 CFR 119.1.

(3) Microloan program—13 CFR 120.700.

(4) 7(j) Management and Technical Assistance program—13 CFR 124.701.

(5) Small Business Development Center program—13 CFR 130.100.

(b) [Reserved]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 143—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 143.

Maria Contreras-Sweet,

Administrator, U.S. Small Business Administration.

Department of Justice

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXVIII and 28 chapter I are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXVIII—DEPARTMENT OF JUSTICE

■ 1. Part 2800 is added to Title 2, Chapter XXVIII of the Code of Federal Regulations to read as follows:

PART 2800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS BY THE DEPARTMENT OF JUSTICE

Sec.
2800.101 Adoption of 2 CFR part 200.
2800.313 Equipment.
2800.314 Supplies.

Authority: 5 U.S.C. 301; 28 U.S.C. 509; 28 U.S.C. 530C(a)(4); 42 U.S.C. 3789; 2 CFR part 200.

§ 2800.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Justice adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.313 and 2 CFR 200.314, which are supplemented by the corresponding sections (*e.g.,* § 2800.313 supplements § 200.313) of this part. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

§ 2800.313 Equipment.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, section 808 (42 U.S.C. 3789), creates a special rule for disposition and use of equipment and supplies purchased by funds made available under that Title, which rule, where applicable, supersedes any conflicting provisions of 2 CFR 200.313. Section 808 currently provides that such equipment and supplies shall vest in the criminal justice agency or nonprofit organization that purchased the property if such agency or nonprofit certifies to the appropriate State office (as indicated in the statute) that it will use the property for criminal justice purposes, and further provides that, if such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

§ 2800.314 Supplies.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, section 808 (42 U.S.C. 3789) creates a special rule for disposition and use of equipment and supplies purchased by funds made available under that Title, which rule, where applicable, supersedes any conflicting provisions of § 200.314. Section 808 currently provides that such equipment and supplies shall vest in the criminal justice agency or nonprofit organization that purchased the property if such agency or nonprofit certifies to the appropriate State office (as indicated in the statute) that it will use the property for criminal justice purposes, and further provides that, if such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PARTS 66 and 70 [Removed]

■ 2. Remove Parts 66 and 70.

James M. Cole,

Deputy Attorney General.

Department of Labor

For the reasons set forth in the common preamble, the Department of Labor (DOL) establishes Chapter XXIX (consisting of Part 2900) in Title 2, of the Code of Federal Regulations to read as follows:

CHAPTER XXIX—DEPARTMENT OF LABOR

PART 2900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Sec.
2900.1 Budget.
2900.2 Non-Federal entity.
2900.3 Questioned cost.

Subpart B—General Provisions

2900.4 Adoption of 2 CFR part 200.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

2900.5 Federal awarding agency review of merit of proposals.

Subpart D—Post Federal Award Requirements

2900.6 Advance Payment.
2900.7 Payment.
2900.8 Cost sharing or matching.
2900.9 Revision of budget and program plans.
2900.10 Prior approval requests.
2900.11 Revision of budget and program plans including extension of the period of performance.
2900.12 Revision of budget and program plans approval from Grant Officers.
2900.13 Intangible property.
2900.14 Financial reporting.
2900.15 Closeout.

Subpart E—Cost Principles

2900.16 Prior written approval (prior approval)
2900.17 Adjustment of negotiated IDC rates.
2900.18 Contingency provisions.
2900.19 Student activity costs.

Subpart F—Audit Requirements

2900.20 Federal Agency Audit Responsibilities.
2900.21 Management decision.
2900.22 Audit Requirements, Appeal Process for Department of Labor Recipients.

Authority: 5 U.S.C. 301; 2 CFR 200.

Subpart A—Acronyms and Definitions

§ 2900.1 Budget.

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal Awarding agency specifies as requiring prior approval. See § 200.407 for more information about prior approval. (See 2 CFR 200.8)

§ 2900.2 Non-Federal entity.

In the DOL, *Non-Federal entity* means a state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient. (See 2 CFR 200.69)

§ 2900.3 Questioned cost.

In the DOL, in addition to the guidance contained in 2 CFR 200.84, a *Questioned cost* means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit finding:

(a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(b) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Subpart B—General Provisions

§ 2900.4 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Labor adopts the Office of Management and Budget (OMB) Guidance in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by this part, as the Department of Labor policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. The DOL also has programmatic and administrative regulations located in 20 and 29 CFR.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 2900.5 Federal awarding agency review of merit of proposals.

In the DOL, audits and monitoring reports containing findings, issues of non-compliance or questioned costs are in addition to reports and findings from audits performed under Subpart F—Audit Requirements of this Part or the reports and findings of any other available audits; and (See 2 CFR 200.205(c)(4))

Subpart D—Post Federal Award Requirements

§ 2900.6 Advance Payment.

In the DOL, except as authorized under 2 CFR 200.207, specific conditions, the non-Federal entity must be paid in advance. (See 2 CFR 200.305(b)(1))

§ 2900.7 Payment.

In addition to the guidance set forth in 2 CFR 200.305 (b)(2), for Federal awards from the Department of Labor, the non-Federal entity should liquidate existing advances before it requests additional advances.

§ 2900.8 Cost sharing or matching.

In addition to the guidance set forth in 2 CFR 200.306(b), for Federal awards from the Department of Labor, the non-Federal entity accounts for funds used for cost sharing or match within their accounting systems as the funds are expended.

§ 2900.9 Revision of budget and program plans.

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal awarding agency specifies as requiring prior approval (see 2 CFR 200.407 and 2 CFR 200.308(a))

§ 2900.10 Prior approval requests.

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval actions at least 30 days prior to the effective date of the requested action.

§ 2900.11 Revision of budget and program plans including extension of the period of performance.

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval for an extension to the period of performance.

§ 2900.12 Revision of budget and program plans approval from Grant Officers.

In the DOL, unless otherwise noted in the Grant Agreement, prior written approval must come from the Grant Officer (See 2 CFR 200.308(d))

§ 2900.13 Intangible property.

In addition to the guidance set forth in 2 CFR 200.315(d)(3), the Department of Labor requires intellectual property developed under a competitive Federal award process to be licensed under a Creative Commons Attribution license. This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the grantee.

§ 2900.14 Financial reporting.

In addition to the guidance set forth in 2 CFR 200.327, for Federal awards from the Department of Labor, the DOL awarding agency will prescribe whether the report will be on a cash or an accrual basis. If the DOL awarding agency requires reporting on an accrual basis and the recipient's accounting system is not on the accrual basis, the recipient will not be required to convert its accounting system, but must develop

and report such accrual information through best estimates based on an analysis of the documentation on hand.

§ 2900.15 Closeout.

In addition to the guidance set forth in 2 CFR 200.343(b), for Federal awards from the Department of Labor, the non-Federal entity must liquidate all obligations and/or accrued expenditures incurred under the Federal award.

Subpart E—Cost Principles

§ 2900.16 Prior written approval (prior approval).

In addition to the guidance set forth in 2 CFR 200.407, for Federal awards from the Department of Labor, the non-Federal entity must request prior written approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is to occur. Unless otherwise noted in the Grant Award, the Grant Officer is the only official with the authority to provide prior written approval (prior approval). Items included in the statement of work or budget as awarded does not constitute prior approval.

§ 2900.17 Adjustment of negotiated IDC rates.

In the DOL, in addition to the requirements under 2 CFR 200.411(a)(2), adjustments to indirect cost rates resulting from a determination of unallowable costs being included in the rate proposal may result in the reissuance of negotiated rate agreement.

§ 2900.18 Contingency provisions.

In addition to the guidance set forth in 2 CFR 200.433(c), for Federal awards from the Department of Labor, excepted citations include 2 CFR 200.333 Retention requirements for records, and 2 CFR 200.334 Requests for transfers of records.

§ 2900.19 Student activity costs.

In the Department of Labor, the provisions of 2 CFR 200.469 apply unless the activities meet a program requirement and have prior written approval from the Federal awarding agency.

Subpart F—Audit Requirements

§ 2900.20 Federal Agency Audit Responsibilities.

In the DOL, in addition to 2 CFR 200.513 the department employs a collaborative resolution process with non-federal entities.

(a) *Department of Labor Cooperative Audit Resolution Process.* The DOL official(s) responsible for resolution shall promptly evaluate findings and recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(1) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(2) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the decisions of the responsible DOL official(s).

(3) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

(i) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;

(ii) Lists those matters upon which the parties continue to disagree;

(iii) Lists any modifications to the factual findings and conclusions set forth in the initial determination;

(iv) Lists any sanctions and required corrective actions; and

(v) Sets forth any appeal rights.

(4) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

§ 2900.21 Management decision.

In the DOL, ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General. The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no later than upon receipt of the audit report. (See 2 CFR 200.521(d))

§ 2900.22 Audit Requirements—Appeal Process for Department of Labor Recipients.

In the DOL, the DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) Request for hearing. Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.* (1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW., Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall

designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

T. Michael Kerr,

Assistant Secretary for Administration and Management.

Department of Homeland Security

For the reasons set forth in the common preamble, Part 3002 is added to Title 2, Subtitle B, Chapter XXX of the Code of Federal Regulations to read as follows:

Title 2—Grants and Agreements

CHAPTER XXX—DEPARTMENT OF HOMELAND SECURITY

PART 3002—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 31 U.S.C. 503, 2 CFR part 200, and as noted in specific sections.

§ 3002.10 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Homeland Security adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Department of Homeland Security

Federal Emergency Management Agency

For the reasons discussed in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, the Federal Emergency Management Agency amends 44 CFR Chapter I as follows:

Title 44—Emergency Management and Assistance

CHAPTER I—FEDERAL EMERGENCY MANAGEMENT AGENCY

PART 13—[REMOVED AND RESERVED]

■ 1. Remove and reserve part 13.

PART 78—FLOOD MITIGATION ASSISTANCE

■ 2. The authority citation for part 78 continues to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 3. Section 78.3 is amended by revising paragraphs (b)(5) and (c)(4) as follows:

§ 78.3 Responsibilities.

(b) * * *

(5) Submit performance and financial reports to FEMA in compliance with 2 CFR 200.327 and 200.328.

(c) * * *

(4) Comply with FEMA requirements, 2 CFR parts 200 and 3002, the grant agreement, applicable Federal, State and local laws and regulations (as applicable); and

* * * * *

■ 4. Section 78.13 is amended by revising the last sentence of paragraph (a) and revising paragraph (b) as follows:

§ 78.13 Grant administration.

(a) * * * Allowable costs will be governed by 2 CFR parts 200 and 3002.

(b) The grantee must submit performance and financial reports to FEMA and must ensure that all subgrantees are aware of their responsibilities under 2 CFR parts 200 and 3002.

* * * * *

PART 79—FLOOD MITIGATION GRANTS

■ 5. The authority citation for part 79 continues to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.;* 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 6. Section 79.3 is amended by revising paragraphs (b)(6) and (d)(4) as follows:

§ 79.3 Responsibilities.

(b) * * *

(6) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

(d) * * *

(4) Comply with program requirements under this part, grant management requirements identified under 2 CFR parts 200 and 3002, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

■ 7. Section 79.8 is amended by revising paragraph (a) introductory text and revising the last sentence of paragraph (a)(2) to read as follows:

§ 79.8 Allowable costs.

(a) *General.* General policies for allowable costs are addressed in 2 CFR 200.101, 200.102, 200.400–200.475.

* * * * *

(2) * * * In addition, all costs must be in accordance with the provisions of 2 CFR parts 200 and 3002.

* * * * *

■ 8. Section 79.9 is amended by revising the last sentence of paragraph (a) as follows:

§ 79.9 Grant administration.

(a) * * * In addition, grantees are responsible for ensuring that all subgrantees are aware of and follow the

requirements contained in 2 CFR parts 200 and 3002.

* * * * *

PART 152—ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

■ 9. The authority citation for part 152 continues to read as follows:

Authority: Federal Fire Protection and Control Act, 15 U.S.C. 2201 *et seq.*

■ 10. Section 152.7 is amended by revising the third sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 152.7 Grant payment, reporting and other requirements.

(a) * * * Grantees may request funds from FEMA as reimbursement for expenditures made under the grant program or they may request funds for immediate cash needs under 2 CFR 200.305. * * *

(c) All grantees must follow their own established procurement process when buying anything with Federal grant funds as provided in 2 CFR 200.317–200.326. * * *

* * * * *

PART 201—MITIGATION PLANNING

■ 11. The authority citation for part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 12. Section 201.4 is amended by revising paragraph (c)(7) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(c) * * *

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002.

* * * * *

■ 13. Section 201.7 is amended by revising paragraph (c)(6) to read as follows:

§ 201.7 Tribal Mitigation Plans.

* * * * *

(c) * * *

(6) *Assurances.* The plan must include assurances that the Indian Tribal government will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, including 2 CFR parts 200 and 3002.

* * * * *

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

■ 14. The authority citation for part 204 continues to read as follows:

Authority: 42 U.S.C. 5121 through 5207; 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1.

■ 15. Section 204.42 is amended by revising paragraph (a)(3) to read as follows:

§ 204.42 Eligible Costs.

(a) * * *

(3) Grantees will award Federal funds to subgantees under State law and procedure and complying with 2 CFR parts 200 and 3002.

* * * * *

■ 16. Section 204.53 is amended by revising paragraph (b)(2) to read as follows:

§ 204.53 Certifying costs and payments.

(b) * * *

(2) In compliance with 2 CFR 200.305 and U.S. Treasury 31 CFR part 205, Cash Management Improvement Act.

■ 17. Section 204.63 is revised to read as follows:

§ 204.63 Allowable costs.

2 CFR part 200, subpart E—Cost Principles establishes general policies for determining allowable costs.

(a) FEMA will reimburse direct costs for the administration of a fire management assistance grant under 2 CFR part 200.

(b) FEMA will reimburse indirect costs for the administration of a fire management assistance grant in compliance with the Grantee's approved indirect cost rate under 2 CFR part 200.

(c) Management costs as defined in 44 CFR part 207 do not apply to this section.

■ 18. Section 204.64 is amended by revising paragraph (b)(1) to read as follows:

§ 204.64 Reporting and audit requirements.

(b) * * *

(1) *Audit.* Audits will be performed, for both the Grantee and the subgrantees, under 2 CFR 200.500–200.520.

* * * * *

PART 206—FEDERAL DISASTER ASSISTANCE

■ 19. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 20. Section 206.16 is amended by revising paragraph (a) to read as follows:

§ 206.16 Audit and investigations.

(a) Subject to the provisions of chapter 75 of title 31, United States Code, and 2 CFR parts 200 and 3002, relating to requirements for single audits, the Administrator, the Assistant Administrator for the Disaster Operations Directorate, or the Regional Administrator shall conduct audits and investigations as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

* * * * *

■ 21. Section 206.120 is amended by revising paragraphs (f)(2)(i), (f)(6), and the first sentence of paragraph (f)(7) to read as follows:

§ 206.120 State administration of other needs assistance.

* * * * *

(f) * * *

(2) *Reporting requirements.* (i) The State shall provide financial status reports as required by 2 CFR 200.327.

* * * * *

(6) *Audit requirements.* Pursuant to 2 CFR 200.500–200.520, uniform audit requirements apply to all grants provided under this subpart.

(7) *Document retention.* Pursuant to 2 CFR 200.333–200.337, States are required to retain records, including source documentation, to support expenditures/costs incurred against the grant award, for 3 years from the date of submission to FEMA of the Financial Status Report. * * *

■ 22. Section 206.171 is amended by revising paragraphs (f)(4)(v) and (g)(3) to read as follows:

§ 206.171 Crisis counseling assistance and training.

* * * * *

(f) * * *

(4) * * *

(v) Any funds granted pursuant to an immediate services program, paragraph (f) of this section, shall be expended solely for the purposes specified in the approved application and budget, these

regulations, the terms and conditions of the award, and the applicable principles prescribed in 2 CFR parts 200 and 3002.

* * * * *

(g) * * *

(3) *Reporting requirements.* The State shall submit the following reports to the Regional Administrator, the Secretary, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Administrator or the Secretary, due 30 days after the end of the reporting period. This is consistent with 2 CFR 200.328, Monitoring and Reporting Program Performance;

(ii) A final program report, to be submitted within 90 days after the end of the program period. This is also consistent with 2 CFR 200.328, Monitoring and Reporting Program Performance;

(iii) An accounting of funds, in accordance with 2 CFR 200.327, Financial Reporting, to be submitted with the final program report; and

(iv) Such additional reports as the Regional Administrator, Secretary, or SCO may require.

* * * * *

■ 23. Section 206.200 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 206.200 General.

* * * * *

(b) * * *

(2) The regulations entitled ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' published at 2 CFR parts 200 and 3002, place requirements on the State in its role as Grantee and gives the Grantee discretion to administer federal programs under their own procedures. * * *

■ 24. Section 206.202(a) is amended by revising the last sentence as follows:

§ 206.202 General.

(a) *General.* * * * As Grantee you are responsible for processing subgrants to applicants under 2 CFR parts 200 and 3002, and 44 CFR part 206, and your own policies and procedures.

* * * * *

■ 25. Section 206.204(b) is revised to read as follows:

§ 206.204 Project performance.

* * * * *

(b) *Advances of funds.* Advances of funds will be made in accordance with 2 CFR 200.305.

* * * * *

■ 26. Section 206.205(b)(1) is amended by removing the second sentence and adding a sentence in its place to read as follows:

§ 206.205 Payment of claims.

* * * * *

(b) *Large projects.* (1) * * * In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 2 CFR 200.305.

* * * * *

■ 27. Section 206.207 is amended by revising paragraphs (a), (b)(1)(iii)(G) and (H), and (c) as follows:

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 2 CFR parts 200 and 3002 apply to all disaster assistance grants and subgrants.

(b) * * *

(1) * * *

(iii) * * *

(G) Compliance with the administrative requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206;

(H) Compliance with the audit requirements of 2 CFR parts 200 and 3002;

* * * * *

(c) *Audit*—(1) *Nonfederal audit.* For grantees or subgrantees, requirements for nonfederal audit are contained in 2 CFR parts 200 and 3002.

(2) *Federal audit.* In accordance with 2 CFR part 200 and 3002, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

■ 28. Section 206.436 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 206.436 Application procedures.

(a) * * * Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 2 CFR parts 200 and 3002. * * *

* * * * *

■ 29. Section 206.437 is amended by revising paragraph (b)(4)(xi) as follows:

§ 206.437 State administrative plan.

* * * * *

(b) * * *

(4) * * *

(xi) Comply with the administrative and audit requirements of 2 CFR parts 200 and 3002 and 44 CFR part 206.

* * * * *

■ 30. Section 206.438 is amended by revising the first sentences of paragraphs (a) and (e) as follows:

§ 206.438 Project management.

(a) *General.* The State serving as grantee has primary responsibility for project management and accountability of funds as indicated in 2 CFR parts 200 and 3002 and 44 CFR part 206. * * *

(e) *Audit requirements.* Uniform audit requirements as set forth in 2 CFR parts 200 and 3002 and 44 CFR part 206 apply to all grant assistance provided under this subpart. * * *

* * * * *

■ 31. Section 206.439(a) is revised to read as follows:

§ 206.439 Allowable costs.

(a) General requirements for determining allowable costs are established in 2 CFR part 200, Cost Principles. Exceptions to those requirements as allowed in 2 CFR 200.101 and 2 CFR 200.102 are explained in paragraph (b) of this section.

* * * * *

PART 207—MANAGEMENT COSTS

■ 32. The authority citation for part 207 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 33. Section 207.4 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 207.4 Responsibilities.

(a) * * * These responsibilities are unique to the administration of this part and are in addition to common Federal Government requirements of grantees and subgrantees, consistent with OMB circulars and other applicable requirements, such as 2 CFR parts 200 and 3002.

* * * * *

■ 34. Section 207.6 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 207.6 Use of funds.

(a) The grantee or subgrantee must use management cost funds provided under this part in accordance with 2 CFR part 200, subpart E—Cost Principles, and only for costs related to administration of PA or HMGP, respectively. * * *

* * * * *

■ 35. Section 207.8 is amended by revising the first sentence of paragraph (a), the last sentence of (b)(3), (e), and

the first sentence of (f) to read as follows:

§ 207.8 Management cost funding oversight.

(a) *General.* The grantee has primary responsibility for grants management activities and accountability of funds provided for management costs as required by 2 CFR parts 200 and 3002, especially 2 CFR 200.301–200.304 and 200.317–200.326. * * *

(b) * * *

(3) * * * FEMA will deobligate any funds not liquidated by the grantee in accordance with 2 CFR 200.309 and 200.343(b).

(e) *Audit requirements.* Uniform audit requirements in 2 CFR 200.500–200.520 apply to all assistance provided under this part.

(f) *Document retention.* In compliance with State law and procedures and with 2 CFR 200.333–200.337, grantees must retain records, including source documentation to support expenditures/costs incurred for management costs, for 3 years from the date of submission of the final Financial Status Report to FEMA that is required for PA and HMGP. * * *

■ 36. Section 207.9 is amended by revising the first sentences of paragraph (b) introductory text and (b)(1)(ii), and revising paragraph (c)(1) to read as follows:

§ 207.9 Declarations before November 13, 2007.

* * * * *

(b) *Eligible direct costs.* Eligible direct costs to complete approved activities are governed by 2 CFR parts 200 and 3002. * * *

(1) * * *

(ii) *State management administrative costs.* Except for the items listed in paragraph (b)(1)(i) of this section, other administrative costs will be paid in accordance with 2 CFR part 200, subpart E—Cost Principles. * * *

(c) *Eligible indirect costs:* (1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of 2 CFR parts 200 and 3002 if the grantee provides FEMA with a current Indirect Cost Rate Agreement approved by its Cognizant Agency.

* * * * *

■ 37. Section 207.10 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 207.10 Review of management cost rates.

* * * * *

(b) In order for FEMA to review the management cost rates established, and in accordance with 2 CFR parts 200 and 3002, the grantee and subgrantee must document all costs expended for management costs (including cost overruns). * * *

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

■ 38. The authority citation for part 208 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 39. Section 208.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 208.7 Enforcement.

(a) *Remedies for noncompliance.* In accordance with the provisions of 2 CFR 200.338, 200.341, and 200.342, if a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member materially fails to comply with a term of a Cooperative Agreement, Memorandum of Agreement, System directive or other Program Directive, the Assistant Administrator may take one or more of the actions provided in 2 CFR 200.338(a)–(f). Any such enforcement action taken by the Assistant Administrator will be subject to the hearings, appeals, and effects of suspension and termination provisions of 2 CFR 200.341 and 200.342.

(b) The enforcement remedies identified in this section, including suspension and termination, do not preclude a Sponsoring Agency, Participating Agency, Affiliated Personnel or other System Member from being subject to ''Debarment and Suspension'' under E.O. 12549, as amended, in accordance with 2 CFR 200.338(d).

* * * * *

■ 40. Section 208.23 introductory text is revised to read as follows:

§ 208.23 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that DHS provides under any Preparedness Cooperative Agreement and any required matching funds under 2 CFR part 200, subpart E—Cost Principles, and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

* * * * *

■ 41. Section 208.26 is revised to read as follows:

§ 208.26 Accountability for use of funds.

The Sponsoring Agency is accountable for the use of funds as provided under the Preparedness Cooperative Agreement, including financial reporting and retention and access requirements according to 2 CFR 200.327 and 200.333–200.337.

■ 42. Section 208.27 is revised to read as follows:

§ 208.27 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Preparedness Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 2 CFR 200.313(e)(3), for example, when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

■ 43. Section 208.33(c) is revised to read as follows:

§ 208.33 Allowable costs.

* * * * *

(c) *Normal or predetermined practices.* Consistent with 2 CFR parts 200 and 3002, Sponsoring Agencies and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from DHS except as it sets out in this subpart.

* * * * *

■ 44. Section 208.46 is revised to read as follows:

§ 208.46 Title to equipment.

Title to equipment purchased by a Sponsoring Agency with funds provided under a DHS Response Cooperative Agreement vests in the Sponsoring Agency, provided that DHS reserves the right to transfer title to the Federal Government or a third party that DHS may name, under 2 CFR 200.313(e)(3), when a Sponsoring Agency indicates or demonstrates that it cannot fulfill its obligations under the Memorandum of Agreement.

PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

■ 45. The authority citation for part 304 continues to read as follows:

Authority: 50 U.S.C. app. 2251 *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12148.

■ 46. Section 304.5 is revised to read as follows:

§ 304.5 Audits and records.

(a) *Audits.* FEMA will maintain adequate auditing, accounting and review procedures as outlined in FEMA guidance material and 2 CFR parts 200 and 3002.

(b) *Records.* Financial records, supporting documents, statistical records, and all other records pertinent to a consolidated grant shall be retained for a period of three years from submission of final billing and shall be available to the Administrator, FEMA, and the Comptroller General of the United States, all as prescribed in FEMA guidance material and in accordance with 2 CFR parts 200 and 3002.

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

■ 47. The authority citation for part 360 continues to read as follows:

Authority: Reorganization Plan No. 3 (3 CFR, 1978 Comp., p. 329); E.O. 12127 (44 FR 19367); E.O. 12148 (44 FR 43239).

■ 48. Section 360.4(c)(3)(iii) is revised to read as follows:

§ 360.4 Administrative procedures.

* * * * *

(c) * * *

(3) * * *

(iii) Standard Form 270 ''Request for Advance or Reimbursement'' as required by 2 CFR parts 200 and 3002 and FEMA General Provisions for Cooperative Agreements.

* * * * *

PART 361—NATIONAL EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

■ 49. The authority citation for part 361 continues to read as follows:

Authority: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.;* E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12381, 47 FR 39795, 3 CFR, 1982 Comp., p. 207.

■ 50. Section 361.5(c)(8) is revised to read as follows:

§ 361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.

* * * * *

(c) * * *

(8) Consistent with 2 CFR parts 200 and 3002.

* * * * *

Jeh Charles Johnson,

Secretary, Department of Homeland Security.

Institute of Museum and Library Services

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301, 20 U.S.C. 9103(h), and the authorities listed below, 2 CFR chapter XXXI and 45 CFR chapter XI are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXXI—INSTITUTE OF MUSEUM AND LIBRARY SERVICES

■ 1. Part 3187 is added to Chapter XXXI to read as follows:

PART 3187—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
3187.1 Adoption of 2 CFR part 200.

Subpart A—Definitions and Eligibility

3187.2 Applicable regulations and scope of this part.
3187.3 Definition of a museum.
3187.4 Other definitions.
3187.5 Museum eligibility and burden of proof—Who may apply.
3187.6 Related institutions.
3187.7 Basic materials which an applicant must submit to be considered for funding.

Subpart B—General Application, Selection and Award Procedures

Applications

3187.8 Deadline date and method for submitting applications.

Selection and Award Procedures

3187.9 Rejection of an application.
3187.10 Rejection for technical deficiency—appeal.

Subpart C—General Conditions Which Must Be Met

Compliance with Legal Requirements

3187.11 Compliance with statutes, regulations, approved application and Federal award.

Nondiscrimination

3187.12 Federal statutes and regulations on nondiscrimination.

Evaluation

3187.13 Federal evaluation—Cooperation by a non-Federal entity.

Allowable Costs

3187.14 Subawards
3187.15 Allowable costs.

Authority 20 U.S.C. 9101–9176, 9103(h); 20 U.S.C. 80r–5; 2 CFR part 200.

§ 3187.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Institute of Museum and Library Services (IMLS) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the additions that are provided below. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for IMLS.

Subpart A—Scope, Definitions, and Eligibility

§ 3187.2 Applicable regulations and scope of this part.

(a) Except as set forth in this 2 CFR part 3187, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to awards from funds appropriated to the Institute of Museum and Library Services (the ''Institute'' or ''IMLS'').

(b) The IMLS authorizing statutes, including 20 U.S.C. 9101 *et seq.* and 20 U.S.C. 80r–5, (''IMLS Statutes'') are controlling in the event of any conflict between the IMLS Statutes and the regulations in 2 CFR part 200.

§ 3187.3 Definition of a museum.

For the purpose of this part:

(a) Museum means a public or private nonprofit institution which is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff:

(1) Owns or uses tangible objects, either animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the general public on a regular basis.

(i) An institution that exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

(ii) An institution that exhibits objects by appointment may meet this requirement if it can establish, in light of the facts under all the relevant circumstances, that this method of exhibition does not unreasonably restrict the accessibility of the institution's exhibits to the general public.

(b) The term ''museum'' in paragraph (a) of this section includes museums that have tangible and digital collections. Museums include, but are not limited to, the following types of institutions, if they otherwise satisfy the provisions of this section:

(1) Aquariums;

(2) Arboretums;

(3) Botanical gardens;

(4) Art museums;

(5) Children's museums;

(6) General museums;

(7) Historic houses and sites;
(8) History museums;
(9) Nature centers;
(10) Natural history and anthropology museums;
(11) Planetariums;
(12) Science and technology centers;
(13) Specialized museums; and
(14) Zoological parks.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution.

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution that does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination regarding the eligibility of such an institution under this section.

(e) For the purpose of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

§ 3187.4 Other definitions.

The following other definitions apply in this part:

Act means The Museum and Library Services Act, Pub. L. 104–208 (20 U.S.C. 9101–9176), as amended.

Collection includes objects owned, used or loaned by a museum as well as those literary, archival and documentary resources specifically required for the study and interpretation of these objects.

Director means the Director of the Institute of Museum and Library Services.

Institute or *IMLS* means the Institute of Museum and Library Services established under Section 203 of the Act.

Museum services means services provided by a museum, primarily exhibiting objects to the general public, and including but not limited to preserving and maintaining its collections, and providing educational and other programs to the public through the use of its collections and other resources.

§ 3187.5 Museum eligibility and burden of proof—Who may apply.

(a) A museum located in any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau may apply for a Federal award under the Act.

(b) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(c) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(d) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

§ 3187.6 Related institutions.

(a) If two or more institutions are under the common control of one agency or institution or are otherwise organizationally related and apply for assistance under the Act, the Director determines under all the relevant circumstances whether they are separate museums for the purpose of establishing eligibility for assistance under these regulations. *See* § 3187.5 (Museum eligibility and burden of proof—Who may apply).

(b) IMLS regards the following factors, among others, as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

§ 3187.7 Basic materials which an applicant must submit to be considered for funding.

(a) *Application.* To apply for an IMLS Federal award, an applicant must submit the designated application form containing all information requested.

(b) *IRS letter.* An applicant applying as a private, nonprofit institution must submit a copy of the letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the applicable provision of the Internal Revenue Code of 1954, as amended.

Subpart B—General Application, Selection and Award Procedures

Applications

§ 3187.8 Deadline date and method for submitting applications.

(a) The notice of funding opportunity sets the deadline date and method(s) for applications to be submitted to the Institute.

(b) If the application notice permits mailing of an application, an applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director.

(c) If the application notice permits mailing of an application, and the application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not date cancelled by the U.S. Postal Service.

Selection and Award Procedures

§ 3187.9 Rejection of an application.

(a) The Director rejects an application if:

(1) The applicant is not eligible;

(2) The applicant fails to comply with procedural rules that govern the submission of the application;

(3) The application does not contain the information required;

(4) The application cannot be funded under the authorizing statute or implementing regulations.

(b) If the Director rejects an application under this section, the Director informs the applicant and explains why the application was rejected.

§ 3187.10 Rejection for technical deficiency—appeal.

An applicant whose application is rejected because of technical deficiency may appeal such rejection in writing to the Director within 10 business days of electronic or postmarked notice of rejection, whichever is earlier.

Subpart C—General Conditions Which Must Be Met

Compliance With Legal Requirements

§ 3187.11 Compliance with statutes, regulations, approved application and Federal award.

(a) A recipient and subrecipient, as applicable, shall comply with the relevant statutes, regulations, and the approved application and Federal award, and shall use Federal funds in accordance therewith.

(b) No act or failure to act by an official, agent, or employee of the Institute can affect the authority of the Director to enforce regulations.

(c) In any circumstance for which waiver is provided, the determination of the Director shall be final.

Nondiscrimination

§ 3187.12 Federal statutes and regulations on nondiscrimination.

(a) Each recipient and subrecipient, as applicable, shall comply with the relevant nondiscrimination statutes and public policy requirements including, but not limited to, the following:

Subject	Statute
Discrimination on the basis of race, color or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
Discrimination on the basis of age	The Age Discrimination Act (420 U.S.C. 8101 *et. seq*).

(b) *Regulations under section 504 of the Rehabilitation Act of 1973.* The Institute applies the regulations in 45 CFR part 1170, issued by the National Endowment for the Humanities and relating to nondiscrimination on the basis of handicap in federally assisted programs and activities, in determining the compliance with section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Institute. These regulations apply to each program or activity that receives such assistance. In applying these regulations, references to the *Endowment* or the *agency* shall be deemed to be references to the Institute and references to the *Chairman* shall be deemed to be references to the Director.

Evaluation

§ 3187.13 Federal evaluation—Cooperation by a non-Federal entity.

A non-Federal entity shall cooperate in any evaluation by the Director of the particular IMLS Federal financial assistance program in which the non-Federal entity has participated.

Allowable Costs

§ 3187.14 Subawards.

(a) A recipient may not make a subaward unless expressly authorized by the Institute. In the event the Institute authorizes a subaward, the recipient shall:

(1) Ensure that the subaward includes any clauses required by Federal law as well as any program-related conditions imposed by the Institute;

(2) Ensure that the subrecipient is aware of the applicable legal and program requirements; and

(3) Monitor the activities of the subrecipient as necessary to ensure compliance with Federal law and program requirements.

(b) A recipient may contract for supplies, equipment, and services, subject to applicable law, including but not limited to applicable Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200.

§ 3187.15 Allowable costs.

(a) Determination of costs allowable under a Federal award is made in accordance with the government-wide cost principles in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200.

(b) No costs shall be allowed for the purchase of any object to be included in the collection of a museum, except library, literary, or archival material specifically required for a designated activity under a Federal award under the Act.

Title 45—Public Welfare

CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Subchapter E—Institute of Museum and Library Services

PART 1180—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 1180.

PART 1183—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 1183.

Nancy E. Weiss,

General Counsel.

National Endowment for the Arts

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXXII and 45 CFR chapter XI are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXXII—NATIONAL ENDOWMENT FOR THE ARTS

■ 1. Part 3255 is added to Title 2, Chapter XXXII of the Code of Federal Regulations to read as follows:

PART 3255—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 20 U.S.C. 954, 2 CFR part 200.

§ 3255.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Endowment for the Arts (NEA) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the NEA.

Title 45—Public Welfare

CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Subchapter B—National Foundation for the Arts

PART 1157—[REMOVED AND RESERVED]

■ 2. Remove and reserve 45 CFR part 1157.

India J. Pinkney,
General Counsel.

National Endowment for the Humanities

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXXIII and 45 CFR chapter XI are amended as follows:

Title 2—Grants and Agreements

CHAPTER XXXIII—NATIONAL ENDOWMENT FOR THE HUMANITIES

■ 1. Part 3374 is added to Title 2, Chapter XXXIII to read as follows:

PART 3374—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301, 20 U.S.C. 956, 2 CFR part 200.

§ 3374.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Endowment for the Humanities (NEH) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for NEH.

Title 45—Public Welfare

CHAPTER XI—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Subchapter D—National Endowment for the Humanities

PART 1174—[REMOVED AND RESERVED]

■ 2. Remove and reserve 45 CFR part 1174.

Michael P. McDonald,
General Counsel.

Department of Education

For the reasons discussed in the preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, the Secretary amends chapter XXXIV of title 2 of the Code of Federal Regulations and amends subtitle A and chapters I, II, III, IV, V, and VI of title 34 of the of the Code of Federal Regulations as follows.

Title 2—Grants and Agreements

Subtitle B—Federal Agency Regulations for Grants and Agreements

CHAPTER XXXIV—DEPARTMENT OF EDUCATION

■ 1. Part 3474 is added to read as follows.

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
3474.1 Adoption of 2 CFR part 200.
3474.5 How exceptions are made to 2 CFR part 200.
3475.10 Clarification regarding 2 CFR 200.207.

Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200, unless otherwise noted.

§ 3474.1 Adoption of 2 CFR part 200.

(a) The Department of Education adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.102(a) and 2 CFR 200.207(a). Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The authority for all of the provisions in 2 CFR part 200 as adopted in this part is listed as follows.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200.)

§ 3474.5 How exceptions are made to 2 CFR part 200.[1]

(a) With the exception of Subpart F—Audit Requirements of 2 CFR part 200, the Secretary of Education, after consultation with OMB, may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances.

(b) Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at *www.whitehouse.gov/omb*.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200)

[1] C. Ref. 2 CFR 200.102.

§ 3474.10 Clarification regarding 2 CFR 200.207.[2]

The Secretary or a pass-through entity may, in appropriate circumstances, designate the specific conditions established under 2 CFR 200.207 as ''high-risk conditions'' and designate a non-Federal entity subject to specific conditions established under § 200.207 as ''high–risk''.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education

PART 74 [REMOVED]

■ 2. Part 74 is removed.

PART 75—DIRECT GRANT PROGRAMS

■ 3–4. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 5. Section 75.118 is amended by:
■ A. Revising paragraph (a).
■ B. Revising the cross-reference at the end of the section.

The revisions read as follows:

§ 75.118 Requirements for a continuation award.

(a) A recipient that wants to receive a continuation award shall submit a performance report that provides the most current performance and financial expenditure information, as directed by the Secretary, that is sufficient to meet the reporting requirements of 2 CFR 200.327 and 200.328 and 34 CFR 75.590 and 75.720.

* * * * *

CROSS-REFERENCE: See 2 CFR 200.327, Financial reporting, and 200.328, Monitoring and reporting program performance; and 34 CFR 75.117, Information needed for a multi-year project, 75.250 through 75.253, Approval of multi-year projects, 75.590, Evaluation by the grantee, and 75.720, Financial and performance reports.

■ 6. Section 75.135 is amended by:
■ A. Revising the introductory text of paragraph (a).
■ B. Revising paragraph (e).

The revisions read as follows:

§ 75.135 Competition exception for proposed implementation sites, implementation partners, or service providers.

(a) When entering into a contract with implementation sites or partners, an applicant is not required to comply with

[2] C. Ref. 2 CFR 200.205, 200.207.

the competition requirements in 2 CFR 200.320(c) and (d), if—

* * * * *

(e) The exceptions in paragraphs (a) and (b) of this section do not extend to the other procurement requirements in 2 CFR part 200 regarding contracting by grantees and subgrantees.

* * * * *

■ 7. The cross-reference following § 75.236 is revised to read as follows:

§ 75.236 Effect of the grant.

* * * * *

CROSS-REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

■ 8. Section 75.253 is amended by:

■ A. Revising paragraph (a)(5).

■ B. Revising the introductory text to paragraph (d)(1).

■ C. Revising paragraph (d)(1)(ii).

■ D. Revising the Note that follows paragraph (d)(1)(ii).

The revisions read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) * * *

(5) The grantee has maintained financial and administrative management systems that meet the requirements in 2 CFR 200.302, Financial management, and 200.303, Internal controls.

* * * * *

(d)(1) Notwithstanding any regulatory requirements in 2 CFR part 200, a grantee may expend funds that have not been obligated at the end of a budget period for obligations of the subsequent budget period if—

* * * * *

(ii) ED regulations, including those in title 2 of the CFR, statutes, or the conditions of the grant do not prohibit the obligation.

Note: See 2 CFR 200.308(d)(2).

* * * * *

■ 9. Section 75.261 is amended by:

■ A. Revising paragraph (a).

■ B. Revising the introductory text to paragraph (c).

The revisions read as follows:

§ 75.261 Extension of a project period.

(a) *General rule.* A grantee may extend the project period of an award one time for a period up to twelve months without the prior approval of the Secretary, if—

(1) The grantee meets the requirements for extension in 2 CFR 200.308(d)(2); and

(2) ED statutes, regulations other than those in 2 CFR part 200, or the conditions of an award do not prohibit the extension.

* * * * *

(c) *Other regulations.* If ED regulations other than the regulations in 2 CFR part 200 or the conditions of the award require the grantee to obtain prior approval to extend the project period, the Secretary may permit the grantee to extend the project period if—

* * * * *

§ 75.263 [Removed and Reserved]

■ 10. Section 75.263 is removed and reserved.

■ 11. Section 75.264 is revised to read as follows:

§ 75.264 Transfers among budget categories.

A grantee may make transfers as specified in 2 CFR 200.308 unless—

(a) ED regulations other than those in 2 CFR part 200 or a statute prohibit these transfers; or

(b) The conditions of the grant prohibit these transfers.

(Authority 20 U.S.C. 1221e–3, 3474, 2 CFR part 200)

■ 12. The cross-reference following § 75.511 is revised to read as follows:

§ 75.511 Waiver of requirement for a full-time project director.

* * * * *

CROSS-REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

§ 75.517 [Removed and Reserved]

■ 13. Section 75.517 is removed and reserved.

■ 14. Section 75.524 is amended by revising paragraphs (b) and (c) to read as follows:

§ 75.524 Conflict of interest: Purpose of § 75.525.

* * * * *

(b) These conflict of interest regulations do not apply to a ''local government,'' as defined in 2 CFR 200.64, or a ''State,'' as defined in 2 CFR 200.90.

(c) The regulations in § 75.525 do not apply to a grantee's procurement contracts. The conflict of interest regulations that cover those procurement contracts are in 2 CFR part 200.

* * * * *

■ 15. Section 75.530 and the cross-reference that follows that section are revised to read as follows:

§ 75.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are specified at 2 CFR part 200, subpart E—Cost Principles.

(Authority: 20 U.S.C. 1221e–3 and 3474)

CROSS-REFERENCE: See 2 CFR part 200, subpart D—Post Federal Award Requirements.

■ 16. Section 75.560 is amended by revising paragraph (a) to read as follows:

§ 75.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E—Cost Principles;

(2) Hospitals, at 45 CFR part 75, Appendix XI—Principles for Determining Cost Applicable to Research and Development Under Awards and Contracts with Hospitals; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31 Contract Cost Principles and Procedures.

* * * * *

■ 17. Section 75.562 is amended by revising paragraph (c)(2)(iv) and (c)(4) to read as follows:

§ 75.562 Indirect cost rates for educational training projects.

* * * * *

(c) * * *

(2) * * *

* * * * *

(iv) Equipment, as defined in 2 CFR 200.33.

* * * * *

(4) The eight percent limit does not apply to agencies of Indian tribal governments, local governments, and States as defined in 2 CFR 200.54, 200.200.64, and 200.90, respectively.

* * * * *

■ 18. The cross-reference that follows the undesignated center heading ''Construction'' is revised to read as follows:

CROSS-REFERENCE: See 2 CFR part 200.317–200.326 for procurement requirements.

■ 19. The cross-reference that follows the undesignated center heading ''Equipment and Supplies'' and before § 75.618 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.311, Real property; 200.313, Equipment; 200.314, Supplies; and 200.59, Intangible property; and 200.315, Intangible property.

§ 75.621 [Removed and Reserved].

■ 20. Section 75.621 is removed and reserved.

■ 21. The cross-reference following former § 75.621 and before § 75.622 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.305, Payment; 200.307, Program income; and 200.315, Intangible property.

■ 22. The cross-reference following the undesignated center heading ''Inventions and Patents'' and before § 75.626 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.307, Program income.

■ 23. The cross-reference following the undesignated center heading ''Other Requirements for Certain Projects'' and before § 75.650 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.302, Financial management, and 200.326, Contract provisions.

■ 24. Section 75.702 is revised and the cross-reference that follows that section is removed to read as follows:

§ 75.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of, and accounting for, Federal funds as required in 2 CFR part 200, subpart D—Post Federal Award Requirements.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 25. Section § 75.707 is amended by revising paragraph (h) to read as follows:

§ 75.707 When obligations are made.

* * * * *

If the obligation is for—	The obligation is made—
* * * * * * *	
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E—Cost Principles.	On the first day of the project period.

* * * * *

■ 26. Section 75.708 is amended by revising paragraph (e) to read as follows:

§ 75.708 Subgrants.

* * * * *

(e) A grantee may contract for supplies, equipment, construction, and other services, in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements (2 CFR 200.317–200.326, Procurement Standards).

* * * * *

■ 27. The cross-reference after the undesignated center heading ''Reports'' and before § 75.720 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.327–200.337, which appear after the undesignated center heading ''Performance and Financial Monitoring and Reporting.''

■ 28. Section 75.720 is revised to read as follows:

§ 75.720 Financial and performance reports.

(a) This section applies to the reports required under—

(1) 2 CFR 200.327 (Financial reporting); and

(2) 2 CFR 200.328 (Monitoring and reporting program performance).

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) The Secretary may require a grantee to report more frequently than annually, as authorized under 2 CFR 200.207, Specific conditions, and may impose high-risk conditions in appropriate circumstances under 2 CFR 3474.10.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 29. The cross-reference after the undesignated center heading ''Records'' and before § 75.730 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.333–200.337, which follow the undesignated center heading ''Record Retention and Access.''

■ 30. The cross-reference after § 75.732 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.308, Revision of budget and program plans.

■ 31. The cross-reference after the heading for subpart G and before § 75.900 is revised to read as follows:

CROSS-REFERENCE: See 2 CFR 200.338–200.342 which follow the undesignated center heading ''Remedies for Noncompliance.''

■ 32. Section 75.901 is revised to read as follows:

§ 75.901 Suspension and termination.

The Secretary may use the Office of Administrative Law Judges to resolve disputes that are not subject to other procedures. See, for cross-reference, the following:

(a) 2 CFR 200.338 (Remedies for noncompliance).

(b) 2 CFR 200.339 (Termination).

(c) 2 CFR 200.340 (Notification of termination requirement).

(d) 2 CFR 200.341 (Opportunities to object, hearings and appeals).

(e) 2 CFR 200.342 (Effects of suspension and termination).

(f) 2 CFR 200.344 (Post-closeout adjustments and continuing responsibilities).

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 33. Section 75.903 is amended by revising paragraph (c) to read as follows:

§ 75.903 Effective date of termination.

* * * * *

(c) The date of a final decision of the Secretary under part 81 of this title.

* * * * *

§ 75.910 [Removed and Reserved].

■ 34. Section 75.910 is removed and reserved.

PART 76—STATE-ADMINISTERED PROGRAMS

■ 35. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 36. Section 76.132 is amended by revising paragraph (a)(5) to read as follows:

§ 76.132 What assurances must be in a consolidated grant application?

(a) * * *

(5) Submit an annual report to the Secretary containing information covering the program or programs for which the grant is used and administered, including the financial and program performance information required under 2 CFR 200.327 and 200.328.

* * * * *

■ 37. Section 76.530 is revised to read as follows:

§ 76.530 General cost principles.

The general principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants are specified at 2 CFR part 200, subpart E—Cost Principles.

(Authority: 20 U.S.C. 1221e–3 and 3474)

■ 38. Section 76.560 is amended by revising paragraph (a) to read as follows:

§ 76.560 General indirect cost rates; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E—Cost Principles;

(2) Hospitals, at 45 CFR part 75, Appendix XI, Principles for Determining Costs Applicable to Research and Development Under Awards and Contracts With Hospitals; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31, Contract Cost Principles and Procedures.

* * * * *

■ 39. Section 76.564 is amended by revising the introductory text in paragraph (c) to read as follows:

§ 76.564 Restricted indirect cost rate; formula.

* * * * *

(c) Under the programs covered by § 76.563, a subgrantee of an agency of a State or a local government (as those terms are defined in 2 CFR 200.90 and 200.64, respectively), or a grantee subject to 34 CFR 75.563 that is not a State or local government agency may use—

* * * * *

■ 40. Section § 76.707 is amended by revising paragraph (h) to read as follows:

§ 76.707 When obligations are made.

* * * * *

If the obligation is for—	The obligation is made—
* * * * * * *	
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, Subpart E—Cost Principles.	On the first day of the grant or subgrant performance period.

* * * * *

■ 41. Section 76.708 is amended by revising paragraph (c) to read as follows:

§ 76.708 When certain subgrantees may begin to obligate funds.

* * * * *

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles in 2 CFR part 200, subpart E–Cost Principles.

* * * * *

■ 42. Section 76.720 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (b)(2).

The revisions read as follows:

§ 76.720 State reporting requirements.

(a) This section applies to a State's reports required under 2 CFR 200.327 (Financial reporting) and 2 CFR 200.328 (Monitoring and reporting program performance), and other reports required by the Secretary and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

(b) * * *

(2) The Secretary requires a State to report more frequently than annually, including reporting under 2 CFR 3474.10 and 2 CFR 200.207 (Specific conditions) and 2 CFR 3474.10 (Clarification regarding 2 CFR 200.207) or 2 CFR 200.302 Financial management and 200.303 Internal controls.

* * * * *

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

■ 43. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 44. Section 77.1 is amended by:

■ A. Revising paragraph (b).

■ B. Revising, in paragraph (c), the definitions of ''EDGAR'' and ''Grantee.''

■ C. Adding to paragraph (c), in alphabetical order, the definitions of ''Award,'' ''Direct grant program.'' ''Grant,'' ''Project Period,'' ''Subgrant,'' and ''Subgrantee.''

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in 2 CFR part 200 apply to the regulations in title 34 of the Code of Federal Regulations. The section of 2 CFR part 200 that contains the definition is given in parentheses as well as references to the term or terms used in title 34 that are consistent with the term defined in title 2.

Contract (2 CFR 200.22).

Equipment (2 CFR 200.33).

Federal award (2 CFR 200.38) (The terms ''award,'' ''grant,'' and ''subgrant'', as defined in paragraph (c) of this section, have the same meaning, depending on the context, as ''Federal award'' in 2 CFR 200.38.).

Period of performance (2 CFR 200.77) (For discretionary grants, ED uses the term ''project period,'' as defined in paragraph (c) of this section, instead of ''period of performance'' to describe the period during which funds can be obligated.).

Personal property (2 CFR 200.78).

Real property (2 CFR 200.85).

Recipient (2 CFR 200.86).

Subaward (2 CFR 200.92) (The term ''subgrant,'' as defined in paragraph (c) of this section, has the same meaning as ''subaward'' in 2 CFR 200.92).

Supplies (2 CFR 200.94).

(c) * * *

Award has the same meaning as the definition of ''Grant'' in this paragraph (c).

Direct grant program means any grant program of the Department other than a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

CROSS-REFERENCE: See 34 CFR 75.1(b).

EDGAR means the Education Department General Administrative Regulations (34 CFR parts 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, and 99).

* * * * *

Grant means financial assistance, including cooperative agreements, that provides support or stimulation to accomplish a public purpose. 2 CFR part 200, as adopted in 2 CFR part 3474, uses the broader, undefined term ''Award'' to cover grants, subgrants, 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—

(1) Technical assistance, which provides services instead of money;

(2) Other assistance in the form of loans, loan guarantees, interest subsidies, or insurance;

(3) Direct payments of any kind to individuals; and

(4) Contracts that are required to be entered into and administered under procurement laws and regulations.

* * * * *

Grantee means the legal entity to which a grant is awarded and that is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award notice (GAN). For example, a GAN may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually intends, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations that may be only components of a legal entity.) The term ''grantee'' does not include any secondary recipients, such as subgrantees and contractors, that may receive funds from a grantee pursuant to a subgrant or contract.

* * * * *

Project period means the period established in the award document during which Federal sponsorship begins and ends (See, 2 CFR 200.77 Period of performance).

* * * * *

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual or any other form of legal agreement, but does not include procurement purchases, nor does it include any form of assistance that is excluded from the definition of ''grant or award'' in this part (See 2 CFR 200.92, ''Subaward'').

Subgrantee means the government or other legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the funds provided.

* * * * *

PART 80—[REMOVED AND RESERVED]

■ 45. Part 80 is removed and reserved.

Subtitle B—Regulations of the Offices of the Department of Education

CHAPTER I—OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 101—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 100 OF THIS TITLE

§ 101.43 [Amended]

■ 46. Section 101.43 is amended by removing the phrase ''part 80 of this title'' and adding, in its place, the phrase ''part 100 of this chapter.''

CHAPTER II—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION, DEPARTMENT OF EDUCATION

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

■ 47. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

■ 48. Section 206.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(7).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474, and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

■ 49. Section 206.5 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

The revisions read as follows:

§ 206.5 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1(c) (EDGAR, Definitions):

Applicant
Application
Award
Elementary school
EDGAR
Facilities
Grant
Grantee
Minor remodeling
Nonprofit
Private
Project
Public
Secondary school
Secretary
State

(b) *Definitions in the grants administration regulations.* The following terms used in this part are defined in 2 CFR part 200, as adopted in 2 CFR part 3474:

Budget
Equipment
Supplies

* * * * *

PART 222—IMPACT AID PROGRAMS

■ 50. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

■ 51. Section 222.19 is amended by:

■ A. Removing and reserving paragraphs (b)(3) and (b)(5).

■ B. Adding new paragraph (c).

The addition reads as follows:

§ 222.19 What other statutes and regulations apply to this part?

* * * * *

(c) The following regulations in title 2 of the CFR:

(1) 2 CFR part 200, as adopted in part 3474 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) for payments under sections 8003(d) (payments for federally connected children with disabilities), 8007 (construction), and 8008 (school facilities).

(2) 2 CFR part 180, as adopted in 2 CFR part 3485 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)).

* * * * *

§ 222.194 [Amended]

■ 52. Section 222.194, paragraph (c), is amended by removing the citation ''34 CFR 80.24'' and adding, in its place, the citation ''2 CFR 200.306.''

PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

■ 53. The authority citation for part 225 continues to read as follows:

Authority: 20 U.S.C. 7223, unless otherwise noted.

■ 54. Section 225.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(9).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?

* * * * *

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

■ 55. The authority citation for part 226 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 7221d(b), unless otherwise noted.

■ 56. Section 226.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(9).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 226.3 What regulations apply to the State Charter School Facilities Incentive program?

* * * * *

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

PART 270—DESEGREGATION OF PUBLIC EDUCATION

■ 57. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 2000c–2000c–2 and 2000–5, unless otherwise noted.

■ 58. Section 270.2 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 270.2 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), and part 81 (General Education Provisions Act—Enforcement), except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR part 271 and 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under 34 CFR part 272.

* * * * *

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

■ 59. The authority citation for part 280 continues to read as follows:

Authority: 20 U.S.C. 7231–7231j, unless otherwise noted.

■ 60. Section 280.3 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 280.3 What regulations apply to this program?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 75 (Direct Grant Programs), 77 (Definitions that Apply to Department Regulations), 79 (Intergovernmental Review of Department of Education Programs and Activities) and 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

* * * * *

(c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474 and OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in part 3485.

* * * * *

PART 299—GENERAL PROVISIONS

■ 61. The authority citation for part 299 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 6511(a), and 7373(b), unless otherwise noted.

■ 62. Section 299.1 is amended by revising paragraph (b) to read as follows:

§ 299.1 What are the purpose and scope of these regulations?

* * * * *

(b) If an ESEA program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent applicable, title IX of the ESEA, the General Education Provisions Act, the regulations in this part, EDGAR (34 CFR parts 75 through 99), and 2 CFR parts 180, as adopted at 2 CFR part 3485, and 200, as adopted at part 3474, that are not inconsistent with specific statutory provisions of the ESEA.

* * * * *

■ 63. Section 299.2 is amended by:

■ A. Revising the introductory text of the section.

■ B. Revising paragraph (a).

■ C. Revising paragraph (b).

The revisions read as follows:

§ 299.2 What general administrative regulations apply to ESEA programs?

Title 2 of the CFR, part 200, as adopted at 2 CFR part 3474, applies to the ESEA programs except for title VIII programs (Impact Aid) (in addition to any other specific implementing regulations) as follows:

(a) 2 CFR part 200 applies to grantees under direct grant programs (as defined in 34 CFR 75.1(b)).

(b) 2 CFR part 200 also applies to grantees under all other programs under the ESEA unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies (SEAs) and local educational agencies (LEAs) under the ESEA. If a State adopts its own alternative requirements, the requirements must be available for inspection upon the request of the Secretary or the Secretary's representatives and must—

* * * * *

CHAPTER III—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 64. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e-3, 1406, and 1411–1419, unless otherwise noted.

■ 65. Section 300.154 is amended by revising paragraph (g)(1) to read as follows:

§ 300.154 Methods of ensuring services.

* * * * *

(g) * * *

(1) Proceeds from public benefits or insurance or private insurance will not

be treated as program income for purposes of 2 CFR 200.307.

* * * * *

■ 66. Section 300.609 is revised to read as follows:

§ 300.609 Rule of construction.

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under GEPA, including the provisions in 34 CFR parts 76, 77, and 81 and 2 CFR part 200 to monitor and enforce the requirements of the Act, including the imposition of special or high-risk conditions under 2 CFR 200.207 and 3474.10.

(Authority: 20 U.S.C. 1416(g))

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

■ 67. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1431–1444, unless otherwise noted.

■ 68. Section 303.3 is amended by:

■ A. Revising paragraph (a)(2).

■ B. Adding a new paragraph (a)(3).

The revision and addition read as follows:

§ 303.3 Applicable regulations.

(a) * * *

(2) EDGAR, including 34 CFR parts 76 (except for § 76.103), 77, 79, 81, 82, 84, and 86.

(3) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in part 3474, and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

■ 69. Section 303.121 is amended by revising paragraph (b) to read as follows:

§ 303.121 Policy for contracting or otherwise arranging for services.

* * * * *

(b) Be consistent with 2 CFR part 200, as adopted at 2 CFR part 3474.

* * * * *

■ 70. Section 303.416 is amended by revising paragraph (a) to read as follows:

§ 303.416 Destruction of information.

(a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, EDGAR, 34 CFR part 76, and 2 CFR part 200, as adopted in 2 CFR part 3474.

* * * * *

■ 71. Section 303.520 is amended by:

■ A. Revising paragraph (d)(1).

■ B. Revising paragraph (e).

The revisions read as follows:

§ 303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.

* * * * *

(d) * * *

(1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 2 CFR 200.307.

* * * * *

(e) *Funds received from a parent or family member under a State's system of payments.* Funds received by the State from a parent or family member under the State's system of payments established under § 303.521 are considered program income under 2 CFR 200.307. These funds—

(1) Are not deducted from the total allowable costs charged under part C of the Act (as set forth in 2 CFR 200.307(e)(1));

(2) Must be used for the State's part C early intervention services program, consistent with 2 CFR 200.307(e)(2); and

(3) Are considered neither State nor local funds under § 303.225(b).

* * * * *

§ 303.521 [Amended]

■ 72. Section 303.521 is amended by removing the citation ''34 CFR 80.25'' in paragraph (d)(1) and adding, in its place, the citation ''2 CFR 200.307.''

■ 73. Section 303.707 is revised to read as follows:

§ 303.707 Rule of construction.

Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 *et seq.,* the regulations in 34 CFR parts 76, 77, and 81, and 2 CFR part 200, to monitor and enforce the requirements of the Act, including the imposition of special or high-risk conditions under 2 CFR 200.207 and 3474.5(e).

(Authority: 20 U.S.C. 1416(g), 1442)

PART 350—DISABILITY AND REHABILITATION RESEARCH PROJECTS AND CENTERS PROGRAM

■ 74. The authority citation for part 350 continues to read as follows:

Authority: Sec. 204; 29 U.S.C. 761–762, unless otherwise noted.

■ 75. Section 350.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(4), and (a)(7).

■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 350.4 What regulations apply?

* * * * *

(d) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474, and the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted in 2 CFR part 3485.

* * * * *

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

■ 76. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 709(c), unless otherwise noted.

■ 77. Section 361.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).

■ B. Adding a new paragraph (e).

The addition reads as follows:

§ 361.4 Applicable regulations.

* * * * *

(e)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

§ 361.60 [Amended]

■ 78. Section 361.60 is amended by:

■ A. In paragraph (b)(1), removing the citation ''34 CFR 80.24'' and adding, in its place, the citation ''2 CFR 200.306.''

■ B. In paragraph (b)(2), removing the citation ''34 CFR 80.24(a)(2)'' and adding, in its place, the citation ''2 CFR 200.306(b).''

■ 79. Section 361.63 is amended by:

■ A. Revising paragraph (c)(3)(i).

■ B. Revising paragraph (c)(3)(ii).

■ C. Revising the authority citation.

The revisions read as follows.

§ 361.63 Program income.

* * * * *

(c) * * *

(3) * * *

(i) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2); or

(ii) A deduction from total allowable costs, in accordance with 2 CFR 200.307(e)(1).

* * * * *

(Authority: Section 108 of the Act; 29 U.S.C. 728)

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

■ 80. The authority citation for part 363 continues to read as follows:

Authority: 29 U.S.C. 795j–q, unless otherwise noted.

■ 81. Section 363.5 is amended by:
■ A. Removing and reserving paragraphs (a)(4) and (a)(7).
■ B. Adding a new paragraph (d) after the note following paragraph (c).
The addition reads as follows:

§ 363.5 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 364—STATE INDEPENDENT LIVING SERVICES PROGRAM AND CENTERS FOR INDEPENDENT LIVING PROGRAM: GENERAL PROVISIONS

■ 82. The authority citation for part 364 is revised to read as follows:

Authority: 29 U.S.C. 796–796f–5, unless otherwise noted.

■ 83. Section 364.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).
■ B. Adding a new paragraph (d).
The addition reads as follows:

§ 364.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

■ 84. Section 364.5 is amended by revising paragraph (c)(2) to read as follows:

§ 364.5 What is program income and how may it be used?

* * * * *

(c) * * *

(2) A service provider is authorized to treat program income as—

(i) A deduction from total allowable costs charged to a Federal grant, in accordance with 2 CFR 200.307(e)(1); or

(ii) An addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2)

* * * * *

■ 85. Section 364.21 is amended by revising paragraph (l) to read as follows:

§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

* * * * *

(l) *Conflict of interest.* The code of conduct provisions in 2 CFR 200.318 and the conflict of interest provisions in 34 CFR 75.524 and 75.525 apply to members of the SILC. For purposes of this paragraph and 2 CFR 200.318 and 34 CFR 75.524, and 75.525, a SILC is not considered a government, governmental entity, or governmental recipient.

* * * * *

§ 364.34 [Amended]

■ 86. Section 364.34 is amended by removing from the introductory text the word ''EDGAR'' and adding in its place the citation ''2 CFR part 200''.

§ 364.35 [Amended]

■ 87. Section 364.35 is amended by removing from the introductory text the word ''EDGAR'' and adding in its place the citation ''2 CFR part 200''.

PART 365—STATE INDEPENDENT LIVING SERVICES

■ 88. The authority citation for part 365 continues to read as follows:

Authority: 29 U.S.C. 796e–796e–2, unless otherwise noted.

■ 89. Section 365.13 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 365.13 What requirements apply if the State's non-Federal share is in cash?

(a) Except as further limited by paragraph (b) of this section, expenditures that meet the requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement under section 712(b) of the Act if—

* * * * *

■ 90. Section 365.15 is amended by revising paragraph (a) to read as follows:

§ 365.15 What requirements apply if the State's non-Federal share is in kind?

* * * * *

(a) Used to meet the matching requirement under section 712(b) of the Act if the in-kind contributions meet the requirements of 2 CFR 200.306 and if the in-kind contributions would be considered allowable costs under this part, as determined by the cost principles in 2 CFR part 200, subpart E—Cost Principles; and

* * * * *

■ 91. Section 365.23 is amended by:
■ A. Revising paragraph (b).
■ B. Revising paragraph (c).
The revisions read as follows:

§ 365.23 How does a State make a subgrant or enter into a contract?

* * * * *

(b) The provisions concerning the administration of subgrants and contracts in 34 CFR parts 76 and 2 CFR part200 apply to the State.

(c) Cross-reference: See 34 CFR part 76 and 2 CFR part 200.

* * * * *

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

■ 92. The authority citation for part 367 continues to read as follows:

Authority: 29 U.S.C. 796k, unless otherwise noted.

■ 93. Section 367.4 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).
■ B. Adding a new paragraph (e).
The addition reads as follows:

§ 367.4 What regulations apply?

* * * * *

(e)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

■ 94. The authority citation for part 369 continues to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f, and 795g, unless otherwise noted.

■ 95. Section 369.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
■ B. Adding a new paragraph (d).
The addition reads as follows.

§ 369.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment

and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 370—CLIENT ASSISTANCE PROGRAM

■ 96. The authority citation for part 370 continues to read as follows:

Authority: 29 U.S.C. 732, unless otherwise noted.

■ 97. Section 370.5 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).

■ B. Revising the note after paragraph (c).

■ C. Adding a new paragraph (d), to follow the revised note.

The revision and addition read as follows:

§ 370.5 What regulations apply?

* * * * *

Note: Any funds made available to a State under this program that are transferred by a State to a designated agency do not constitute a subgrant, as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee, as that term is defined in that section and used in 34 CFR part 76.

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

■ 98. Section 370.30 is amended by revising paragraph (c) to read as follows:

§ 370.30 How does the Secretary allocate funds?

* * * * *

(c) Unless prohibited or otherwise provided by State law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request. Because the designated agency is the eventual, if not the direct, recipient of the CAP funds, 34 CFR part 81 applies to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 77 and the recipient under 2 CFR 200.86. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

* * * * *

■ 99. Section 370.40 is amended by:

■ A. Revising paragraph (a).

■ B. Removing and reserving paragraph (b).

■ C. Revising paragraph (c).

The revisions read as follows:

§ 370.40 What are allowable costs?

(a) The designated agency shall apply the cost principles in accordance with 2 CFR part 200, subpart E—Cost Principles.

* * * * *

(c) In addition to those allowable costs established in 2 CFR part 200, and consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

* * * * *

§ 370.44 [Amended]

■ 100. Section 370.44 is amended by removing from the introductory text, the term ''EDGAR'' and adding, in its place, the citation ''2 CFR part 200.''

PART 373—SPECIAL DEMONSTRATION PROGRAMS

■ 101. The authority citation for part 373 continues to read as follows:

Authority: 29 U.S.C. 773(b), unless otherwise noted.

■ 102. Section 373.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).

■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 373.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 103. Section 373.23 is amended by revising paragraph (b) to read as follows:

§ 373.23 What additional requirements must be met?

* * * * *

(b) A grantee may not make a subgrant under this part. However, a grantee may contract for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements, Procurement Standards.

* * * * *

PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

■ 104. The authority citation for part 377 is revised to read to read as follows:

Authority: 29 U.S.C. 773(a), unless otherwise noted.

■ 105. Section 377.4 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).

■ B. Adding a new paragraph (d).

The addition reads as follows:

§ 377.4 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

■ 106. Section 377.5 is amended by revising paragraph (b) to read as follows.

§ 377.5 What definitions apply?

* * * * *

(b) *Definitions in EDGAR and 2 CFR part 200.* (1) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Grant
Grantee
Nonprofit
Project
Public
Secretary

(2) The following terms used in this part are defined in 2 CFR part 200:

Federal Award
Recipient

* * * * *

PART 380—[REMOVED AND RESERVED]

■ 107. Part 380 is removed and reserved.

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

■ 108. The authority citation for part 381 continues to read as follows:

Authority: 29 U.S.C. 794e, unless otherwise noted.

■ 109. Section 381.4 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).
■ B. Adding a new paragraph (d).
The addition reads as follows:

§ 381.4 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

PART 385—REHABILITATION TRAINING

■ 110. The authority citation for part 385 is revised to read as follows:

Authority: 29 U.S.C. 709(c) and 772, unless otherwise noted.

■ 111. Section 385.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
■ B. Adding a new paragraph (d).
The addition reads as follows:

§ 385.3 What regulations apply to these programs?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

■ 112. The authority citation for part 396 is revised to read as follows:

Authority: 29 U.S.C. 709(c) and 772(f), unless otherwise noted.

■ 113. Section 396.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a)(8).
■ B. Adding a new paragraph (d).
The addition reads as follows:

§ 396.3 What regulations apply?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

* * * * *

■ 114. The heading of Chapter IV is revised to read as follows:

CHAPTER IV—OFFICE OF CAREER, TECHNICAL, AND ADULT EDUCATION, DEPARTMENT OF EDUCATION

PART 400—CAREER, TECHNICAL, AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

■ 115. The authority citation for part 400 continues to read as follows:

Authority: 20 U.S.C. 2301 *et seq.,* unless otherwise noted.

■ 116. The heading of part 400 is revised to read as set forth above.
■ 117. Section 400.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1), (a)(6), and (a)(9).
■ B. Adding a new paragraph (e).
The addition reads as follows:

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

* * * * *

(e)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 118. Section 400.4 is amended by revising the introductory text to paragraph (a) to read as follows:

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *General definitions.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 426—[REMOVED AND RESERVED]

■ 119. Part 426 is removed and reserved.

PART 460—[REMOVED AND RESERVED]

■ 120. Part 460 is removed and reserved.

PART 464—[REMOVED AND RESERVED]

■ 121. Part 464 is removed and reserved.

PART 491—[REMOVED AND RESERVED]

■ 122. Part 491 is removed and reserved.

CHAPTER V—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS, DEPARTMENT OF EDUCATION

PART 535—[REMOVED AND RESERVED]

■ 123. Part 535 is removed and reserved.

CHAPTER VI—OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

■ 124. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.,* unless otherwise noted.

■ 125. Section 606.6 is amended by:
■ A. Removing and reserving paragraphs (a)(1) and (a)(6).
■ B. Adding a new paragraph (c).
The addition reads as follows.

§ 606.6 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

■ 126. The authority citation for part 607 is revised to read as follows:

Authority: 20 U.S.C. 1057–1059g, 1067q, 1068–1068h unless otherwise noted.

■ 127. Section 607.6 is amended by:
■ A. Removing and reserving paragraphs (a)(1) and (a)(6).
■ B. Adding a new paragraph (c).
The addition reads as follows:

§ 607.6 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

■ 128. The authority citation for part 608 is revised to read as follows:

Authority: 20 U.S.C. 1060 through 1063a, 1063c, 1067q and 1068–1068h, unless otherwise noted.

■ 129. Section 608.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).

The addition reads as follows.

§ 608.3 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 130. Section 608.4 is amended by revising the introductory text in paragraph (a) to read as follows:

§ 608.4 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

■ 131. The authority citation for part 609 continues to read as follows:

Authority: 20 U.S.C. 1063b and 1063c, unless otherwise noted.

■ 132. Section 609.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 609.3 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 133. Section 609.4 is amended by revising the introductory text of paragraph (a) to reads as follows:

§ 609.4 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

■ 134. The authority citation for part 611 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.* and 1024(e), unless otherwise noted.

■ 135. Section 611.61 is amended by revising the introductory text to read as follows:

§ 611.61 What is the maximum indirect cost rate that applies to a recipient's use of program funds?

Notwithstanding 34 CFR 75.560–75.562 and 2 CFR 200.414, Indirect (F&A) costs, the maximum indirect cost rate that any recipient of funds under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

* * * * *

PART 614—PREPARING TOMORROW'S TEACHERS TO USE TECHNOLOGY

■ 136. The authority citation for part 614 continues to read as follows:

Authority: 20 U.S.C. 6832, unless otherwise noted.

■ 137. Section 614.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1), (a)(5), and (a) (8).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 614.3 What regulations apply to this program?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

■ 138. The authority citation for part 628 continues to read as follows:

Authority: 20 U.S.C. 1065, unless otherwise noted.

■ 139. Section 628.5 is amended by:

■ A. Removing and reserving paragraphs (b)(1)(i) and (b)(1)(ii).

■ B. Adding new paragraphs (b)(1)(v), (b)(1)(vi), and (b)(1)(vii).

■ C. Revising paragraph (b)(2).

■ D. Adding a new paragraph (c).

The revision and additions read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

* * * * *

(b)(1) * * *

(v) 34 CFR part 82 (New Restrictions on Lobbying).

(vi) 34 CFR part 84 (Governmentwide Requirements For Drug-Free Workplace (Financial Assistance)).

(vii) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(2) Except as specifically indicated in paragraph (b)(1) and (c) of this section, the Education Department General Administrative Regulations and the regulations in 2 CFR part 200 do not apply.

(c) The following regulations in title 2 of the CFR apply to the Endowment Challenge Grant Program:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(2) 2 CFR 200.328 (Monitoring and reporting program performance), as adopted at 2 CFR part 3474.

(3) 2 CFR part 200, subpart F (Audit Requirements), as adopted by ED at 2 CFR part 3474.

* * * * *

■ 140. Section 628.47 is amended by:

■ A. Revising paragraph (d).

■ B. Revising paragraph (e).

The revisions read as follows:

§ 628.47 What shall a grantee record and report?

* * * * *

(d) Carry out the audit required in 2 CFR part 200, subpart F;

(e) Comply with the reporting requirements in 2 CFR 200.512; and

* * * * *

PART 636—[REMOVED AND RESERVED]

■ 141. Part 636 is removed and reserved.

PART 637—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAM

■ 142. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted.

■ 143. Section 637.3 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 637.3 What regulations apply to the Minority Science and Engineering Improvement Program?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

■ 144. The authority citation for part 642 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

■ 145. Section 642.5 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The addition and revision read as follows:

§ 642.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 146. Section 642.6 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 642.6 What definitions apply?

(a) *General definitions.* The following terms are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 643—TALENT SEARCH

■ 147. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 148. Section 643.6 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 149. Section 643.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 643.7 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or in 34 CFR 77.1:

* * * * *

■ 150. Section 643.30 is amended by revising the introductory text to read as follows:

§ 643.30 What are allowable costs?

The cost principles that apply to the Talent Search program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 151. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 152. Section 644.6 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The addition and revision read as follows:

§ 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 153. Section 644.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 644.7 What definitions apply?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or in 34 CFR 77.1:

* * * * *

■ 154. Section 644.30 is amended by revising the introductory text to read as follows:

§ 644.30 What are allowable costs?

The cost principles that apply to the Educational Opportunity Centers program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 155. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 156. Section 645.5 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 157. Section 645.6 is amended by revising the heading and introductory text in paragraph (a) to read as follows.

§ 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

■ 158. Section 645.40 is amended by revising the introductory text to read as follows:

§ 645.40 What are allowable costs?

The cost principles that apply to the Upward Bound Program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 646—STUDENT SUPPORT SERVICES PROGRAM

■ 159. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

■ 160. Section 646.6 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 161. Section 646.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 646.7 What definitions apply?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

■ 162. Section 646.30 is amended by revising the introductory text to read as follows:

§ 646.30 What are allowable costs?

The cost principles that apply to the Student Support Services Program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

* * * * *

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

■ 163. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

■ 164. Section 647.6 is amended by:

■ A. Revising paragraph (a).

■ B. Adding a new paragraph (c).

The revision and addition read as follows:

§ 647.6 What regulations apply?

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 165. Section 647.7 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 647.7 What definitions apply?

* * * * *

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

■ 166. Section 647.30 is amended by revising the introductory text to read as follows:

§ 647.30 What are allowable costs?

The cost principles in 2 CFR part 200, subpart E, may include the following costs reasonably related to carrying out a McNair project:

* * * * *

PART 648—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

■ 167. The authority citation for part 648 is revised to read as follows:

Authority: 20 U.S.C. 1135–1135e, unless otherwise noted.

■ 168. Section 648.8 is amended by:

■ A. Removing and reserving paragraphs (a)(1) and (a)(6).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 648.8 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 169. Section 648.9 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 648.9 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 650—JACOB K. JAVITS FELLOWSHIP PROGRAM

■ 170. The authority citation for part 650 continues to read as follows:

Authority: 20 U.S.C. 1134–1134d, unless otherwise noted.

■ 171. Section 650.3 is amended by:

■ A. Removing and reserving paragraphs (b)(1) and (b)(5).

■ B. Adding a new paragraph (c).

The addition reads as follows:

§ 650.3 What regulations apply to the Jacob K. Javits Fellowship Program?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

■ 172. The authority citation for part 654 continues to read as follows:

Authority: 20 U.S.C. 1070d–31–1070d–41, unless otherwise noted.

■ 173. Section 654.4 is amended by:
■ A. Removing and reserving paragraphs (a)(5) and (a)(7).
■ B. Adding a new paragraph (c).
The addition reads as follows:

§ 654.4 What regulations apply?

* * * * *

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

■ 174. The authority citation for part 655 is revised to read as follows:

Authority: 20 U.S.C 1132–1132–7, unless otherwise noted.

■ 175. Section 655.3 is amended by:
■ A. Removing and reserving paragraphs (a)(1) and (a)(6).
■ B. Adding a new paragraph (d).
The addition reads as follows:

§ 655.3 What regulations apply to the International Education Programs?

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 176. Section 655.4 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 655.4 What definitions apply to the International Education Programs?

(a) *General definitions.* The following terms used in this part and 34 CFR parts 656, 657, 658, 660, 661, and 669 are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

■ 177. The authority citation for part 661 continues to read as follows:

Authority: 20 U.S.C. 1130–1130b, unless otherwise noted.

■ 178. Section 661.4 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 661.4 What definitions apply to the Business and International Education Program?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

* * * * *

PART 662—FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

■ 179. The authority citation for part 662 continues to read as follows:

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

■ 180. Section 662.6 is amended by:
■ A. Revising paragraph (b).
■ B. Adding a new paragraph (c).
The revision and addition read as follows:

§ 662.6 What regulations apply to this program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 181. Section 662.7 is amended by revising the introductory text in paragraph (a) to read as follows:

§ 662.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 2 CFR part 200, subpart A, or 34 CFR part 77:

* * * * *

PART 663—FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

■ 182. The authority citation for part 663 continues to read as follows:

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

■ 183. Section 663.6 is amended by:
■ A. Revising paragraph (b).
■ B. Adding a new paragraph (c).
The revision and addition read as follows:

§ 663.6 What regulations apply to this program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 184. Section 663.7 is amended by revising the introductory text in paragraph (a) to read as follows:

§ 663.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 2 CFR part 200, subpart A, or 34 CFR part 77:

* * * * *

PART 664—FULBRIGHT-HAYS GROUP PROJECTS ABROAD PROGRAM

■ 185. The authority citation for part 664 continues to read as follows:

Authority: 22 U.S.C. 2452(b)(6), unless otherwise noted.

■ 186. Section 664.4 is amended by:
■ A. Revising paragraph (b).
■ B. Adding a new paragraph (c).
The revision and addition read as follows:

§ 664.4 What regulations apply to the Fulbright-Hays Group Projects Abroad Program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

■ 187. Section 664.5 is amended by revising the heading and introductory text in paragraph (a) to read as follows:

§ 664.4 What definitions apply to the International Education Programs?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR part 77:

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 188. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 189. Section 682.305 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

* * * * *

(c) * * *

(2) * * *

(v) A lender must conduct the audit required by this paragraph in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.[1]

* * * * *

■ 190. Section 682.410 is amended by:

■ A. Removing and reserving paragraph (b)(1)(i).

■ B. Revising paragraph (b)(1)(ii).

The revision reads as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(1) * * *

(ii) A guaranty agency must conduct an audit in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.[2] If a nonprofit guaranty agency meets the criteria in 2 CFR part 200, subpart F—Audit Requirements to have a program specific audit, and chooses that option, the program-specific audit must meet the following requirements:

* * * * *

■ 191. Section 682.416 is amended by:

■ A. Revising paragraph (e)(3).

■ B. Removing and reserving paragraph (e)(4).

The revision reads as follows:

§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

* * * * *

(e) * * *

(3) A third-party servicer must conduct the audit required by this paragraph in accordance with 31 U.S.C. 7502 and 2 CFR part 200, subpart F—Audit Requirements.[3]

* * * * *

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

■ 192. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

■ 193. Section 692.3 is amended by:

■ A. Removing and reserving paragraph (b)(5).

■ B. Revising paragraph (b)(7).

■ C. Adding a new paragraph (d).

The revision and addition read as follows:

§ 692.3 What regulations apply to the LEAP Program?

* * * * *

(b) * * *

(7) 34 CFR part 84 (Governmentwide Requirements For Drug-Free Workplace (Financial Assistance)).

* * * * *

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

■ 194. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070a–21–1070a–28.

■ 195. Section 694.11 is amended by revising the introductory text to read as follows:

§ 694.11 What is the maximum indirect cost rate for an agency of a State or local government?

Notwithstanding 34 CFR 75.560–75.562 and 2 CFR part 200, subpart E—Cost Principles, the maximum indirect cost rate that an agency of a State or local government receiving funds under GEAR UP may use to charge indirect costs to these funds is the lesser of—

* * * * *

Subtitle C—Regulations Relating to Education

CHAPTER XI—[REMOVED AND RESERVED]

■ 197. Chapter XI, consisting of Part 1100, is removed and reserved.

Arne Duncan,

Secretary of Education.

Executive Office of the President

Office of National Drug Control Policy

For the reasons set forth in the common preamble and under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR chapter XXXVI is established and 21 CFR chapter III is amended as follows:

Title 2—Grants and Agreements

■ 1. In Title 2, Chapter XXXVI, consisting of part 3603, is established to read as follows:

CHAPTER XXXVI—OFFICE OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT

PART 3603—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 21 U.S.C. 1706; 21 U.S.C. 1703(d), 1703(f), 21 U.S.C. 1701, 21 U.S.C. 1521–1548, 21 U.S.C. 2001–2003, Office of National Drug Control Policy Reauthorization Act of 2006, P.L 109–469 (2006), 2 CFR part 200.

§ 3603.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Executive Office of the President, Office of National Drug Control Policy (ONDCP) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for ONDCP.

[1] None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F-Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

[2] None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F-Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

[3] None of the other regulations in 2 CFR part 200 apply to lenders. Only those requirements in subpart F-Audit Requirements, apply to lenders, as required under the Single Audit Act Amendments of 1996 (31 U.S.C. Chapter 75).

Title 21—Food and Drugs

CHAPTER III—OFFICE OF NATIONAL DRUG CONTROL POLICY

PARTS 1403, 1404, AND 1405—[REMOVED AND RESERVED]

■ 1. Remove and reserve parts 1403, 1404 and 1405.

Daniel S. Rader,

Deputy General Counsel.

Gulf Coast Ecosystem Restoration Council

For the reasons set forth in the common preamble, Chapter LIX consisting of Part 5900 is established in Title 2 of the Code of Federal Regulations to read as follows:

Title 2 Grants and Agreements

CHAPTER LIX—GULF COAST ECOSYSTEM RESTORATION COUNCIL

PART 5900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 33 U.S.C. 1321(t)(2); 38 U.S.C. 501; 2 CFR part 200.

§ 5900.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Gulf Coast Ecosystem Restoration Council adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Council.

Jeffrey K. Roberson,

Senior Counsel, Department of Commerce.

[FR Doc. 2014–28697 Filed 12–18–14; 8:45 am]

BILLING CODE 6050–28–4210–67–4910–9X–3280–F5–4410–18–4710–24–3510–17–9110–9J–9111–23–6450–01–7537–01–6560–50–6560–58–7036–01–7515–01U–7536–01–6116–01–4334–12–8320–01–4150–24–7555–01–5001–06–7510–13–8025–01–4191–02–4810–25–3410–KS–3410–22–3410–15–3410–05–4000–01–4510–FM–3110–01–P

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Part III

Department of Commerce

Economic Development Administration

13 CFR Parts 300, 301, 302 et al.

Economic Development Administration Regulatory Revision; Final Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 300, 301, 302, 303, 304, 305, 306, 307, 308, 310, and 314

[Docket No.: 110726429–4508–02]

RIN 0610–AA66

Economic Development Administration Regulatory Revision

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (''EDA'' or ''Agency''), U.S. Department of Commerce (''DOC''), is amending its regulations implementing the Public Works and Economic Development Act of 1965, as amended (''PWEDA''). These comprehensive changes are intended to reflect EDA's current practices and policies in administering its economic development assistance programs.

DATES: This rule is effective on January 20, 2015.

ADDRESSES: For convenience, the full text of EDA's regulations as amended is available on EDA's Web site at *http://www.eda.gov/.*

FOR FURTHER INFORMATION CONTACT: Stephen D. Kong, Chief Counsel, Office of the Chief Counsel, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., 7th Floor, Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Background

The mission of EDA is to lead the Federal economic development agenda by promoting competitiveness and preparing the nation's regions for growth and success in the worldwide economy. EDA makes investments in and provides technical assistance to economically distressed communities in order to facilitate job creation for U.S. workers, increase private sector investment, promote American innovation, and accelerate long-term sustainable economic growth. EDA's regulations, codified at 13 CFR Chapter III, provide the framework through which the Agency administers its economic development assistance programs.

Although EDA had amended its regulations in 2006 (71 FR 56675), 2008 (73 FR 62865), and 2010 (75 FR 4262), since early 2011 the Agency has undertaken an across-the-board review of its regulations to ensure consistency with the Agency's emphasis on incentivizing innovation and regional collaboration and to reduce burdens on stakeholders and the public by removing outdated provisions and streamlining and clarifying existing requirements.

On December 12, 2011, EDA published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** (76 FR 76492) requesting public comments on EDA's proposed changes to its regulations. Subsequently, EDA extended the deadline for submitting comments to NPRM from the original date of February 8, 2012 to February 15, 2012 (77 FR 6517).

The NPRM proposed a number of substantive and non-substantive revisions intended to ensure that the regulations reflect the Agency's focus on innovation and regional collaboration and provide EDA's stakeholders with the flexibility and local control needed to achieve these ends. From a programmatic standpoint, the most significant proposed changes were to the Comprehensive Economic Development Strategies requirements outlined in Part 303 and the Revolving Loan Fund program described in Part 307. The revisions proposed in the NPRM are summarized below. Capitalized terms used but not otherwise defined in this Final Rule have the meanings ascribed to them in EDA's current regulations.

Part 300—General Information

- The NPRM inserted the term ''new and better jobs'' in place of ''higher-skill, higher-wage jobs'' (§ 300.1), revised EDA's Headquarters address in Washington, DC (§ 300.2(a)), and replaced and/or deleted certain words in § 300.2(b).
- EDA also proposed changes and/or corrections to the definitions of ''Cooperative Agreement,'' ''Grant,'' ''Eligible Recipient,'' ''Federal Funding Opportunity,'' ''Federally Declared Disaster,'' ''Indian Tribe,'' ''Investment or Investment Assistance, ''Investment Rate,'' ''Local Share or Matching Share,'' ''Presidentially Declared Disaster,'' ''Region or Regional'' and ''Trade Act'' in § 300.3.
- In addition, EDA proposed removing the definition of ''Private Sector Representative'' to be consistent with proposed changes to Parts 303 and 304 and adding a definition for ''Regional Innovation Clusters or RICs.''

Part 301—Eligibility, Investment Rate and Application Requirements

- The NPRM proposed amending § 301.1 to more accurately describe EDA's application process.
- EDA proposed non-substantive changes to §§ 301.3(a)(1) and 301.3(c)(1).
- EDA proposed updates to § 301.3(a)(4) to clarify the data requirements Eligible Recipients must follow to demonstrate economic distress.
- The NPRM provided, via revisions to Table 2 of § 301.4(b)(5), that EDA may authorize a grant rate of up to 80 percent to incentivize Projects that encourage broad, innovative Regional planning or demonstrate effective leveraging of other Federal Agency resources.
- The NPRM proposed amending Table 2 of § 301.4(b)(5) to make clear that EDA may provide up to a 100 percent grant rate when ''EDA receives appropriations under section 703 of PWEDA (42 U.S.C. 3233),'' which authorizes disaster economic recovery activities.
- To provide added flexibility when warranted, EDA proposed to remove the requirement in Table 2 of § 301.4(b)(5) that a disaster-related application must be submitted within 18 months of the relevant disaster declaration to receive a 100 percent grant rate.
- The NPRM proposed removing a number of repetitive numerical references in § 301.4.
- EDA proposed clarifying, non-substantive revisions to § 301.6.
- The NPRM modified the language in § 301.7 to reflect the Agency's improved grant review and selection process under its Public Works and Economic Adjustment Assistance programs.
- Besides minor changes to the text, EDA's revised § 301.8 outlined EDA's updated criteria for evaluating applications. Under the NPRM's approach, EDA would evaluate applications based on the extent to which they: (a) Ensure regional collaboration; (b) leverage public-private partnerships; (c) advance national strategic priorities; (d) enhance global competitiveness; (e) encourage environmentally sustainable development; and (f) support economically distressed and underserved communities.
- EDA proposed minor changes to the language of § 301.9.
- In § 301.10, the NPRM provides for a new paragraph (d) that would require a feasibility study to be conducted by an impartial third party, and an operational plan for any ''Project'' involving the

construction of business, technology or other types of incubators or accelerators. The NPRM also proposed other clarifying revisions to § 301.10.

• EDA proposed to add a new § 301.11 entitled ''Infrastructure.'' In § 301.11(a), EDA provides examples of innovation- and entrepreneurship-related infrastructure and definitions of these terms, including business incubation, business acceleration, venture development organizations, proof of concept centers and technology transfer. In paragraph (b), EDA notes that it will seek to fund Projects that effectively leverage Federal, State and local resources and reiterates its prohibition under PWEDA on providing funds to any for-profit entity.

Part 302—General Terms and Conditions for Investment Assistance

• EDA proposed minor, non-substantive changes to §§ 302.1, 302.3, 302.6, 302.8, 302.9(a)-(b), and 302.11.

• EDA proposed updates to § 302.10, which includes a ''post-employment'' restriction on the employment of certain EDA employees by Eligible Applicants, as required by PWEDA. The NPRM provides for greater flexibility in the application of the post-employment restriction, putting particular focus on those situations where there is a greater chance of undue influence. In addition, EDA proposed restructuring this section to separate the post-employment restriction from expediter requirements, along with several minor corrections.

• EDA proposed a revision to § 302.16 outlining EDA's accountability expectations; namely, in new paragraph (d), EDA emphasizes that it expects Recipients to use good faith efforts to meet Project goals and sets forth the ramifications should the Recipient fail to undertake such efforts. Also, the NPRM adds additional paragraph headings and several clarifying changes to the text.

• In § 302.18, EDA proposed a revision to clarify that post-approval requirements apply to all EDA awards.

• EDA proposed minor, non-substantive changes to §§ 302.17 and 302.20(b)(1).

Part 303—Planning Investments and Comprehensive Economic Development Strategies

• The NPRM proposed numerous non-substantive revisions to §§ 303.1, 303.3, 303.4, 303.6 and 303.9.

• In § 303.1, EDA proposed two substantive revisions. First, EDA proposed to replace the phrase ''Private Sector Representative'' with ''the private sector.'' Although ''Private Sector Representative'' was removed as a defined term in § 300.1, EDA wanted to emphasize that it still expects the private sector to play a key role in the Regions' planning processes. Second, EDA proposed to add ''non-profit organizations'' and ''educational institutions'' to the list of entities that EDA expects to will be actively involved in the planning process.

• EDA proposed a significant restructuring of, and important substantive revisions to, § 303.6, which sets forth the process requirements for developing Comprehensive Economic Development Strategies (CEDS). In order to ensure that there exists sufficient flexibility for all types of communities and Regions, the NPRM proposed maintaining the requirement that a Strategy Committee represent the main economic interests of the Region (*e.g.,* private sector, public officials, community leaders, private individuals, representatives of workforce development boards, institutions of higher education, minority and labor groups), but eliminated the requirement for a majority or membership threshold from any type of economic stakeholder. EDA also proposed adding language to § 303.6(b)(1) to capture any stakeholders not specifically mentioned in the list. Although the membership threshold would be removed, EDA proposed adding a sentence to emphasize that the capability of each Strategy Committee to undertake a collaborative Regional planning process is still of principal importance. Finally, besides a minor correction to § 303.6(b), EDA proposed a change to this paragraph that emphasizes broader and on-going stakeholder input in the Regional planning process. More specifically, under the proposed § 303.6(b)(2) describing the revised public comment requirements, the Planning Organization, before submission of a CEDS to EDA, must provide the public and appropriate governments and interest groups with adequate notice and opportunity to comment on the CEDS. The Planning Organization, as before, would still be required to keep the comment period open for at least 30 days. In addition, the Planning Organization must make the CEDS available in electronic or other appropriate form, throughout the comment period. Also, the updated § 303.6(b)(2) requires the Planning Organization to provide to EDA, upon request, any comments received on the CEDS and demonstrate how the comments were addressed.

• In § 303.7(b), several discrete changes were proposed for clarity purposes and to emphasize certain concepts. But the most significant revision proposed was streamlining the CEDS requirements from a laundry-list of ten detailed items to the following four essential planning elements in § 303.7(b)(1)(i)–(iv): (a) A summary of economic development conditions of the Region; (b) an in-depth analysis of the economic and community strengths, weaknesses, opportunities and threats; (c) strategies and an implementation plan to build upon the Region's strengths and opportunities and resolve or mitigate the weaknesses and threats facing the Region, but should not be inconsistent with applicable State and local economic development or workforce development strategies; and (d) performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS. Moreover, as noted in the NPRM, EDA intends to provide further content to stakeholders through the publication of periodically-updated CEDS guidelines, which will be based on best practices and developed in collaboration with EDA's economic development and research partners. All of these substantive changes are expected to enhance local control and allow EDA's planning partners to focus on strategies, performance, and outputs.

Part 304—Economic Development Districts

• The NPRM proposed to correct minor errors and/or remove redundancies in §§ 304.1, 304.2, and 304.4, as well as make a conforming change in § 304.2(c)(2).

• To allow District Organizations to focus on an effective planning process rather than constant compliance with membership requirements, EDA proposed to revise § 304.2(c)(2) to eliminate the current membership thresholds. However, EDA's new provision would maintain the requirement that governing bodies demonstrate that they are broadly representative of the principal economic interests of the Region and added a sentence emphasizing that governing bodies must have the capability to implement the relevant CEDS.

• In order to increase public participation in District Organization operations and provide for greater public awareness of the importance of these entities, the NPRM provided in § 304.2(c)(4) that District Organizations must meet at least twice a year, instead of only once a year.

Part 305—Public Works and Economic Development Investments

• EDA proposed minor, non-substantive revisions to §§ 305.1, 305.2(c), 305.6, and 305.8.

• The NPRM proposed substantive changes to § 305.6(a), which addresses allowable methods of procurement for construction services. EDA was seeking to ensure that Recipients, if they wished to use alternate construction procurement methods to the traditional design/bid/build approach, still followed correct procedures and that the maximum amount of project costs were allowable under applicable regulations and Federal cost principles. A proposed change to the first sentence clarifies that Recipients must obtain EDA's prior written approval before any such alternate construction procurement method can be used. The justification for using an alternate method must include a brief analysis of the appropriateness and benefits of using the method to successfully execute the Project, as well as the Recipient's past experience in using the method.

• In an apparent oversight, § 305.10 currently only addresses construction contract bid underrun procedures. To correct this problem, EDA proposed a new heading entitled ''Bid Underrun and Overrun.'' The existing provision regarding bid underrun procedures would become a new paragraph (a). A new paragraph (b), simply codifying EDA's existing practice, would set forth EDA's procedures in the event of an overrun at construction contract bid opening. If there is an overrun, the proposed provision allows the Recipient to take deductive alternatives if provided for in the bid documents, reject all bids and re-advertise, or augment the Matching Share. But if the Recipient demonstrates to EDA's satisfaction that these options are not feasible and the Project cannot be completed otherwise, the Recipient may submit a written request to EDA for additional funding. The final decision will be in the sole discretion of EDA and considered in accordance with EDA's competitive process requirements.

• EDA also sought a change to the newly-proposed § 305.10(a) requiring the Recipient, in the event of a bid underrun, to contact EDA immediately to determine the relevant procedures.

Part 306—Training, Research and Technical Assistance Investments

• The NPRM proposed minor, non-substantive changes to §§ 306.1, 306.3, 306.4, 306.6 and 306.7.

Part 307—Economic Adjustment Assistance Investments

• Through the NPRM, EDA sought to clarify award requirements for the Economic Adjustment Assistance (''EAA'') Program as well as incorporate all Revolving Loan Fund (''RLF'') requirements under Subpart B, which EDA proposed renaming ''Revolving Loan Fund Program.'' For example, the NPRM incorporated the RLF application review and post-approval requirements under the new § 307.7 entitled ''Revolving Loan Fund award requirements'' in Subpart B.

• EDA proposed minor, non-substantive changes to § 307.1.

• In EDA's interim final rule published in the **Federal Register** on October 22, 2008 (73 FR 62858), EDA made clear it would no longer allow RLF Recipients to use RLF capital to guarantee loans. The NPRM proposed a revision to § 307.3(b)(2) to remove the reference to ''loan guaranties'' that was inadvertently missed in the 2008 regulatory revision.

• Because of an omission in § 307.4(c)(2), EDA proposed changes to the text of new § 307.7(a)(1)(ii) to specify that EDA will review disaster-related RLF applications to assess the need to provide appropriate support for post-disaster economic recovery efforts in Presidentially Declared Disaster areas.

• Without changing the requirements applicable to EAA awards, EDA proposed relocating portions of current § 307.6 to § 307.4, making minor yet necessary additional revisions to the language of § 307.4, and making conforming changes to the table of contents of Part 307.

• The NPRM proposed redesignating the current § 307.7 as § 307.6 and incorporating redesignated § 307.6 under Subpart B. EDA also proposed a minor change to the wording of redesignated § 307.6.

• EDA also proposed an amendment to § 307.9(a)(2) to clarify the existing requirement that the RLF Recipient is responsible for complying with applicable environmental laws as outlined in § 307.10, meaning that the Recipient must adopt compliance procedures and otherwise ensure that borrowers adhere to relevant environmental laws and regulations.

• The NPRM proposed minor, non-substantive changes to §§ 307.9(b), 307.10(a)–(b), 307.11(b), (d), (e), (f), 307.12(a)–(b) and 307.13(a)–(b).

• EDA proposed additional language to § 307.14(c) to provide that EDA may waive the requirement to submit the RLF Income and Expense Statement (Form ED–209I), required of any RLF Recipient that uses either 50 percent or more (or more than $100,000) of RLF Income for administrative costs in a six-month Reporting Period, for small RLFs as determined by the Agency. The NPRM also proposed to remove repetitive numerical references from § 307.14(c).

• EDA proposed a revision to § 307.15(b)(1), which contains the requirement that an accountant certify to the adequacy of an RLF Recipient's accounting system before EDA can disburse funds. The proposed language, to address concerns raised in prior programmatic audits, imposes a rigorous standard that the certification be made by ''a qualified independent accountant who preferably has audited the RLF recipient in accordance with OMB Circular A–133 requirements.''

• Besides removing several repetitive references in §§ 307.15(b)–(d), EDA proposed a change to § 307.15(d)(1)(iii) so that any Federal loans, not just those from the U.S. Small Business Administration's 7(a) and 504 debenture programs, can be used by the RLF Recipient to meet its leveraging requirement. In addition, the NPRM provides additional clarity by listing loans from U.S. Department of Agriculture as a type of Federal loan than can be used as leverage.

• In its current form, § 307.16(c)(1)(ii) creates an exception to EDA's capitalization utilization standard of 75 percent of RLF Capital if the RLF Recipient anticipates making large loans relative to the size of its RLF Capital base. EDA, recognizing that such an approach is a deviation from the rule, rather than an exception, proposed to delete this provision. At the same time, EDA proposed to make related conforming amendments to §§ 307.16(c)(1) and (c)(2)(i).

• EDA proposed non-substantive revisions to various portions of §§ 307.16(a), (c) and (d).

• In general, RLF Capital cannot be used to refinance existing debt, but EDA may allow the RLF Recipient to use RLF Capital to purchase the rights of a prior lien holder during a foreclosure action in order to prevent a significant loss on an RLF loan. To make use of RLF Capital in this manner, the RLF Recipient must currently demonstrate under § 307.17(b)(6)(ii) that there is a high probability that the sale of assets will result in compensation sufficient to cover the RLF's costs, plus a reasonable portion of the outstanding loan, within 18 months of the refinancing. To provide greater flexibility in uncertain economic conditions, EDA proposed to change the 18-month time limit to ''a reasonable period of time, as determined by EDA.'' The NPRM also proposed to remove a repetitive numerical reference in § 307.17(c).

• The NPRM proposed amending § 307.18(a) to allow EDA to approve, at the request of an RLF Recipient, the

addition of a new lending area before the full amount of the RLF Grant is disbursed to the Recipient. To effect this revision, EDA proposed to remove § 307.18(a)(1)(i) and renumber the remainder of the subparagraph accordingly.

• To clarify that all RLF loans must be made in accordance with the RLF Plan, the NPRM also proposed removing the phrase ''to implement and assist economic activity'' from the first sentence of § 307.18(a)(1) as well as proposing other minor, non-substantive revisions to this subparagraph.

• EDA proposed textual changes to § 307.18(b) to help clarify the distinction between a ''consolidation,'' when a single RLF Recipient that has multiple RLF awards obtains EDA approval for the consolidation of the multiple awards into a single RLF, and a ''merger,'' when two or more RLF recipients obtain EDA approval for the merger of their respective RLF awards to form a single RLF award. The NPRM also corrects repetitive numbering found in §§ 307.18(b)(1) and (b)(2).

• EDA proposed amending § 307.19 that outlines the requirements for an RLF Recipient to sell or securitize RLF loans. Pursuant to this section, EDA may approve the Sale or Securitization of all or a portion of an RLF loan portfolio if, *inter alia,* the RLF Recipient requests that EDA subordinate the Agency's interest in all or a portion of the RLF loan portfolio to be sold or securitized. Put simply, however, if after seeking and receiving EDA approval, the RLF Recipient sells a portion of its loan portfolio, there is no ''interest' for EDA to subordinate. Thus, the NPRM proposed removing paragraph (b) that contains the subordination request requirement and renumbered the other paragraphs accordingly.

• The NPRM proposed removing unnecessary phrases from §§ 307.20(a) and 307.21(a)(1), eliminating redundant numerical references in § 307.20 and making small non-substantive changes in § 307.21(a)(1)(viii).

Part 308—Performance Incentives

• EDA proposed minor, non-substantive revisions to §§ 308.2 and 308.3.

Part 310—Special Impact Areas

• The NPRM proposed minor, non-substantive changes to §§ 310.1 and 310.2(b).

Part 311—America COMPETES

• EDA proposed revising the heading for this Part to ''America COMPETES'' in preparation for any regulations needed for implementation of the America Competes Reauthorization Act of 2010 (Pub. L. 111–358, January 4, 2011).

Part 314—Property

• EDA proposed to amend the table of contents for this Part, which sets forth the rules controlling property acquired or improved, in whole or in part, with EDA Investment Assistance. More specifically, EDA would eliminate Subparts A through D to enhance comprehension and revise the headings for §§ 314.8 and 314.9.

• The NPRM proposed a non-substantive revision to § 314.1.

• EDA proposed changes to § 314.3(a) to clarify that the terms and conditions of the award are the reference point for determining the purpose of a given Project. Also, the NPRM added the clause ''during the Estimated Useful Life of the Project'' to both §§ 314.3(a) and 314.3(b) to clarify that EDA's use restrictions apply only during the Estimated Useful Life of Project Property.

• EDA proposed additional minor changes to §§ 314.3(c), 314.4(c) and 314.5(b).

• EDA proposed a number of revisions to § 314.6(b), which sets forth the exceptions to the general rule that Property must be free from encumbrances.

○ The NPRM reorders paragraph (b) and makes appropriate changes to headings and text so that requirements will apply based on the point in time when a Recipient asks EDA to subordinate the Federal Interest (*i.e.,* Recipient has already mortgaged the Project Property before EDA's award decision, request for subordination made at same time as award decision, or after award decision made).

○ EDA proposed adding a new subsection (b)(1), titled ''Shared first lien position,'' to set forth the Agency's authority to enter into an inter-creditor agreement under which EDA and another lien holder share a first lien position.

○ The NPRM redesignates current § 314.6(b)(1) as subsection (b)(3) and then makes a clarifying change to the new § 314.(b)(3).

○ Current § 314.6(b)(3), addressing when EDA can consider requests to subordinate its interest, is unclear whether it requires an Eligible Applicant to request subordination prior to the Grant award decision or whether it applies after EDA has awarded funds to the Recipient, or both. To provide clarity, EDA adds a new subsection (b)(4) with the heading ''Encumbrances proposed proximate to Project approval,'' which outlines the requirements applicable to subordination requests made contemporaneously with the Grants award decision. The list of determinations that EDA must make to subordinate its interest are similar to those in current § 314.6(b)(3), but EDA has proposed adding the requirement that the terms and conditions of the encumbrance are acceptable to the Agency.

○ EDA proposed a revision to subsection (b)(4)(i), adding the clause ''and legal authority'' to indicate that EDA may waive the restriction against encumbrances if it finds that there is both ''good cause'' to waive the restriction and legal authority to waive.

○ In § 314.6(b)(4)(ii), EDA proposed to expand the availability of the equity in Project Property for other economic development projects, so long as EDA determines that those projects are consistent with EDA's mission.

○ The NPRM designates each of the requirements under subsection (b)(4)(v) with the letters ''A'' through ''D'' to improve organization, with a new subsection (b)(4)(v)(C) that requires the submission of an appraisal so that EDA can weigh the risk to the Federal Interest if EDA agrees to subordinate at a time that may be several years after the original award decision.

○ EDA also proposed to add a phrase to the introductory text of subsection (b)(4) specifying that the kind of ''debt'' that may be the subject of a subordination request includes ''time and maturity-limited debt, that finances the Project Property,'' with the intention of better accommodating New Market Tax Credits and other financing mechanisms.

• The NPRM redesignated the text of current § 314.6(b)(3) as § 314.6(b)(5) and adds the heading ''Encumbrances proposed after Project approval.''

○ EDA proposed to amend redesignated subparagraph (b)(5) to provide additional flexibility to waive the prohibition on encumbrances subsequent to Grant award. Similar to the requirements of revised (b)(4), revised (b)(5) provides that EDA may subordinate its interest after Grant award when EDA determines that: (1) There is good cause and legal authority to waive the general requirement; (2) all of the proceeds will be used to enhance Project Property or for related activities or other activities consistent with EDA's programs; (3) the grantor or lender will not provide funds without the security of a lien; (4) the terms and conditions of the encumbrance are satisfactory to EDA; and (5) the risk of the encumbrance is acceptable based on a number of factors, including the

approximate value of the Project Property at the time the encumbrance is requested, and the financial strength of the Recipient. Essentially, under revised (b)(5), a Recipient can request that EDA agree to subordinate its interest when the appraised value of the Real Property provides sufficient collateral for the EDA award even if EDA takes a second lien position.

• EDA proposed numerous changes to § 314.7 to streamline EDA's title requirements and make them more understandable, including providing paragraph and subparagraph headings to act as a useful guide for Recipients and others.

○ The NPRM revised the heading of § 314.7(b)(1), removes an unnecessary phrase from this subparagraph, and adds headings to subparagraphs (c)(1) through (c)(5) to clarify the exceptions to the general title requirement.

○ EDA proposed adding the substance of § 314.7(c)(6) to § 314.7(c)(5) and then removing § 317.(c)(6). The change is proposed because the requirements of current subsections (c)(5) and (c)(6) are similar and address analogous situations where the EDA-approved purpose of a Project is to construct facilities that benefit Real Property owned by the Recipient (§ 314.7(c)(5)) or privately owned Real Property (§ 314.7(c)(6)), where the benefitted Real Property ultimately will be sold or leased to private parties in order to spur economic development. The requirements of the two provisions will be set forth in revised § 314.7(c)(5)(i), which will also be amended to make clear that these provisions apply to both Recipients and private Owners.

○ EDA proposed removing current § 314.7(c)(5)(i)(D), which provides that 10 years after an award is made EDA may waive the requirement that a sale of project property during the Estimated Useful life be for Adequate Consideration and that the purpose of the award continued to be fulfilled, because it is inconsistent with EDA's policy on Estimated Useful Life and has created uncertainty in situations involving the sale of Property. In addition, EDA proposed removing an unnecessary phrase and a repetitive numerical reference from § 314.7(c)(5)(i).

○ The NPRM proposed other revisions to current § 314.7(c)(5), a regulation that has caused confusion because it refers to both the authorized scope of the work and the Property that is to be benefitted by the scope of the work as the ''Project.'' The proposed changes distinguish between these two different concepts by clarifying that the Recipient is responsible for completing the ''Project.'' The ''Project'' encompasses: (1) The activities to be completed under the EDA-approved scope of work and supported by the Grant; and (2) in appropriate situations, ensuring that the development of land and improvements on the Real Property is completed in accordance with the terms and conditions of the Investment Assistance. By contrast, the revisions refer to Real Property to be benefitted by the ''Project'' as ''development of land and improvements on the Real Property to be served by or that provides the economic justification for the Project.''

○ EDA proposed to add a heading to § 314.7(c)(5)(i) and remove an unnecessary phrase from § 314.7(c)(5)(ii). The NPRM relocated to § 314.7(c)(5)(iii), the requirement in current § 314.7(c)(6)(i)(B) that the Recipient and Owner must agree to use the Real Property improved or benefitted by the EDA Investment Assistance only for authorized uses of the Project and consistent with the terms and conditions of the Investment Assistance when an authorized use is to construct facilities to benefit privately owned Real Property. In addition, the NPRM relocated the statement, currently set forth in §§ 314.7(c)(5)(i)(F) and (c)(6)(i)(F), that EDA may deem that a violation of § 314.7(c)(5) constitutes an Unauthorized Use of Project Property to new § 314.7(c)(5)(iv).

• Consistent with the removal of the subpart B designation, EDA proposed to amend the heading of § 314.8 to clarify that this section outlines the recordation requirements specifically for Real Property.

• Given the removal of the subpart C heading for Personal Property, the NPRM proposed to change the heading of § 314.9 to clarify that the requirements of this specific regulation apply only to Personal Property. EDA also proposed removing an unnecessary phrase in this section as well as specifying the security interest EDA requires with respect to Personal Property; namely, a ''Uniform Commercial Code Financing Statement (Form UCC–1, as provided by State law).''

• In § 314.10, EDA proposed to streamline the procedures for the release of the Federal Interest in connection with EDA-assisted Property.

○ The NPRM reorganizes § 314.10 to add a new § 314.10(a), which provides additional information on EDA's practice in establishing the Estimated Useful Life of Projects. Since 1999, EDA has typically established useful lives between 15 and 20 years, depending on the nature of the asset.

○ EDA proposed to redesignate current paragraph (a), which details the process for EDA's release of the Federal Interest before the expiration of the Estimated Useful Life but at least 20 years after the date of the award, as new paragraph (d) accompanied by a clarifying heading, additional clarifying language and removal of a repetitive reference.

○ EDA proposed to delete the content of current paragraph (b) as unnecessary and replace it with new language that outlines the general rule that upon written request, EDA may release the Federal Interest in Project Property at the expiration of the Project's Estimated Useful Life, so long as the Recipient has made a good faith effort to fulfill the terms and conditions of the award, as determined by EDA. Accordingly, EDA would also revise the heading of new § 314.10(b).

○ The NPRM proposed to remove, revise and relocate certain portions of current § 314.10(c). The new paragraph (c) would provide that EDA can release its interest before the expiration of the Estimated Useful Life of Project Property only if the Agency receives compensation for the fair market value of the Federal Interest, and would have a new heading.

○ EDA proposed to remove the content of current § 314.10(c)(1)(ii), which provides that notwithstanding the release of the Federal Interest, Project Property may not be used for inherently religious activities prohibited by applicable Federal law. In the NPRM, EDA acknowledged that this prohibition may not be required and in fact, may serve to prevent religious institutions from fully participating in EDA's economic development assistance programs by treating them as less than equal in their ability to obtain a release of the Federal Interest.

○ Paragraph (e), as proposed by EDA in the NPRM, would provide that EDA may not approve a release of its interest if the Agency lacks the legal authority to do so (including under the Establishment Clause), if the Recipient has not performed in accordance with the terms and conditions of the Investment or has used Project Property in violation of §§ 314.3 or 314.4, or other such factors as EDA deems appropriate. Reserving such authority would allow EDA to review its legal authority to release the Federal Interest at the time of the request.

○ However, notwithstanding any release of the Federal Interest under § 314.10, in accordance with DOC's regulations at 15 CFR part 8, compliance with nondiscrimination requirements is a continuing obligation. Additionally,

upon consideration of the public comments and EDA's own review, EDA is reserving its proposed change to the covenant requirements for releasing Federal interest in new § 314.10(e)(2) and (3). Thus, EDA proposed to retain the content of current § 314.10(c)(1)(i), but relocate the provision to new paragraph §§ 314.10(e)(3).

EDA did not propose any changes to Parts 309 (''Redistributions of Investment Assistance''), 311–312 (''[Reserved]''), 313 (''Community Trade Adjustment Assistance'') and 315 (''Trade Adjustment Assistance for Firms'').

Summary of Final Rule

After careful review of the public comments received and additional internal deliberations, EDA has determined that the policy and legal rationales underlying the changes proposed in NPRM remain compelling. Thus, with one exception, EDA has not made any substantive changes to the NPRM in this Final Rule.

With respect to § 314.10(e) addressing EDA's review process and requirements for releasing the Federal Interest in Property, EDA will revise the language proposed in the NPRM. More specifically, for the reasons outlined below (*see* Agency Response to Topic 18), in the final version of § 314.10(e) EDA will: (a) Delete the reference to ''governing Establishment Clause law'' in (e)(2); and (b) retain the express prohibition on using Property acquired or improved with Investment Assistance for ''inherently religious activities in violation of applicable Federal law'' that is provided for in the current rule at §§ 314.10(c)(1)(ii) and (d)(2)(i)(A). While it maintains its legal position on the validity of the proposed change to this requirement, EDA would like to further examine its options at this time.

Summary of Comments and EDA's Responses

EDA received over 120 comments from a variety of respondents on the NPRM. Most of the comments supported EDA's proposals. They believed that the flexibility provided by the changes would have a significant positive impact on the quality of EDA projects, which would now better reflect regional composition and needs. The comments, organized by topic and directly followed by a specific Agency response, are discussed and addressed in further detail below.

Comment Topic 1: Regulatory Review Process and Purpose of Regulations

Multiple commenters provided general feedback on EDA's approach to amending its regulations. Several commenters provided specific, strict rules that they would like to see applied, now and in the future, to EDA's regulatory review process (*e.g.,* mandatory schedule of review, requirement for EDA to immediately remove provisions once they become obsolete, cutting regulatory language by 10% to enhance comprehension). Others were of the view that EDA should draft its regulations with the overarching goal of supporting communities and businesses.

Agency Response to Topic 1

EDA is committed to ensuring that its regulations provide a framework and the flexibility needed to allow the Agency's programs and resources to be leveraged to respond to current and future economic conditions in communities across the nation. EDA aims to ensure that all regulations are clear and as easy-to-follow and implement as possible, while balancing the need to ensure sufficient oversight and controls on the expenditure of Federal funds and the needs to be good stewards of taxpayer resources. EDA reviews its regulations periodically to determine whether, and if so, how, updates or adjustments are needed to best support businesses and communities across the nation, and to ensure that EDA's operations are conducted in an appropriate manner that balances the need for efficient and streamlined processes with sufficient controls and due diligence. EDA will maintain its existing approach of reviewing and updating regulations on an as-needed basis, rather than instituting universal sunsets or rigid timelines, in order to ensure business continuity. It is essential that effective regulatory provisions remain in place while the time-consuming, yet necessary, dialogue on whether certain requirements should be added or removed from EDA's regulatory scheme moves forward. Overall, EDA emphasizes that this regulatory revision represents a significant clarification and streamlining of the requirements (*e.g.,* composition of CEDS Strategy Committees, CEDS content requirements) contained in previous regulations.

Comment Topic 2: Third-Party Feasibility Analysis for Incubators

EDA received three comments expressing concern with the Agency's new proposed § 301.10(d) that would require a feasibility study when proposing the development of a business incubator.

Agency Response to Topic 2

Despite these concerns, EDA will move forward with the revision. EDA believes that business incubators can play a pivotal role in a community's job development effort by stimulating and nurturing business enterprises. Incubators have been proven to increase the probability of survival and growth of small businesses at a precarious time in their formation. Because support of these activities closely parallels EDA's objectives, the number of funding requests for incubators is increasing. However, EDA's experience has demonstrated that there are best practices that are strong predictors of incubator (and other innovation-focused projects) success that should be considered during the project selection phase. In particular, EDA believes that a feasibility study is a critical element in the grant-making process by helping EDA understand and confirm the market demand for the specific start-up companies proposed for incubation (*e.g.,* technology, general business, biotechnology, manufacturing, etc.) while demonstrating that there are adequate resources to operate the incubator.

Although there was no objection from the commenters regarding EDA's additional substantive requirement in § 301.10(d) that projects proposing construction of an incubator must include an operational plan, EDA notes that verification of the financial health of the incubator and a clear management direction (including tenant selection, graduation policies, etc.) are also helpful in determining the future success and sustainability of the incubator.

Comment Topic 3: Use of American Community Survey (''ACS'') Data

One commenter noted the difficulty, especially in rural areas, of using ACS data to capture a reliable picture of economic distress and urged EDA to rely on more current data.

Agency Response to Topic 3

Pursuant to the proposed and now final § 301.3(a)(4)(i), EDA requires, for eligibility purposes, applications for Investment Assistance to document the Region's per capita income from a variety of possible sources. While EDA strongly encourages and prefers the use of the ACS, EDA recognizes that for some communities, this is not the most current Federal data available. EDA's regulations are designed to provide flexibility in such circumstances for an applicant to use other, more current Federal data. In those rare cases where

no other Federal data is available, applicants may use the most current State data available. However, EDA requires the ACS or other Federal data in the first instance as it provides a more consistent mechanism to evaluate and compare economic distress across applications.

Comment Topic 4: Investment Rates and Matching Share

Several commenters expressed the need for grant rates higher than the traditional 50%. These commenters collectively praised EDA's proposal to amend Section 301.4 to authorize an Investment Rate of up to 80 percent for Projects that: (a) Involve broad Regional planning and coordination with other entities outside the Eligible Applicant's political jurisdiction or area of authority, under special circumstances as determined by EDA; and/or (b) effectively leverage other Federal Agency resources.

Agency Response to Topic 4

EDA emphasizes that both the existing and revised regulations provide authority for applying a higher Federal grant rate than 50% under certain conditions. EDA remains committed to evaluating current economic conditions and adjusting regulation requirements, including those for Matching Share, as necessary to ensure that distressed communities have ample opportunity to compete for assistance as part of the Agency's grant competitions. EDA, by amending § 301.4(b)(5) to permit up to a 100% grant rate for projects to be funded by appropriations authorizing disaster economic recovery activities, also recognizes that in the wake of a disaster event, securing matching funds can be difficult and that there is a need for flexibility in the regulations to be able to provide timely assistance to impacted communities that they can effectively leverage.

Comment Topic 5: Quarterly Cycle v. Rolling Admissions

EDA received a number of comments about the pros and cons of the Agency's quarterly cycle approach and their view that improvements should continue to be made to the grant awarding and monitoring process.

Agency Response to Topic 5

Under the present system, EDA accepts applications for review four times a year, based on the quarters of the Federal fiscal year (*i.e.,* October to December, January to March, April to June, and July to September). The NPRM proposed an amendment to § 301.7(a) to reflect the Agency's current practice. At this time, EDA will continue with the quarterly application cycle process and adopt § 301.7(a) as proposed.

EDA is committed to process improvements that will enhance the Agency's efficiency and effectiveness in working with communities to support economic development projects in rural and urban communities across the nation. Implementing more specific deadlines and an established response framework and timeline is an important part of this process improvement. While EDA recognizes that in some cases the quarterly cycle process limits the Agency's ability to move quickly to support time-sensitive economic development objectives, overall this approach provides a level of transparency and accountability to stakeholders that many communities have appreciated. Moreover, processes do exist for grant applications to be considered for ''out-of-cycle'' consideration if the circumstances warrant. EDA will continue to implement steps to make applying and administering awards more streamlined and more efficient.

EDA's regulations are intended to outline core requirements, with specific process improvements and priorities being articulated through specific funding opportunities, program guidance, and related materials. EDA is moving forward with its regulatory changes under this approach and is committed to ensuring that while improvements are made to streamline the organization's processes it does not deleteriously impact the Agency's ability to support rural and urban communities. Importantly, as it continues to consider process improvements EDA strives to implement and advance best practices. However, contrary to one of the public comments, EDA's support for best practices is not intended to constrain the adoption and implementation of novel approaches that may serve as the best practices for tomorrow. Instead, EDA emphasizes best practices because they provide the empirical foundation needed for the prudent consideration of new ideas and which contribute, ultimately, to successful Agency investments.

Comment Topic 6: Grant Award Notification

The position of one commenter is that the regulations should require that the Economic Development District (EDD) be notified before all others when an award decision on a project is made by EDA.

Agency Response to Topic 6

EDA does not believe that the protocol for notification of award decisions warrants documentation in the regulations. However, EDA would like to highlight that the Agency appreciates the hard work that applicants invest in completing applications for EDA assistance. As such, EDA is committed to the timely notification of its grant award decisions. EDA encourages all of its stakeholders, including the EDDs, to stay in close communication with the appropriate Economic Development Representative or Economic Development Specialist throughout the application process in order to successfully address all their information needs while staying abreast of the latest developments.

Comment Topic 7: Regional Innovation Clusters and Innovation- and Entrepreneurship-Related Infrastructure

In the NPRM, EDA proposed a definition in § 300.3 for the phrase ''regional innovation cluster'' (RIC), an important economic development strategy designed to spark job creation and help communities and Regions become more competitive in the global economy. EDA also proposed adding a new section, § 301.11, to make clear that EDA funds a broad portfolio of construction and non-construction infrastructure to meet a community's strategic goals, from basic assets to innovation- and entrepreneurship-related infrastructure. In proposed § 301.11(a), for the first time EDA provided some examples of innovation and entrepreneurship-related infrastructure, including business incubation, business acceleration, venture development organizations, proof of concept centers and technology transfer.

These proposed changes engendered a number of comments. They were generally supportive of EDA's explicit recognition of RICs and the flexibility provided by the Agency's description of non-traditional infrastructure. Two commenters, however, were concerned that the definitions and examples proposed in §§ 300.3 and 300.11(a) were too narrow and thus, might foreclose the funding of certain Projects.

Agency Response to Topic 7

EDA will adopt the definition of RICs and the new § 300.11, as proposed. In response to the concerns expressed by the commenters, EDA emphasizes that the amendments will not prevent potential, innovation- and entrepreneurship-related infrastructure projects from being funded. Instead,

EDA's regulations will simply provide necessary context by clarifying the meaning of key terms and the type of investments that may be supported. The definitions and examples do not in any way limit what type or scope of investment may be construed to support innovation- and entrepreneurship-related infrastructure, nor do they assume that a cluster, an empirically defined, measurable concept based on independent research and analysis, will only need hard infrastructure investments. EDA agrees with the other commenters that investments supporting a broad range of infrastructure activities may fall into the category of innovation- and entrepreneurship-related infrastructure, and that clusters require both hard and soft infrastructure to thrive. EDA's regulations are designed to allow flexibility in funding announcements, guidance and other policy documents so that EDA remains nimble and best able to support diverse Project types from both rural and urban communities across the nation.

Comment Topic 8: Attorneys and Consultants of Eligible Applicants

EDA received a comment that § 302.10(a) should be amended to require that the Eligible Applicant certify the name of the law firm or consulting firm retained by the Eligible Applicant to expedite its Investment Assistance application rather than the name of the specific individual(s) that performed the work.

Agency Response to Topic 8

EDA is not adopting this recommendation in the Final Rule. Having a specific name allows the Agency to more easily contact those involved on the project if necessary. Also, this requirement allows the Agency to better monitor and otherwise ensure that the Eligible Applicant, because of the activities or relationships of the entities providing assistance on the application, does not itself have a conflict of interest.

Comment Topic 9: Composition of CEDS Strategy Committees and District Organization Governing Bodies

EDA proposed, and now revises §§ 303.6(b)(1) and 304.2(c)(2) to provide additional flexibilities with respect to the composition of CEDS Strategy Committees and District Organization governing bodies (also referred to as ''EDD policy boards''). These revisions will properly shift the focus of these entities from membership structure to performance and outcomes by maintaining the requirement that CEDS Strategy Committees and District Organization governing bodies represent the main interests of the Region, including the private sector, public officials, community leaders, private individuals, representatives of workforce development boards, institutions of higher education and minority and labor groups, but will no longer require a majority or membership threshold from any type of economic stakeholder. However, the new regulations make clear that these organizations are still expected to retain strong private sector representation and must continue to demonstrate the capacity to effectively undertake planning processes and implement strategies, as applicable.

EDA received numerous comments addressing these provisions. Most commenters supported the new streamlined requirements because Planning Organizations and District Organizations will now have more flexibility to appoint committees and boards, respectively, which better reflect their own unique local qualities and priorities. By contrast, others expressed their view that the current composition requirements should stay the same, with a particular focus on maintaining the requirement for majority representation of elected officials or designated appointees on District Organization governing bodies because of their accountability to the general public.

Agency Response to Topic 9

As noted above, EDA agrees with those supporting new, less restrictive composition requirements. EDA is committed to ensuring that its regulations provide a general framework and the flexibility needed to respond to current and future economic conditions in communities across the nation. EDA believes (and the new regulations require) that effective economic development planning needs the input of multiple sectors (*e.g.,* private, public, non-profit, educational) to reflect regional interests effectively. By removing the requirement for specific sector percentages (*i.e.,* majority private sector representation for CEDS Strategy Committees and majority public sector representation for EDD boards), EDA intends to empower communities to decide how best to structure these entities to meet the varying needs and priorities of each Region while ensuring broad stakeholder input is achieved. EDA believes that the flexibility to develop regional composition based on regional economic interests and dynamics will better contribute to the overall effectiveness of the planning process.

Comment Topic 10: CEDS Content Requirements

The NPRM proposed streamlining the rigid list of required CEDS items in § 303.7(b) to four essential planning elements. A number of commenters praised the more concise and flexible format of the proposed content requirements, while two were of the view that the existing list of guidelines should not be simplified because they encouraged thoughtful deliberation and provided needed structure in the planning process. EDA also received comments requesting more guidance from EDA with respect to developing the content of the CEDS.

Agency Response to Topic 10

EDA, on balance, believes that the static list of ten CEDS requirements may be of limited value and even counterproductive to many Regions attempting to develop dynamic, responsive and relevant economic development strategies, and will adopt the proposed changes to § 303.7(b) in the final regulations. Nor does this Final Rule preclude inclusion of lists of proposed projects in the CEDS (*see* Agency Response to Topic 12).

Moreover, EDA emphasizes that it is in the process of developing new CEDS Content Guidelines to help regional Planning Organizations prepare more impactful CEDS. The Content Guidelines will offer suggestions on what should be included in each of the required sections (as outlined in the regulations), and recommends tools, resources and examples to help in the development of the CEDS document. EDA has sought the review and feedback of key stakeholders such as the National Association of Development Organizations (NADO) and its members in developing the Content Guidelines, which will be released shortly after publication of this Final Rule.

Comment Topic 11: CEDS Public Comment Requirement

EDA received a number of comments that were generally supportive of EDA's proposed changes to the CEDS public review and comment period requirement in § 303.6(b)(2). Instead of keeping the existing bare-bones requirement intact—namely, that the CEDS be made available to the public for comment for at least 30 days before submission to EDA—EDA proposed adding more details to the requirement. While maintaining the mandate that the comment period be for at least 30 days, the NPRM specified that the Planning Organization must provide the public and appropriate governments and

interest groups with adequate notice and opportunity to comment, make the CEDS available electronically or otherwise throughout the period, and that the Planning Organization, upon request by EDA, provide to EDA any comments received on the CEDS and demonstrate how those comments were resolved.

Agency Response to Topic 11

EDA is adopting this change in the Final Rule. EDA is committed to a high level of transparency and accountability in its programs. Public participation, as a key component of the planning process, is viewed as critical to the success of the CEDS process. The more detailed requirement in the Final Rule reinforces the importance of a robust, broad-based participatory process that is inclusive of the economic interests of multiple stakeholders while at the same time, providing Planning Organizations with some degree of flexibility in determining what is adequate and appropriate in terms of input.

Comment Topic 12: CEDS Project Lists/ Project Consistency with CEDS

The NPRM proposed streamlining CEDS requirements outlined in § 303.7(b) from ten detailed specifications to four essential planning elements. One of the specifications EDA proposed removing was the ''project list,'' which requires that a CEDS include ''[a] section listing all suggested Projects and the projected numbers of jobs to be created as a result thereof.'' Multiple comments were received about EDA's proposal to no longer require a project list in the CEDS document. Many of these respondents objected to this proposed change, expressing their view that listing specific projects was an important and unique part of the CEDS process that ensured that the project was critical to the Region. In a related concern, a number of these respondents expressed their disapproval of EDA's proposed revision § 301.8 that would remove the specific references that an EDA project ''be part of an overarching, long-term Comprehensive Economic Development Strategy . . .'' and ''demonstrate [ ] a high degree of local commitment.''

Agency Response to Topic 12

Despite the concerns voiced by the commenters, EDA will adopt the new § 303.7(b), as proposed. Although a listing of projects is no longer required, the proposed regulations do not prohibit the CEDS contents from including a list of projects. EDA firmly believes that a successful CEDS should be a strategy-driven plan based on regional visioning, prioritized actions and performance outcomes rather than a stand-alone list of projects and programs. This is not to say, however, that the CEDS should not include an action or implementation plan. EDA recommends that a strong CEDS include a robust action plan with a collection of worthwhile capacity building activities. However, the action plan should not simply be a list of projects and programs. Nor should it exclusively reflect those activities which EDA alone could support. The action plan should include a wide-range of activity types (housing, transportation, environmental, etc.) and must be clearly linked to the strategic direction within the plan. The emphasis of the CEDS should be on its strategic direction—and any subsequent actions should flow from the corresponding goals and objectives. The action plan should provide a guide to prioritizing resources and efforts. It should not be used to limit the identification and implementation of other projects and activities that effectively align with the strategic direction that was established as part of the vision goals and objectives within the CEDS.

We also disagree with the commenters' suggestions regarding § 301.8 and maintain the revisions proposed in the NPRM. First, EDA believes that the updated evaluation criteria does not diminish the Agency's emphasis on projects that demonstrate local commitment and in fact, are geared towards selecting projects that best reflect the ability to help the impacted community grow the local economy effectively, create new and better jobs and coherently engage local partners. Second, even with the proposed elimination of the regulatory language, EDA is not eliminating the need for certain projects to be aligned with a CEDS. PWEDA itself requires projects under EDA's Public Works and EAA programs to be consistent with a relevant CEDS. *See* 42 U.S.C. 3141, 3149.

Comment Topic 13: CEDS Consistency with Other Plans

As discussed above, EDA proposed streamlining the CEDS content requirements in § 303.7(b) from a laundry-list of ten items to four essential planning elements. One of these proposed elements was ''[s]trategies and an implementation plan to build upon the Region's strengths and opportunities and resolve the weaknesses and threats facing the Regions, which should not be inconsistent with applicable State and local economic development or workforce development strategies.'' A number of respondents felt that the language in the regulation that states that the CEDS ''should not be inconsistent'' with other strategies is misleading and should be clarified because it implies that CEDS are somehow subordinate to, or developed after, other plans.

Agency's Response to Topic 13

EDA does not see any ambiguity in the language of the proposed rule and thus, adopts such language in the Final Rule. EDA is highly committed to the process of cross-pollination when it comes to crafting impactful CEDS. EDA believes that related plans should build upon and be linked to each other to leverage existing information and approaches while avoiding duplication and actions or activities that may be at cross-purposes. The language in proposed (and now final) § 303.7(b) was not intended to suggest that CEDS were secondary to, or must await the development of, other plans. Instead, this element was intended to promote the concept that other community and regional planning efforts, if already crafted, should be used to inform the development or update of the CEDS as appropriate, and vice versa.

Comment Topic 14: RLF Audits

EDA received several comments on the proposed new requirement that the certification of prudent management of RLF funds be made by ''a qualified independent accountant who preferably has audited the RLF Recipient in accordance with OMB Circular A–133 requirements.'' The commenters expressed concern with the change to § 307.15(b)(1), arguing that in many Regions it would be difficult and costly to find a firm qualified, and even willing because of liability issues, to make such a certification.

Agency's Response to Topic 14

EDA disagrees with the position of the commenters, and the proposed language will be adopted in the Final Rule. The concerns of the commenters are speculative, and in any event, issues raised in prior programmatic audits have created the need for the revision. EDA also emphasizes that it is the Agency's aim to ensure that all regulations are clear and as easy to follow and implement as possible, while also balancing the need to ensure sufficient oversight and controls on the expenditure of Federal funds and the need to be good stewards of taxpayer resources. RLF audits are governed by OMB Circular A–133, and are required either when a Recipient expends $500,000 or more in combined Federal funds from all Federal agencies in a

given year or when the thresholds outlined by program specific A–133 compliance supplementals are met. EDA's A–133 Compliance Supplemental for the RLF program provides specific instruction on how RLF funds should be used to calculate towards the $500,000 expenditure threshold requirement. EDA's definition of prudent management is not prescriptive of specific activities that must be followed and is not intended to limit the scope of the audit beyond conformity to OMB Circular A–133.

EDA notes that on December 26, 2013, the Office of Management and Budget (OMB) issued the Final Rule to the ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' (78 FR 78590). This rule, commonly known as the ''Super Circular,'' streamlines a number of OMB Circulars, including A–133, into a single, comprehensive guidance document and has important implications for Federal grant-making entities, Federal grant recipients, and applicants for Federal grant assistance. For example, the Super Circular raises the threshold for compliance audits of Federal grant recipients from $500,000 to $750,000 per fiscal year. The Super Circular, although effective on December 26, 2013, provided that Federal agencies have until December 26, 2014 to promulgate regulations implementing this guidance. When DOC finalizes its Department-wide regulations, EDA will take appropriate steps to amend its own regulations and issue additional policy guidance to its stakeholders.

One of the above commenters also expressed concern that the requirement that the certification be made within 60 days before ''the initial disbursement of EDA funds'' is ambiguous. EDA believes that the language is clear: The certification is only required prior to the initial disbursement, not after each subsequent disbursement.

Comment Topic 15: RLF Advisory Committee

One commenter points out that in the narrative of the proposed rule, EDA acknowledged that it had ''identified the need to create an internal RLF task force to improve communications and resolve program issues, and currently is in the process of establishing one.'' (76 FR 76512). The commenter suggested that any EDA RLF task force should include external members as well.

Agency's Response to Topic 15

We agree with the commenter's opinion that feedback from practitioners and others outside of EDA would benefit the RLF program, but there is no current need for a specific regulatory change or provision to address this issue. EDA is committed to a high-level of transparency and accountability in its programs. Although EDA has identified the need to create an internal task force to improve communications and resolve RLF program issues, public participation is viewed as critical to the success of the initiative. EDA believes that the process improvements require the input of multiple sectors (*e.g.,* private, public, non-profit) and intends to interact with our external stakeholders to better contribute to the overall effectiveness of the RLF program.

Comment Topic 16: RLF Flexibility

Several comments were received regarding the need for flexibility in the RLF program and alternative uses of RLF funds. For example, one commenter suggested that EDA outline a process in its regulations for converting RLF funds into an approved public infrastructure investment.

Agency's Response to Topic 16

Although at this time EDA will not be incorporating any of these proposals into its Final Rule, EDA emphasizes that it is committed to ensuring its regulations provide a general framework and the flexibility needed to respond to current and future economic conditions in communities across the nation. Within the confines of its statutory authority, EDA has taken a critical and comprehensive look-back at its regulations to reduce burdens by removing outmoded provisions and streamlining and clarifying requirements. EDA will continue this process going forward to ensure that EDA's operations are conducted in an appropriate manner that balances the need for efficient and streamlined processes with sufficient controls and due diligence.

Comment Topic 17: RLF Defederalization

Multiple commenters provided feedback on the need to release the Federal interest in RLF assets after all of the initial funds have been fully disbursed.

Agency's Response to Topic 17

EDA recognizes the challenges presented by the present requirement that EDA maintain its interest in RLF assets in theoretic perpetuity. One result of particular concern to stakeholders is that RLFs must then comply with reporting and audit requirements in perpetuity. However, unlike the case with Real Property and tangible Personal Property, currently there is no statutory authority for EDA to release its interest in RLF assets.

However, the RLF program has grown significantly in its capital base because of its longevity and continues to support its original purpose of fostering economic development and supporting businesses and communities throughout the nation. Recognizing the value of the program and the need to reduce burdens when appropriate, EDA will continually review its regulations to determine whether updates or adjustments can be made to provide greater flexibility for RLF Recipients.

Comment Topic 18: Inherently Religious Activities

EDA received three comments on its proposal to modify § 314.10(c)(1)(ii), which required that Real or tangible Personal Property ''acquired or improved with Investment Assistance [from EDA] . . . not be used . . . [f]or inherently religious activities prohibited by applicable Federal law.'' EDA proposed to modify this language to read, in new § 314.10(e)(2): ''In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including governing Establishment Clause law; the Recipient's performance under and conformance with the terms and conditions of the Investment Assistance; any use of Project Property in violation of §§ 314.3 or 314.4 of this part; and other such factors as EDA deems appropriate.''

The commenters object to this change on the grounds that it would violate the Establishment Clause of the United States Constitution (U.S. Const. amend. I), and may allow sectarian organizations that receive EDA funds to use such Federal money for religious purposes. More specifically, as summarized by one of the commenters, they contend that ''the current rule [prior § 314.10(c)(1)(ii)] prohibits entities from using property built or rehabilitated with taxpayer funding for religious activities,'' while the proposed rule ''would abolish this current—constitutionally necessary—provision.'' Two of the commenters also argue that EDA's reliance on a 2003 opinion from the Department of Justice's Office of Legal Counsel (''OLC'') on whether grant money could be used to restore the Old North Church in Boston, Massachusetts, Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church, 27 Op. O.L.C. 91, 2003 WL 21246893 (April 30, 2003) (''*Old North Church* opinion''),

was misplaced. Rather, they argue, the U.S. Supreme Court decision in *Tilton* v. *Richardson,* 403 U.S. 672 (1971) is controlling here. There, as we noted in the NPRM, the Supreme Court held that recipients of Federal grants cannot use that grant money to purchase or renovate a building that is later used for religious or sectarian purposes, even after the expiration of the 20-year useful life period of the Federal government's interest in the acquired property. All three commenters claim that the regulatory change EDA proposed contradicts this Supreme Court precedent, and thus, violates the Establishment Clause.

Agency's Response to Topic 18

EDA disagrees that the revision proposed would fundamentally alter the current provision. First, EDA notes that the proposed text would have specifically required EDA to take into account the current law on the Establishment Clause. It states that, ''In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including governing Establishment Clause law.'' This proposed change would not, therefore, have ignored EDA's constitutional obligations, but rather reinforced them. Nor would the proposed clause have prevented EDA from taking any action it could take under the current rules, such as prohibiting a grantee from using for any religious or sectarian purpose any buildings that were constructed, purchased, or renovated using Federal funds. Instead, the proposed provision would have allowed EDA to take into account the specific situation of any grantee seeking a release of EDA's interest in Property acquired or improved using EDA funding. If EDA found or believed that the Property may be used for a religious or sectarian purpose following the release, EDA could refuse to release its interest, require the grantee to file a covenant on the Property upon release that the property will not be used for a religious or sectarian purpose, or require the Recipient to compensate EDA for the Federal Share of such Property.

Moreover, the proposed amendment to EDA's regulations is not precluded by *Tilton* or subsequent Federal case law on the Establishment Clause. The language in the NPRM would have specifically required EDA to take into account any Establishment Clause concerns raised by the release of the Federal Interest on a case-by-basis. *Tilton* does not preclude this kind of case-by-case review.

Were Property, previously acquired or improved with EDA funding and after the project's useful life, sold by a grantee to a church or religious organization for its then fair market value, there would be no violation of the Establishment Clause as there could be no subsidy of any religious activity through the EDA grant. OLC's *Old North Church* opinion also indicates that there are certain circumstances in which the Establishment Clause does not preclude the use of federal grants to maintain buildings that are used in part for religious purposes.

The proposed regulation at § 314.10(e)(2) would have allowed EDA to take all of the relevant circumstances into account. If a Recipient that has otherwise fulfilled the terms of the grant award asks for a release of Federal Interest on the Property, EDA would have been required to consider current Establishment Clause jurisprudence, and could impose restrictions on the future use of the Property for religious or sectarian purposes, as appropriate to the circumstances presented. For example, if a church or faith-based organization is the grantee and seeks to have EDA release its interest on Property it purchased, built, or renovated using, in part, EDA-provided funds, then EDA could require the organization to execute a covenant on the land prohibiting the future use of the Property for any religious or sectarian use as long as the organization owns the Property, prior to or contemporaneously with the release of EDA's interest in the Property. EDA could also seek to have the religious organization or successor-in-interest compensate EDA for the Federal Share of such Property, as current § 314.10(d)(2)(ii) already allows. Conversely, if a non-sectarian grantee seeks a release of the Federal interest after 20 years and after fulfilling the terms of its grant, under the proposed rule EDA could have allowed the release without the above conditions of future use, if EDA's due diligence indicates that the Property will not be used for religious purposes.

Overall, the commenters overstate the effect of EDA's proposed change for § 314.10. We agree with the commenters that Federal grant funds or money cannot be awarded for religious or sectarian purposes, but the rule as proposed does not change EDA's obligation to ensure that such an event does not occur. Rather, it recognizes that a blanket prohibition on the use of Property that has been disposed of by the grant Recipient in an arm's length transaction for its then-fair market value, whether during or after its useful life, would not be appropriate. In such a case, EDA's interest in the Property—the performance of the terms of a grant to help create jobs—has been fulfilled and terminated. The proposed rule would allow EDA to take into account such case-specific circumstances within the boundaries set by governing Establishment Clause law.

Nevertheless, despite our disagreement with the position of the commenters, EDA will not adopt proposed § 314.10(e)(2) in its entirety, but may do so in the future. EDA is sensitive to the legal and practical ramifications of a change to our regulatory language that involves the Establishment Clause. Thus, we wish to proceed carefully, deliberately, and in a fashion consistent with the approaches of other agencies in the Executive Branch. We will continue to review this change, but in the interim EDA will: (a) Remove the reference to ''governing Establishment Clause law'' in proposed § 314.10(e)(2); and (b) restore in (e)(2) and (e)(3) the express prohibition on using Property acquired or improved with Investment Assistance for ''inherently religious activities in violation of applicable Federal law'' that is provided for in the current rule at §§ 314.10(c)(1)(ii) and (d)(2)(i)(A), but otherwise retain the remainder of proposed § 314.10(e) in the final version.

Classification

Regulatory Flexibility Act

As noted in the NPRM, prior notice and opportunity for public comment are not legally required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). However, as matter of policy, EDA put the rule out for notice and comment because it constituted a comprehensive regulatory overhaul.

Nevertheless, because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable to this Final Rule. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Orders No. 12866 and No. 13563

This rule was drafted in accordance with Executive Orders 12866 and 13563. It was reviewed by the Office of Management and Budget (OMB), which found the rule to be ''significant'' according to Executive Order 12866 and Executive Order 13563. Accordingly,

the rule has undergone interagency review.

Congressional Review Act

This Final Rule is not major under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

It has been determined that this Final Rule does not contain policies with federalism implications as that term is defined in under Executive Order 13132.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''*PRA*'') requires that a Federal Agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

The following table provides a complete list of the collections of information (and corresponding OMB Control Numbers) set forth in this Final Rule. These collections of information are necessary for the proper performance and functions of EDA.

Part or section of this final rule	Nature of request	Form/title/OMB control No.
301.2; 301.10	With an application for Investment Assistance, a non-profit Eligible Applicant must include a resolution passed by an authorized representative of a political subdivision of a State.	ED–900, Application for Investment Assistance (0610–0094).
301.3(a); 301.10; 305.3(a)(1).	An Eligible Applicant must substantiate Regional eligibility and justify the requested EDA Investment Assistance based on, for example, the unemployment rate, per capita income levels, or a Special Need (as determined by EDA) in the Region in which the Project will be located. The Eligible Applicant also must identify and submit to EDA the source of data used to substantiate Regional eligibility (e.g., ACS or BLS data, other Federal data for the Region in which the Project will be located, or data available through the State government).	ED–900, Application for Investment Assistance (0610–0094).
301.4(b)(1)(i); 305.3(a)(1).	An Eligible Applicant must provide information on the severity of the Region's unemployment and its duration, the per capita income levels and extent of the Region's unemployment or outmigration.	ED–900, Application for Investment Assistance (0610–0094).
301.4(b)(4)	An Eligible Applicant for a Project under part 306 must provide information to show that the Project merits an increase to the Investment Rate because of the Project's infeasibility without such an increase, or because the Project will be of no or only incidental benefit to the Eligible Applicant.	ED–900, Application for Investment Assistance (0610–0094).
301.5; 301.10	An Eligible Applicant must provide information to show that Matching Share funds will be available for the Project.	ED–900, Application for Investment Assistance (0610–0094).
301.10(c).	An Eligible Applicant for a Project under parts 305 or 307 must include with its application for Investment Assistance a CEDS acceptable to EDA (pursuant to part 303) or otherwise incorporate by reference a current CEDS that EDA approves for the proposed Project.	ED–900, Application for Investment Assistance (0610–0094).
301.10(d)	An Eligible Applicant for a Project to construct a business, technology, or other type of incubator or accelerator, must include a feasibility study demonstrating the need for the Project and an operational plan based on industry best practices demonstrating the Eligible Applicant's plan for ongoing successful operations.	ED–900, Application for Investment Assistance (0610–0094).
302.7(a)	Recipients must submit requests for amendments to Investment awards in writing to EDA for approval and provide information and documentation as EDA deems necessary.	Award Amendment Request (0610–0102).
302.9(a)	An Eligible Applicant must furnish comments on the Project from the relevant governmental authority in the Region or proof of efforts to obtain comments if none were provided by the governmental authority.	ED–900, Application for Investment Assistance (0610–0094).
302.10(a)	An Eligible Applicant must certify to EDA the names of any persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting Investment Assistance applications made to EDA.	ED–900, Application for Investment Assistance (0610–0094).
302.14(a)	Recipients shall keep records of the amount and disposition of awards of Investment Assistance, the total cost of the Project, the amount and nature of the portion of the Project costs provided by other sources and other records that would facilitate an effective audit.	Audits of States, Local Governments, and Non-Profit Organizations, OMB Circular A–133

Part or section of this final rule	Nature of request	Form/title/OMB control No.
302.15	An Eligible Applicant must certify (and submit evidence thereof satisfactory to EDA) that it meets the requirements for receiving Investment Assistance.	ED–900, Application for Investment Assistance (0610–0094).
302.16(b)	Recipients are required to submit reports consisting of data-specific evaluations of the Project's effectiveness.	GPRA Performance Validation Forms (0610–0098).
302.16(c)	EDA may require a Recipient to provide a ''Project service map'' and other information in order to determine which segments of the Region are being assisted with the Investment Assistance.	Project Service Map (0610–0102).
302.20(d)	Recipients and Other Parties must submit written assurances to EDA that they will comply with nondiscrimination laws and regulations.	ED–900, Application for Investment Assistance (0610–0094).
303.9(c)	Eligible Applicants for short-term Planning Investment Assistance must provide performance measures acceptable to EDA, and provide EDA with progress reports during the term of the Planning Investment.	GPRA Performance Validation Forms (0610–0098).
304.1; 304.4(a)	To have a Region certified as an EDD, a District Organization must submit information showing that the Region contains at least one area subject to the relevant economic distress criteria, is able to foster development on a larger scale than in a single area, has an EDA-approved CEDS, and obtains commitments from a majority of the relevant counties and States.	Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
304.2(c)(2); 304.4(b)	The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region.	ED–900, Application for Investment Assistance (0610–0094); Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
304.2(c)(4)	The District Organization must notify the public of its annual meetings, its decisions, the results of programs, and as reasonably requested, the results of audited statements, annual budgets, and minutes of public meetings.	Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
305.2(b); 305.3(a)(3)	An Eligible Applicant must show that the Public Works Project will promote: the growth of industrial or commercial plants, the creation of long-term employment opportunities primarily for low-income families, and the fulfillment of the Region's pressing needs.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.4(c)	In order to receive any portion of the Investment Assistance for design and engineering work, an Eligible Applicant must submit and certify information that documents compliance with the Investment awards of all design and engineering contracts.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.5	In order to allow a District Organization to administer the Project for another Recipient, the Recipient must make this request and submit information to EDA showing that the Recipient does not have the current staff capacity to administer the Project, the District Organization would be more effective than another local business or organization, the District Organization would not subcontract the work, and the costs of District Organization administration will not exceed the allowable costs were the Recipient administering it.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.6	A Recipient shall seek EDA's prior written approval to use an alternate construction procurement method to the traditional design/bid/build. If an alternate method is used, the Recipient must submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.7	The Recipient may use ''in-house forces'' for design, construction, inspection, legal services or other work on the Project if it submits a sufficient justification to EDA.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.8(a); 305.8(b)	Recipients of EDA construction awards must obtain prior approval for the use of furnished equipment and materials. Requests must show that costs claimed for furnished equipment and materials are competitive with local market costs for similar equipment and materials.	ED–900. Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
305.9	An EDA construction award Recipient must submit information to EDA regarding why phasing is necessary, a description of the phasing, related costs and schedules, and certification that the Recipient will pay for overruns and that it is capable of paying for incurred costs before the first disbursement.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).

Part or section of this final rule	Nature of request	Form/title/OMB control No.
305.10(a)	If at the construction contract bid opening, the lowest responsive bid is less than total Project cost, the Recipient will notify EDA to determine relevant procedures.	Construction Investments (0610–0096).
305.10(b)	In case of an overrun at construction contract bid opening, the Recipient may take deductive alternatives if provided for in the bid documents, reject all bids and re-advertise if there is a rational basis to believe that such action will result in a lower bid, or augment the Matching Share by an amount sufficient to cover the excess cost. If EDA determines that these options are not feasible, the Recipient may submit a written request for additional EDA funding.	Construction Investments (0610–0096).
305.11	Recipients may issue a notice permitting construction under contract to commence prior to an EDA determination of award compliance and eligibility for cost reimbursement, but will proceed at their own risk until EDA review and concurrence. The EDA regional office may request information from the Recipient to make a determination of award compliance.	Construction Investments (0610–0096).
305.12	EDA requires a Recipient to erect a Project sign or signs at the Project construction site to indicate that the Federal government is participating in the Project. The regional office will provide mandatory specifications for Project signage.	Construction Investments (0610–0096).
305.13	Recipients involved in a contract change order must submit them to EDA for review.	Construction Investments (0610–0096).
306.2	EDA selects Projects for Local and National Technical Assistance based on the criteria in part 301 and the extent to which the Eligible Applicant demonstrates that the Project will achieve more specific objectives in the Region (as set forth in § 306.2) and meets the criteria in the applicable FFO.	ED–900, Application for Investment Assistance (0610–0094).
306.5	EDA provides Investment Assistance to University Center Projects based on the selection criteria in part 301, the competitive selection process outlined in the applicable FFO, and the extent to which the Eligible Applicant demonstrates other more specific, related criteria.	ED–900, Application for Investment Assistance (0610–0094).
307.5(a)	Each application for Economic Adjustment Assistance must include or incorporate by reference (if so approved by EDA) a CEDS.	ED–900, Application for Investment Assistance (0610–0094).
307.9	All RLF Recipients must submit to EDA an RLF Plan	RLF Standard Terms and Conditions (0610–0095).
307.11(a)	Prior to the disbursement of EDA funds, RLF Recipients must provide in a form acceptable to EDA evidence of fidelity bond coverage and evidence of certification in accordance with § 307.15(b)(1).	RLF Standard Terms and Conditions (0610–0095).
307.11(e)	If the Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA.	RLF Standard Terms and Conditions (0610–0095).
307.13(a)	RLF Recipients must maintain Closed Loan files and all related documents, books of account, computer data files, and other records over the term of the Closed Loan and for a three-year period from the date of final disposition of such Closed Loan.	RLF Standard Terms and Conditions (0610–0095).
307.13(b)	RLF Recipients must maintain adequate accounting records to substantiate the amount of RLF Income expended for eligible administrative costs and retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF.	RLF Standard Terms and Conditions (0610–0095).
307.14(a)	All RLF Recipients must submit semi-annual reports in electronic format to EDA, unless EDA approves a paper submission.	ED–209, Semi-Annual Report (0610–0095).
307.14(b)	All Recipients must certify as part of the semi-annual report that the RLF is operating in accordance with the RLF Plan, and describe any modifications to the RLF Plan to ensure effective use of the RLF.	ED–209, Semi-Annual Report (0610–0095) ED–209A, Annual Report (0610–0095).

Part or section of this final rule	Nature of request	Form/title/OMB control No.
307.14(c)	An RLF Recipient using either fifty percent or more (or more than $100,000) of RLF Income for administrative costs in a 12-month reporting period must submit a completed Income and Expense Statement annually to the appropriate EDA regional office. EDA may waive this requirement for an RLF Grant with a small RLF Capital Base.	ED–209I, Income and Expense Statement (0610–0095).
307.15(b)(1)	Within 60 days prior to the initial disbursement of EDA funds, a qualified independent accountant who preferably has audited the RLF Recipient in accordance with OMB Circular A–133 requirements, shall certify to EDA and the Recipient that such system is adequate to identify, safeguard and account for all RLF operations.	RLF Standard Terms and Conditions (0610–0095).
307.15(b)(2)	Prior to the disbursement of any EDA funds, an RLF Recipient must certify that standard loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law.	RLF Standard Terms and Conditions (0610–0095).
307.16(b)	Recipients must promptly notify EDA in writing of any condition that may adversely affect their ability to meet prescribed schedule deadlines. Recipients must submit a written request for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds.	RLF Standard Terms and Conditions (0610–0095).
307.19	With prior approval from EDA, a Recipient may enter into a Sale or Securitization of all or a portion of its RLF loan portfolio.	RLF Standard Terms and Conditions (0610–0095).
307.21(b)	EDA may approve a request from a Recipient to terminate an RLF Grant.	RLF Standard Terms and Conditions (0610–0095).
part 310	Upon the application of an Eligible Applicant, EDA may designate the Region which the Project will serve as a Special Impact Area and waive the CEDS requirement if the Eligible Applicant demonstrates that its proposed Project will directly fulfill a pressing need and assist in preventing excessive unemployment.	Comprehensive Economic Development Strategies and Planning Investments (0610–0093).
314.3(f)	With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided it satisfies the conditions set forth in § 314.3(f).	Property Management 0610–0103.
314.6(b)	In order to use EDA-funded property to secure a mortgage or deed of trust or encumber the property, the Recipient must provide information that satisfies one or more of the exceptions set forth in § 314.6(b).	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.7(a) and (c)	The Recipient must provide information that satisfies EDA that the Recipient has title to the Real Property and all easements, rights-of-way, permits or long-term leases, unless it can provide information proving it meets an exception to the rule.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.7(b)	The Recipient must provide information regarding all encumbrances on the Real Property to EDA.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.8	Recipients must execute a lien, covenant, or other statement of EDA's interest in all Property acquired or improved with EDA Investment Assistance and record it in the proper jurisdiction.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.9	Recipients must execute a security interest or other statement of EDA's interest in Personal Property acquired or improved by EDA funds and record the interest in accordance with applicable law.	ED–900, Application for Investment Assistance (0610–0094); Construction Investments (0610–0096).
314.10	If a Recipient wishes for EDA to release its Real Property or tangible Personal Property interest before or after the expiration of the Property's Estimated Useful Life, it must submit a request for such release to EDA. EDA's release is not automatic and may require some action on behalf of the Recipient.	Property Management (0610–0103).
315.5(b)	Current or prospective TAACs must submit either a new or amended application to EDA, along with a proposed budget, narrative scope of work and other information as may be requested by EDA.	ED–900, Application for Investment Assistance (0610–0094).
315.5(c)	TAACs must submit information regarding performance to be evaluated by EDA.	GPRA Performance Validation Form (0610–0098).

Part or section of this final rule	Nature of request	Form/title/OMB control No.
315.6(a)(1); 315.7; 315.8.	Firms must provide specific information to EDA in order to be certified for participation in the TAAF program.	ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.6(a)(2); 315.6(a)(3); 315.16.	A Certified Firm must submit an Adjustment Proposal to EDA for approval. If EDA approves the Adjustment Proposal, the Firm may then request Adjustment Assistance from the TAAC.	ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.9	In order to have a public hearing, a Person with a Substantial Interest in an accepted petition for TAAF certification must submit a request that follows this section's procedures.	ED–840P, Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance (0610–0091).
315.12	Each TAAC shall keep records disclosing the use of all TAAF funds.	GPRA Performance Validation Form (0610–0098).

List of Subjects

13 CFR Part 300

Distressed region, Financial assistance, Headquarters, Organization and functions (Government agencies), Regional offices.

13 CFR Part 301

Applicant requirements, Application requirements, Economic distress levels, Eligibility requirements, Investment rates, Match share requirements.

13 CFR Part 302

Civil rights, Community development, Conflicts-of-interest, Environmental review, Federal policy and procedures, Fees, Inter-governmental review,, Post-approval requirements Pre-approval requirements, Project administration, Reporting and audit requirements, Technical assistance..

13 CFR Part 303

Award and application requirements, Comprehensive economic development strategy, Planning, Short-term planning investments, State plans.

13 CFR Part 304

District modification and termination, Economic development district, Organizational requirements, Performance evaluations.

13 CFR Part 305

Award and application requirements, Economic development, Public works, Requirements for approved projects.

13 CFR Part 306

Award and application requirements, Community development, Grant programs—housing and community development, Performance evaluations, Research, Technical assistance, Training, University centers.

13 CFR Part 307

Award and application requirements, Business and industry, Economic adjustment assistance, Grant programs, Income, Liquidation, Merger, Pre-loan requirements, Reporting and recordkeeping requirements, Revolving loan fund, Sales and securitizations, Termination.

13 CFR Part 308

Business and industry, Community development, Performance awards, Planning performance awards.

13 CFR Part 310

Excessive unemployment, Special impact area, Special need.

13 CFR Part 314

Authorized use, Community development, Federal interest, Federal share, Property, Property interest, Release, Title.

Regulatory Text

For the reasons discussed above, EDA is amending title 13, chapter III of the *Code of Federal Regulations* as follows:

PART 300—GENERAL INFORMATION

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 2. Revise § 300.1 to read as follows:

§ 300.1 Introduction and mission.

EDA was created by Congress pursuant to the Public Works and Economic Development Act of 1965 to provide financial assistance to both rural and urban distressed communities. EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through Investments in infrastructure development, capacity building and business development in order to attract private capital investments and new and better jobs to Regions experiencing substantial and persistent economic distress. EDA works in partnership with distressed Regions to address problems associated with long-term economic distress as well as to assist those Regions experiencing sudden and severe economic dislocations, such as those resulting from natural disasters, conversions of military installations, changing trade patterns and the depletion of natural resources. EDA Investments generally take the form of Grants to or Cooperative Agreements with Eligible Recipients.

■ 3. Revise § 300.2 to read as follows:

§ 300.2 EDA Headquarters and regional offices.

(a) EDA's Headquarters Office is located at: U.S. Department of Commerce, Economic Development Administration, 1401 Constitution Avenue NW., Washington, DC 20230.

(b) EDA has regional offices throughout the United States and each regional office's contact information may be found on EDA's Internet Web site at *http://www.eda.gov* or in the applicable announcement of Federal Funding Opportunity issued by EDA. Please contact the appropriate regional office to learn about EDA Investment opportunities in your Region.

■ 4. Amend § 300.3 by:

■ a. Revising the definition of *Cooperative Agreement,* paragraph (7) of the definition of *Eligible Recipient,* and the definitions of *Federal Funding Opportunity* or *FFO, Federally Declared Disaster, Grant, Indian Tribe, Investment* or *Investment Assistance, Investment Rate, Local Share* or *Matching Share,* and *Presidentially-Declared Disaster;*

■ b. Removing the definition of *Private Sector Representative;*

■ c. Revising the definitions of *PWEDA,* and *Region* or *Regional;*

■ d. Adding in alphabetical order a definition of *Regional Innovation Clusters* or *RICs;* and

■ e. Revising the definition of *Trade Act;*

The revisions and addition read as follows:

§ 300.3 Definitions.

* * * * *

Cooperative Agreement means the financial assistance award of EDA funds to an Eligible Recipient where substantial involvement is expected between EDA and the Eligible Recipient in carrying out a purpose or activity authorized under PWEDA or another statute. *See* 31 U.S.C. 6305.

* * * * *

Eligible Recipient * * *

(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments pursuant to § 306.1(d)(3) of this chapter.

* * * * *

Federal Funding Opportunity or *FFO* means an announcement EDA publishes during the fiscal year at *http://www.grants.gov* and on EDA's Internet Web site at *http://www.eda.gov* that provides the funding amounts, application and programmatic requirements, funding priorities, special circumstances, and other information concerning a specific competitive solicitation for EDA's economic development assistance programs. EDA also may periodically publish FFOs on specific programs or initiatives.

Federally Declared Disaster means a Presidentially Declared Disaster, a fisheries resource disaster pursuant to section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)), or other Federally declared disasters pursuant to applicable law.

Grant means the financial assistance award of EDA funds to an Eligible Recipient, under which the Eligible Recipient bears responsibility for carrying out a purpose or activity authorized under PWEDA or another statute. *See* 31 U.S.C. 6304.

* * * * *

Indian Tribe means an entity on the list of recognized tribes published pursuant to the Federally Recognized Indian Tribe List Act of 1994, as amended (Pub. L. 103–454) (25 U.S.C. 479a *et seq.*), and any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). This term includes the governing body of an Indian Tribe, non-profit Indian corporation (restricted to Indians), Indian authority, or other non-profit Indian tribal organization or entity; provided that the Indian tribal organization or entity is wholly owned by, and established for the benefit of, the Indian Tribe or Alaska Native Village.

* * * * *

Investment or *Investment Assistance* means a Grant or Cooperative Agreement entered into by EDA and a Recipient.

Investment Rate means, as set forth in § 301.4 of this chapter, the amount of the EDA Investment in a particular Project expressed as a percentage of the total Project cost.

* * * * *

Local Share or *Matching Share* means the non-EDA funds and any In-Kind Contributions that are approved by EDA and provided by a Recipient or third party as a condition of an Investment. The Matching Share may include funds from another Federal Agency only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority.

Presidentially Declared Disaster means a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

* * * * *

PWEDA means the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*).

* * * * *

Region or *Regional* means an economic unit of human, natural, technological, capital or other resources, defined geographically. Geographic areas comprising a Region need not be contiguous or defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development. For the limited purposes of determining economic distress levels and Investment Rates pursuant to part 301 of this chapter, a Region also may comprise a specific geographic area defined solely by its level of economic distress, as set forth in §§ 301.3(a)(2) and 301.3(a)(3) of this chapter.

* * * * *

Regional Innovation Clusters or *RICs* means networks of similar, synergistic, or complementary entities that support a single industry sector and its various supply chains. In general, RICs:

(1) Are based on a geographic area that may cross municipal, county, and other jurisdictional boundaries;

(2) May include catalysts of innovation and drivers of Regional economic growth, such as universities, government research centers, and other research and development resources;

(3) Have active channels for business transactions and communication; and

(4) Depend upon specialized infrastructure, labor markets, and services that build on the unique competitive assets of a location, including talent, technology, services, and hard and soft infrastructure, to spur innovation, job creation, and business expansion.

* * * * *

Trade Act, for purposes of EDA, means title II, chapters 3, 4 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

* * * * *

PART 301—ELIGIBILITY, INVESTMENT RATE AND APPLICATION REQUIREMENTS

■ 5. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

Subpart A—General

■ 6. Amend § 301.1 by revising the introductory text and paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, the following requirements must be met:

* * * * *

(d) The Eligible Applicant must satisfy the formal application requirements set forth in subpart E of this part;

(e) The Project must meet the general requirements set forth in part 302 (General Terms and Conditions for Investment Assistance) and the specific program requirements (as applicable) set forth in part 303 (Planning Investments and Comprehensive Economic Development Strategies), part 304 (Economic Development Districts), part 305 (Public Works and Economic Development Investments), part 306 (Training, Research and Technical Assistance Investments), or part 307 (Economic Adjustment Assistance Investments) of this chapter; and

(f) EDA must select the Eligible Applicant's proposed Project.

Subpart C—Economic Distress Criteria

■ 7. In § 301.3, revise paragraphs (a)(1) and (2), (a)(4) introductory text, (a)(4)(i), and (c)(1) to read as follows:

§ 301.3 Economic distress levels.

(a) *Part 305 (Public Works and Economic Development Investments) and part 307 (Economic Adjustment Assistance Investments).* (1) Except as otherwise provided by this paragraph (a), for a Project to be eligible for Investment Assistance under parts 305 or 307 of this chapter, the Project must be located in a Region that, on the date EDA receives an application for Investment Assistance, is subject to one or more of the following economic distress criteria:

(i) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percentage point greater than the national average unemployment rate;

(ii) Per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income; or

(iii) A Special Need, as determined by EDA.

(2) A Project located within an Economic Development District, which is located in a Region that does not meet the economic distress criteria described in paragraph (a)(1) of this section, also is eligible for Investment Assistance under parts 305 or 307 of this chapter if EDA determines that the Project will be of ''substantial direct benefit'' to a geographic area within the District that meets the criteria of paragraph (a)(1) of this section. For this purpose, a Project provides a ''substantial direct benefit'' if it provides significant employment opportunities for unemployed, underemployed or low-income residents of the geographic area within the District.

* * * * *

(4) *Data requirements to demonstrate economic distress levels.* EDA will determine the economic distress levels pursuant to this subsection at the time EDA receives an application for Investment Assistance as follows:

(i) For economic distress levels based upon per capita income requirements, EDA will base its determination upon the most recent American Community Survey (''*ACS*'') published by the U.S. Census Bureau. For economic distress levels based upon the unemployment rate, EDA will base its determination upon the most recent data published by the Bureau of Labor Statistics (''*BLS*''), within the U.S. Department of Labor. For eligibility based upon either per capita income requirements or the unemployment rate, when the ACS or BLS data, as applicable, are not the most recent Federal data available, EDA will base its decision upon the most recent Federal data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs, or any other Federal source determined by EDA to be appropriate). If no Federal data are available, an Eligible Applicant must submit to EDA the most recent data available from the State. The required data must be for the Region where the Project will be located (paragraph (a)(1) of this section), the geographic area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographic area of poverty or high unemployment (paragraph (a)(3) of this section), as applicable.

* * * * *

(c) * * *

(1) Contain at least one geographic area that fulfills the economic distress criteria set forth in paragraph (a)(1) of this section and is identified in an approved CEDS; and

* * * * *

Subpart D—Investment Rates and Matching Share Requirements

■ 8. In § 301.4, revise paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2), (b)(3)(i) through (iii), (b)(4) introductory text, (b)(5), and (c) to read as follows:

§ 301.4 Investment rates.

* * * * *

(b) *Maximum Investment Rate*—(1) *General rule.* Except as otherwise provided by this paragraph (b) or paragraph (c) of this section, the maximum EDA Investment Rate for all Projects shall be determined in accordance with Table 1 in paragraph (b)(1)(ii) of this section. The maximum EDA Investment Rate shall not exceed the sum of 50 percent, plus up to an additional 30 percent based on the relative needs of the Region in which the Project is located, as determined by EDA.

* * * * *

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (*i.e.,* where Table 1 produces more than one maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The 24-month unemployment rate is at least 225% of the national average; or	80
(B) The per capita income is not more than 50% of the national average	80
(C) The 24-month unemployment rate is at least 200% of the national average; or	70
(D) The per capita income is not more than 60% of the national average	70
(E) The 24-month unemployment rate is at least 175% of the national average; or	60
(F) The per capita income is not more than 65% of the national average	60
(G) The 24-month unemployment rate is at least one percentage point greater than the national average; or	50
(H) The per capita income is not more than 80% of the national average	50

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to § 301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraph (b)(5) of this section, the maximum allowable Investment Rate for any Project subject to a Special Need shall be 80 percent.

(3) * * *

(i) The minimum Investment Rate for Projects under part 303 of this chapter shall be 50 percent.

(ii) Except as otherwise provided in paragraph (b)(3)(iii) of this section or in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit (*e.g.,* parish) within the Region. The maximum allowable Investment Rate shall not exceed 80 percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (b)(3)(ii) of this section.

(4) *Projects under part 306.* Except as otherwise provided in paragraph (b)(5) of this section, the maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. As specified in section 204(c)(3) of PWEDA, the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to 100 percent where the Project:

(i) * * *

(ii) * * *

(5) *Special Projects.* Table 2 of this paragraph sets forth the maximum allowable Investment Rate for certain special Projects as follows:

TABLE 2

Projects	Maximum allowable investment rates (percentage)
Projects that involve broad Regional planning and coordination with other entities outside the Eligible Applicant's political jurisdiction or area of authority, under special circumstances determined by EDA, and Projects that effectively leverage other Federal Agency resources	80
Projects of Indian Tribes	100
Projects for which EDA receives appropriations under section 703 of PWEDA (42 U.S.C. 3233) and Projects to address and implement post-disaster economic recovery efforts in Presidentially Declared Disaster areas in a timely manner	100
Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity	100
Projects under parts 305 or 307 that receive performance awards pursuant to § 308.2 of this chapter	100
Projects located in a District that receive planning performance awards pursuant to § 308.3 of this chapter	100

(c) Federal Funding Opportunity announcements may provide additional Investment Rate criteria and standards to ensure that the level of economic distress of a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating Investment Assistance.

■ 9. In § 301.6, revise the section heading and paragraphs (a) introductory text and (b) to read as follows:

§ 301.6 Supplementary Investment Assistance.

(a) Pursuant to a request made by an Eligible Applicant, EDA Investment Assistance may supplement a grant awarded in another ''designated Federal grant program,'' if the Eligible Applicant qualifies for financial assistance under such program, but is unable to provide the required non-Federal share because of the Eligible Applicant's economic situation. For purposes of this section, a ''designated Federal grant program'' means a Federal grant program that:

* * * * *

(b) For a Project that meets the economic distress criteria provided in § 301.3(a), the Investment Assistance, combined with funds from a designated Federal grant program, may be at the maximum allowable Investment Rate, even if the designated Federal grant program has a lower grant rate. If the designated Federal grant program has a grant rate higher than the maximum EDA Investment Rate, the EDA Investment and other Federal funds together may exceed the EDA Investment Rate, provided that the EDA share of total funding does not exceed the maximum allowable Investment Rate.

Subpart E—Application Requirements; Evaluation Criteria

■ 10. In § 301.7, revise paragraph (a) to read as follows:

§ 301.7 Investment Assistance application.

(a) The EDA Investment Assistance process begins with the submission of an application. The *Application for Investment Assistance* (Form ED–900 or any successor form) may be obtained electronically from *http://www.grants.gov* or from the appropriate regional office. In general, EDA accepts applications on a continuing basis and competitively evaluates all applications received in quarterly funding cycles throughout the fiscal year. Subject to the availability of funds, the timing in which EDA receives complete and competitive applications affects EDA's ability to participate in a given Project. EDA will evaluate all applications in accord with the criteria set forth in the applicable FFO and in § 301.8 and will:

(1) Return the application to the applicant for specified deficiencies and suggest resubmission after corrections are made; or

(2) Deny the application for specifically stated reasons and notify the applicant.

* * * * *

■ 11. Revise § 301.8 to read as follows:

§ 301.8 Application evaluation criteria.

EDA will screen all applications for the feasibility of the budget presented and conformance with EDA's statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service), as well as the capability of the Eligible Applicant to implement the proposed Project. In addition to criteria set out in the applicable FFO, EDA will consider the degree to which an Investment in the proposed Project will satisfy one or more of the following criteria:

(a) *Ensures collaborative Regional innovation.* The Investment will support the development and growth of innovation clusters based on existing Regional competitive strengths. Such initiatives must engage stakeholders; facilitate collaboration among urban, suburban, and rural (including Tribal) areas; provide stability for economic development through long-term

intergovernmental and public/private collaboration; and support the growth of existing and emerging industries.

(b) *Leverages public-private partnerships.* The Investment will use both public and private sector resources and leverage complementary investments by other government/public entities or non-profit organizations.

(c) *Advances national strategic priorities.* The Investment will encourage job growth and business expansion in clean energy; green technologies; sustainable manufacturing; information technology infrastructure; communities severely impacted by automotive industry restructuring; natural disaster mitigation and resiliency; access to capital for small- and medium-sized and ethnically diverse enterprises; and innovations in science, health care, and alternative fuel technologies.

(d) *Enhances global competitiveness.* The Investment will support high-growth businesses and innovation-based entrepreneurs to expand and compete in global markets.

(e) *Encourages environmentally sustainable development.* The Investment will encompass best practices in ''environmentally sustainable development,'' broadly defined to include projects that enhance environmental quality and develop and implement green products, processes, and buildings as part of the green economy.

(f) *Supports economically distressed and underserved communities.* The Investment will strengthen diverse communities that have suffered disproportionate economic and job losses or are rebuilding to become more competitive in the global economy.

■ 12. Revise § 301.9 to read as follows:

§ 301.9 Application selection criteria.

(a) EDA will review completed application materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO, and other applicable Federal statutes and regulations. From those applications that meet EDA's technical and legal requirements, EDA will select applications based on the:

(1) Availability of funds;

(2) Competitiveness of the applications in accord with the criteria set forth in § 301.8; and

(3) Funding priority considerations identified in the applicable FFO.

(b) EDA will endeavor to notify applicants as soon as practicable regarding whether their applications are selected for funding.

■ 13. I § 301.10, revise paragraphs (b), (c) introductory text, and (c)(2) and add paragraph (d) to read as follows:

§ 301.10 Formal application requirements.

* * * * *

(b) Identify the sources of funds, both eligible Federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under § 301.5); and

(c) For Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements stated in the preceding sentence shall not apply to:

* * * * *

(2) A Project located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

(d) Projects that propose the construction of a business, technology, or other type of incubator or accelerator, must include a feasibility study demonstrating the need for the Project and an operational plan based on industry best practices demonstrating the Eligible Applicant's plan for ongoing successful operations. EDA will provide further guidance in the applicable FFO. EDA may require the Recipient to demonstrate that the feasibility study has been conducted by an impartial third party, as determined by EDA.

■ 14. Add § 301.11 to subpart E to read as follows:

§ 301.11 Infrastructure.

(a) EDA will fund both construction and non-construction infrastructure necessary to meet a Region's strategic economic development goals and needs, which in turn results in job creation. This includes infrastructure used to develop and upgrade basic economic development assets as described in §§ 305.1 and 305.2 of this chapter, as well as infrastructure that supports innovation and entrepreneurship. The following are examples of innovation and entrepreneurship-related infrastructure that support job creation:

(1) *Business Incubation.* Business incubation includes both physical facilities and business support services to advance the successful development of start-up companies by providing entrepreneurs with an array of targeted resources and services.

(2) *Business Acceleration.* Business acceleration includes both physical facilities and an array of business support services to help new and existing businesses develop new processes or products, get products and services to market more efficiently, expand market opportunities, or increase sales and exports.

(3) *Venture Development Organization.* A venture development organization (''*VDO*'') works to ensure that Regional economies operate as smoothly and efficiently as possible in support of innovation-based entrepreneurship. A VDO may make strategic investments of time, talent, and other resources toward innovation, entrepreneurship, and technology to help nurture and grow promising companies and ideas, thereby promoting and taking advantage of the innovation assets of a Region and addressing the needs of the high-growth, innovation-oriented start-up companies in the Region.

(4) *Proof of Concept Center.* A proof of concept center serves as a hub of collaborative and entrepreneurial activity designed to accelerate the commercialization of innovations into the marketplace. Such centers support innovation-based, high growth entrepreneurship through a range of services, including technology and market evaluation, business planning and mentorship, network development, and early stage access to capital.

(5) *Technology Transfer.* Technology transfer is the process of transferring scientific findings from one organization to another for the purpose of further development and commercialization. The process typically includes: Identifying new technologies; protecting technologies through patents and copyrights; and forming development and commercialization strategies, such as marketing and licensing, for existing private sector companies or creating start-up companies based on the technology.

(b) In general, successful Projects, including innovation and entrepreneurship-related infrastructure, require the engagement of a broad range of Regional stakeholders and resources. Therefore through appropriate FFOs and program requirements, EDA will seek to advance interagency coordination by funding Projects that demonstrate effective leveraging of other Federal Agency resources based on a Region's strategic economic development goals and needs. For all types of Projects, EDA assistance may not be used to provide direct venture capital to a for-profit entity because of the restrictions set out in section 217 of PWEDA (42 U.S.C. 3154c) and part 309 of this chapter. Nonetheless, EDA may consider an application more competitive if it includes measures to address the need to provide entrepreneurs with access to early stage capital outside of the

proposed EDA Project budget. *See* § 301.8(b).

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

■ 15. The authority citation for part 302 continues to read as follows:

Authority: 19 U.S.C. 2341 *et seq.;* 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10–4.

■ 16. Revise § 302.1 to read as follows:

§ 302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190; 42 U.S.C. 4321 *et seq.,* as implemented under 40 CFR chapter V) (''*NEPA*''), and all applicable Federal environmental statutes, regulations, and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the availability of Project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects may be obtained from the individual serving as the Environmental Officer in the appropriate EDA regional office listed in the applicable FFO.

■ 17. In § 302.3, revise the introductory text to read as follows:

§ 302.3 Project servicing for loans, loan guaranties and Investment Assistance.

EDA will provide Project servicing to borrowers who received EDA loans or EDA-guaranteed loans and to lenders who received EDA loan guaranties under an EDA-administered program. Project servicing includes loans made under PWEDA prior to the effective date of the Economic Development Administration Reform Act of 1998, the Trade Act, and the Community Emergency Drought Relief Act of 1977 (Pub. L. 95–31; 42 U.S.C. 5184 note).

* * * * *

■ 18. Revise § 302.6 to read as follows:

§ 302.6 Additional requirements; Federal policies and procedures.

Recipients are subject to all Federal laws and to Federal, Department and EDA policies, regulations and procedures applicable to Federal financial assistance awards, including 15 CFR part 14, the Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations, and 15 CFR part 24, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.

■ 19. Revise § 302.8 to read as follows:

§ 302.8 Pre-approval Investment Assistance costs.

Project activities carried out before approval of Investment Assistance shall be carried out at the sole risk of the Eligible Applicant. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of non-compliance with EDA or Federal requirements, including procurement requirements, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation, and related requirements.

■ 20. Revise § 302.9 to read as follows:

§ 302.9 Inter-governmental review of projects.

(a) When an Eligible Applicant is not a State, Indian Tribe, or other general purpose governmental authority, the Eligible Applicant must afford the appropriate general purpose local governmental authority (the ''*Authority*'') in the Region a minimum of 15 days to review and comment on a proposed Project under EDA's Public Works and Economic Development program or a proposed construction Project or RLF Grant under EDA's Economic Adjustment Assistance program. Under these programs, the Eligible Applicant shall furnish the following with its application:

(1) If no comments are received from the Authority, a statement of efforts made to obtain such comments; or

(2) If comments are received from the Authority, a copy of the comments and a statement of any actions taken to address such comments.

(b) As required by 15 CFR part 13 and Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as amended, if a State has adopted a process under Executive Order 12372 to review and coordinate proposed Federal financial assistance and direct Federal development (commonly referred to as the ''single point of contact review process''), all Eligible Applicants also must give State and local governments a reasonable opportunity to review and comment on the proposed Project, including review and comment from area-wide planning organizations in metropolitan areas, as provided for in 15 CFR part 13.

■ 21. Revise § 302.10 to read as follows:

§ 302.10 Attorneys' and consultants' fees, employment of expediters, and post-employment restriction.

(a) *Employment of expediters.* Investment Assistance awarded under PWEDA shall not directly or indirectly reimburse any attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance and contracts under PWEDA. Such Investment Assistance shall not be awarded to any Eligible Applicant, unless the owners, partners, or officers of the Eligible Applicant certify to EDA the names of any attorneys, agents, and other persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting an application made to EDA in connection with obtaining Investment Assistance under PWEDA and the fees paid or to be paid to the person(s) for expediting the application.

(b) *Post-employment restriction.* (1) In general, any Eligible Applicant that is a non-profit organization, District Organization, or for-profit entity, for the two-year period beginning on the date on which the Investment Assistance under PWEDA is awarded to the Eligible Applicant, must refrain from employing, offering any office or employment to, or retaining for professional services any person who, on the date on which the Investment Assistance is awarded or within the one-year period ending on that date:

(i) Served as an officer, attorney, agent, or employee of the Department; and

(ii) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

(2) In addition to the types of Eligible Applicants noted in this paragraph (b), EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis; for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate non-profit organization or association.

■ 22. Revise § 302.11 to read as follows:

§ 302.11 Economic development information clearinghouse.

Pursuant to section 502 of PWEDA, EDA maintains an economic

development information clearinghouse on its Internet Web site at *http://www.eda.gov.*

■ 23. Revise the heading of § 302.15 to read as follows:

§ 302.15 Acceptance of certifications made by Eligible Applicants.

* * * * *

■ 24. Revise § 302.16 to read as follows:

§ 302.16 Accountability.

(a) *General.* Each Recipient must submit reports to EDA at intervals and in the manner that EDA shall require, except that EDA shall not require any report to be submitted more than ten years after the date of closeout of the Investment Assistance.

(b) *Data on Project effectiveness.* Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress and meeting Project goals) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993, as amended (Pub. L. 103–62) and to monitor internal, Investment, and Project performance through an internal performance measurement system.

(c) *Reporting Project service benefits.* To enable EDA to determine the economic development effect of a Project that provides service benefits, EDA may require the Recipient to submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.

(d) *Consequences for failure to undertake good faith efforts.* (1) The Recipient must undertake good faith efforts to fulfill the purpose of the Project as set out in the terms of the Investment Assistance and must report regularly on Project goals. In the event that EDA determines that the Recipient is failing to make good faith efforts to meet these goals, or otherwise is failing to meets its obligations under the Investment Assistance, EDA shall take necessary actions to protect EDA's interest in the Project, including the following:

(i) Discontinue disbursement of funds pending correction;

(ii) Suspend the Investment Assistance;

(iii) Terminate the Investment Assistance;

(iv) Require reimbursement of the EDA share of the Project; or

(v) Institute formal Government-wide debarment and suspension proceedings against the Recipient.

(2) Before making a determination under this subsection, EDA shall provide the Recipient with reasonable notice and opportunity to respond. A determination under this subsection is final and cannot be appealed.

■ 25. In § 302.17, revise paragraphs (a), (b)(2), and (c)(2) and (3) to read as follows:

§ 302.17 Conflicts of interest.

(a) *General.* It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (*e.g.,* procurement of goods or services) by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

(b) * * *

(2) An Interested Party also shall not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain Investment Assistance from EDA.

* * * * *

(c) * * *

(2) A Recipient of an RLF Grant shall not lend RLF funds to an Interested Party; and

(3) Former board members of a Recipient of an RLF Grant and members of his or her Immediate Family shall not receive a loan from such RLF for a period of two years from the date that the board member last served on the RLF's board of directors.

■ 26. Revise § 302.18 to read as follows:

§ 302.18 Post-approval requirements.

A Recipient must comply with all financial, performance, progress report, and other requirements set forth in the terms and conditions of the Investment Assistance, including any special award conditions and applicable Federal cost principles (collectively, ''*Post-Approval Requirements''*). A Recipient's failure to comply with Post-Approval Requirements may result in the disallowance of costs, termination of the Investment Assistance award, or other adverse consequences to the Recipient.

■ 27. In § 302.20, revise paragraph (b)(1) to read as follows:

§ 302.20 Civil rights.

* * * * *

(b) *Definitions.* (1) For purposes of this section, an ''*Other Party''* means an ''other party subject to this part,'' as defined in 15 CFR 8.3(l), and includes an entity which (or which is intended to) creates and/or saves 15 or more permanent jobs as a result of Investment Assistance; provided that such entity also is either specifically named in the application as benefiting from the Project, or is or will be located in an EDA building, port, facility, or industrial, commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA's final disbursement of award funds.

* * * * *

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

■ 28. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 29. Designate §§ 303.1 through 303.5 as subpart A under the following heading:

Subpart A—General

■ 30. In § 303.1, revise the section heading and introductory text to read as follows:

§ 303.1 Overview of EDA's Planning Program.

The purpose of EDA Planning Investments is to provide support to Planning Organizations for the development, implementation, revision, or replacement of Comprehensive

Economic Development Strategies, and for related State plans and short-term Planning Investments designed to create and retain new and better jobs, particularly for the unemployed and underemployed in the nation's most economically distressed Regions. EDA's Planning Investments support partnerships with District Organizations, Indian Tribes, community development corporations, non-profit Regional planning organizations, and other Eligible Recipients. Planning activities supported by these Investments must be part of a continuous process involving the active participation of the private sector, public officials, non-profit organizations, educational institutions, and private citizens, and include:

* * * * *

■ 31. In § 303.3, revise paragraphs (a)(5) and (c) to read as follows:

§ 303.3 Application requirements and evaluation criteria.

(a) * * *

(5) Feasibility of the proposed scope of work to create and retain new and better jobs through implementation of the CEDS.

* * * * *

(c) For Planning Investment awards to a State, the Assistant Secretary also shall consider the extent to which the State will integrate and coordinate its CEDS with local and Economic Development District plans.

* * * * *

■ 32. In § 303.4, revise paragraphs (a) and (c) to read as follows:

§ 303.4 Award requirements.

(a) Planning Investments shall be coordinated with and effectively leverage any other available Federal, State, or local planning assistance and private sector investments.

* * * * *

(c) EDA will provide a Planning Investment for the period of time required to develop, revise or replace, and implement a CEDS, generally in 36-month renewable Investment project periods.

■ 33. Designate §§ 303.6 and 303.7 as subpart B under the following heading:

Subpart B—Partnership Planning Assistance

■ 34. Revise § 303.6 to read as follows:

§ 303.6 Partnership Planning and the EDA-funded CEDS process.

(a) *Partnership Planning Overview.* Partnership Planning Investments support a nationwide network of Planning Organizations to provide comprehensive economic development planning services to distressed Regions. EDA makes Partnership Planning Investments to enable Planning Organizations to manage and coordinate the development and implementation of CEDS to address the unique needs of their respective Regions.

(b) *CEDS Process.* If EDA awards Investment Assistance to a Planning Organization to develop, revise, or replace a CEDS, the Planning Organization must follow the procedures set forth in this section:

(1) *CEDS Strategy Committee.* The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region, including the private sector, public officials, community leaders, private individuals, representatives of workforce development boards, institutions of higher education, minority and labor groups, and others who can contribute to and benefit from improved economic development in the Region. In addition, the Strategy Committee must demonstrate the capacity to undertake a collaborative and effective planning process. The Strategy Committee representing Indian Tribes or States may vary.

(2) *Public notice and comment.* The Planning Organization must develop and submit to EDA a CEDS that complies with the requirements of § 303.7. Before submission to EDA, the Planning Organization must provide the public and appropriate governments and interest groups in the relevant Region with adequate notice of and opportunity to comment on the CEDS. The comment period shall be at least 30 days and the Planning Organization shall make the CEDS readily available through appropriate means of distribution, electronically and otherwise, throughout the comment period. The Planning Organization also shall make the CEDS available in hardcopy upon request. EDA may require the Planning Organization to provide any comments received and demonstrate how the comments were resolved.

(3) *Reports and updates.* (i) After obtaining EDA approval of the CEDS, the Planning Organization must submit annually an updated CEDS performance report to EDA.

(ii) The Planning Organization must submit a new or revised CEDS to EDA at least every five years, unless EDA or the Planning Organization determines that a new or revised CEDS is required earlier due to changed circumstances.

(iii) Any updated CEDS performance report that results in a change of the requirements set forth in § 303.7(b)(1)(iii) of the EDA-accepted CEDS or any new or revised CEDS, must be available for review and comment by the public in accordance with paragraph (b)(2) of this section.

(4) *Inadequate CEDS.* If EDA determines that implementation of the CEDS is inadequate, it will notify the Planning Organization in writing and the Planning Organization shall submit to EDA a new or revised CEDS.

(5) *Regional Commission notification.* If any part of a Region is covered by one or more of the Regional Commissions as set forth in section 404 of PWEDA, the Planning Organization shall ensure that a copy of the CEDS is provided to the Regional Commission(s).

■ 35. In § 303.7, revise paragraph (b) to read as follows:

§ 303.7 Requirements for Comprehensive Economic Development Strategies.

* * * * *

(b) *Strategy requirements.* (1) A CEDS must be the result of a continuing economic development planning process, developed with broad-based and diverse public and private sector participation. Consistent with section 302 of PWEDA, each CEDS must promote Regional resiliency and be unique and responsive to the relevant Region. Each CEDS must include:

(i) A summary of economic development conditions of the Region;

(ii) An in-depth analysis of economic and community development strengths, weaknesses, opportunities, and threats (commonly known as a "*SWOT*" analysis);

(iii) Strategies and an implementation plan to build upon the Region's strengths and opportunities and resolve the weaknesses and threats facing the Region, which should not be inconsistent with applicable State and local economic development or workforce development strategies; and

(iv) Performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS.

(2) EDA will publish and periodically update specific CEDS content guidelines.

* * * * *

■ 36. Designate §§ 303.8 and 303.9 as subpart C under the following heading:

Subpart C—State and Short-Term Planning Assistance

■ 37. In § 303.9, revise paragraphs (a) introductory text and (b) to read as follows:

§ 303.9 Requirements for short-term Planning Investments.

(a) In addition to providing support for CEDS and State plans, EDA also may provide Investment Assistance to support short-term planning activities. EDA may provide such Investment Assistance to:

* * * * *

(b) Eligible activities may include updating a portion of a CEDS, economic analysis, development of economic development policies and procedures, and development of economic development goals.

* * * * *

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

■ 38. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

■ 39. In § 304.1, revise paragraph (a) and paragraph (c) introductory text to read as follows:

§ 304.1 Designation of Economic Development Districts: Regional eligibility.

* * * * *

(a) Contains at least one geographic area that is subject to the economic distress criteria set forth in § 301.3(a)(1) of this chapter and is identified in an approved CEDS;

* * * * *

(c) Has an EDA-approved CEDS that:

* * * * *

■ 40. In § 304.2, revise paragraphs (c)(1) and (2) and (c)(4)(i) to read as follows:

§ 304.2 District Organizations: Formation, organizational requirements and operations.

* * * * *

(c) *Organization and governance.* (1) Each District Organization must meet the requirements of this paragraph (c) concerning membership composition, the maintenance of adequate staff support to perform its economic development functions, and its authorities and responsibilities for carrying out economic development functions. The District Organization's board of directors (or other governing body) also must meet these requirements.

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, including the private sector, public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. In addition, the governing body must demonstrate the capacity to implement the EDA-approved CEDS.

* * * * *

(4) * * *

(i) The District Organization must hold meetings open to the public at least twice a year and also shall publish the date and agenda of such meetings sufficiently in advance to allow the public a reasonable time to prepare in order to participate effectively.

* * * * *

■ 41. In § 304.3, revise paragraph (b) introductory text to read as follows:

§ 304.3 District modification and termination.

* * * * *

(b) *Termination.* EDA may, upon 60 days prior written notice to the District Organization, member counties, and other areas determined by EDA and each affected State, terminate a Region's designation as an Economic Development District when:

* * * * *

■ 42. In § 304.4, revise paragraphs (a) introductory text, (a)(3), and (b) to read as follows:

§ 304.4 Performance evaluations.

(a) EDA shall evaluate the management standards, financial accountability and program performance of each District Organization within three years after the initial Investment award and at least once every three years thereafter, so long as the District Organization continues to receive Investment Assistance. EDA's evaluation shall assess:

* * * * *

(3) The implementation of the CEDS, including the District Organization's performance and contribution towards the retention and creation of employment, as set forth in § 303.7 of this chapter.

(b) For peer review, EDA shall ensure the participation of at least one other District Organization in the performance evaluation on a cost-reimbursement basis.

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

■ 43. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

Subpart A—General

■ 44. Revise § 305.1 to read as follows:

§ 305.1 Purpose and scope.

Public Works and Economic Development Investments (''*Public Works Investments*'') intend to help the nation's most distressed communities revitalize, expand, and upgrade their physical infrastructure (as defined in § 301.11 of this chapter) to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investments. The primary goal of these Investments is to create new or retain existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by chronic high unemployment, underemployment, low per capita income, outmigration, or a Special Need. These Investments also intend to assist communities in attracting private capital investment and new and better job opportunities and to promote the successful long-term economic recovery of a Region.

■ 45. In § 305.2, revise paragraph (c) to read as follows:

§ 305.2 Award requirements.

* * * * *

(c) Not more than 15 percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one State.

■ 46. In § 305.6, revise paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 305.6 Allowable methods of procurement for construction services.

(a) Recipients shall seek EDA's prior written approval to use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These alternate methods may include design/build, construction management at risk, and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

(1) Justification for the proposed method for procurement of construction services, including a brief analysis of the appropriateness and benefits of using the method to successfully execute the Project and the Recipient's experience in using the method;

* * * * *

(b) For all procurement methods, the Recipient must comply with the procedures and standards set forth in 15 CFR part 14 or 24, as applicable.

■ 47. In § 305.8, revise paragraphs (a) and (c) to read as follows:

§ 305.8 Recipient-furnished equipment and materials.

* * * * *

(a) EDA must approve any use of Recipient-furnished equipment and materials. EDA may require that major equipment items be subject to a lien in favor of EDA and also may require a statement from the Recipient regarding expected useful life and salvage value of such equipment;

* * * * *

(c) Acquisition of Recipient-furnished equipment or materials under this section also is subject to the requirements of 15 CFR part 14 or 24, as applicable.

■ 48. Revise § 305.10 to read as follows:

§ 305.10 Bid underrun and overrun.

(a) *Underrun.* If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient shall notify EDA immediately to determine relevant procedures.

(b) *Overrun.* (1) In the case of an overrun at the construction contract bid opening, the Recipient may:

(i) If provided for in the bid documents, take deductive alternatives to eliminate certain Project elements in case of insufficient funds in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work;

(ii) Reject all bids and re-advertise if there is a rational basis to expect that re-advertising will result in a lower bid; or

(iii) Augment the Matching Share by an amount sufficient to cover the excess cost. The Recipient must furnish a letter to EDA identifying the source of the additional funds and confirming that the Matching Share meets the requirements of § 301.5 of this chapter.

(2) If the Recipient demonstrates to EDA's satisfaction that the options listed in paragraph (b)(1) of this section are not feasible and the Project cannot be completed otherwise, the Recipient may submit a written request to EDA for additional funding in accordance with applicable EDA guidance. The award of additional Investment Assistance is at EDA's sole discretion and will be considered in accord with EDA's competitive process requirements. EDA's consideration of a request for additional Investment Assistance does not indicate approval.

PART 306—TRAINING, RESEARCH AND TECHNICAL ASSISTANCE INVESTMENTS

■ 49. The authority citation for part 306 continues to read as follows:

Authority: 42 U.S.C. 3147; 42 U.S.C. 3196; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 50. In § 306.1, revise paragraph (a) introductory text to read as follows:

§ 306.1 Purpose and scope.

(a) Local and National Technical Assistance Investments may be awarded to:

* * * * *

■ 51. In § 306.3, revise paragraph (a) to read as follows:

§ 306.3 Application requirements.

(a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, generally not to exceed 12 to 18 months.

* * * * *

Subpart B—University Center Economic Development Program

■ 52. Revise § 306.4 to read as follows:

§ 306.4 Purpose and scope.

The University Center Economic Development Program is intended to help improve the economies of distressed Regions. Institutions of higher education have many assets, such as faculty, staff, libraries, laboratories, and computer systems that can address local economic problems and opportunities. With Investment Assistance, institutions of higher education establish and operate research centers (''*University Centers''*) that provide technical assistance to public and private sector organizations with the goal of enhancing local economic development.

■ 53. In § 306.6, revise paragraph (d) to read as follows:

§ 306.6 Application requirements.

* * * * *

(d) At least 80 percent of EDA funding must be allocated to direct costs of program delivery.

■ 54. In § 306.7, revise paragraphs (a)(1) and (c) to read as follows:

§ 306.7 Performance evaluations of University Centers.

(a) * * *

(1) Evaluate each University Center within three years after the initial Investment award and at least once every three years thereafter, so long as such University Center continues to receive Investment Assistance; and

* * * * *

(c) For peer review, EDA shall ensure the participation of at least one other University Center in the performance evaluation on a cost-reimbursement basis.

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

■ 55. The authority citation of part 307 remains as follows:

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

Subpart A—General

■ 56. In § 307.1, revise the introductory text and paragraph (b) to read as follows:

§ 307.1 Purpose.

The purpose of Economic Adjustment Assistance Investments is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including those caused by:

* * * * *

(b) Federally Declared Disaster;

* * * * *

■ 57. In § 307.3, revise paragraphs (b)(1) and (2) to read as follows:

§ 307.3 Use of Economic Adjustment Assistance Investments.

* * * * *

(b) * * *

(1) Infrastructure (as defined in § 301.11 of this chapter) improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;

(2) Provision of business or infrastructure financing through the capitalization of Recipient-administered Revolving Loan Funds (''*RLFs''*), which may include loans and interest rate buy-downs to facilitate business lending activities;

* * * * *

■ 58. In § 307.4, revise paragraphs (a), (b), and (c)(2), add paragraph (c)(3), and revise paragraph (d) to read as follows:

§ 307.4 Award requirements.

(a) *General.* EDA will select Economic Adjustment Assistance Projects in accordance with part 301 of this chapter and the additional criteria provided in paragraphs (b), (c), and (d) of this section, as applicable. Funding priority considerations for Economic

Adjustment Assistance, including RLF Grants, may be set forth in an FFO.

(b) *Strategy Grants.* EDA will review Strategy Grant applications to ensure that the proposed activities conform to the CEDS requirements set forth in § 303.7 of this chapter. Strategy Grants shall comply with the applicable provisions of part 303 of this chapter.

(c) * * *

(2) Implementation Grants involving construction shall comply with the provisions of subpart B of part 305 of this chapter.

(3) Implementation Grants that do not involve construction shall comply with the applicable provisions of subpart A of part 306 of this chapter.

(d) *See* § 307.7 for RLF award requirements.

§ 307.6 [Removed]

■ 59. Remove § 307.6.

■ 60. Revise the heading of subpart B to read as follows:

Subpart B—Revolving Loan Fund Program

§ 3017.7 [Redesignated as § 307.6]

■ 61. Redesignate § 307.7 as § 307.6, placing it in subpart B, and revise newly redesignated § 307.6 to read as follows:

§ 307.6 Revolving Loan Funds established for business lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending, but also may fund public infrastructure or other authorized lending activities. The requirements in this subpart B apply to RLFs established for business lending activities. Special award conditions may contain appropriate modifications of these requirements to accommodate non-business RLF awards.

■ 62. Add new § 307.7 to read as follows:

§ 307.7 Revolving Loan Fund award requirements.

(a) For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review applications for the following, as applicable:

(1) Need for a new or expanded public financing tool to:

(i) Enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS; or

(ii) Provide appropriate support for post-disaster economic recovery efforts in Presidentially Declared Disaster areas;

(2) Types of financing activities anticipated; and

(3) Capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

(b) RLF Grants shall comply with the requirements set forth in this part and in the following publications:

(1) EDA's RLF Standard Terms and Conditions; and

(2) The Compliance Supplement to OMB Circular A–133. The Compliance Supplement is available via the Internet at *http://www.omb.gov.*

■ 63. In § 307.9, revise paragraphs (a)(2), (b)(2)(ii), (b)(3), and (c)(1) and (2) to read as follows:

§ 307.9 Revolving Loan Fund Plan.

* * * * *

(a) * * *

(2) Part II of the Plan titled ''Operational Procedures'' must serve as the RLF Recipient's internal operating manual and set out administrative procedures for operating the RLF consistent with ''Prudent Lending Practices,'' as defined in § 307.8, the RLF Recipient's environmental review and compliance procedures as set out in § 307.10, and EDA's conflicts of interest rules set out in § 302.17 of this chapter.

(b) * * *

(2) * * *

(ii) Financing policies and portfolio standards that are consistent with EDA's policies and requirements; and

(3) The Plan must demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures. It also shall provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with Federal and local laws.

(c) * * *

(1) An RLF Recipient must update its Plan as necessary in accordance with changing economic conditions in the Region; however, at a minimum, an RLF Recipient must submit an updated Plan to EDA every five years.

(2) An RLF Recipient must notify EDA of any change(s) to its Plan. Any material modification, such as a merger, consolidation, or change in the EDA-approved lending area under § 307.18, a change in critical management staff, or a change to the strategic purpose of the RLF, must be submitted to EDA for approval prior to any revision of the Plan. If EDA approves the modification, the RLF Recipient must submit an updated Plan to EDA in electronic format, unless EDA approves a paper submission.

■ 64. In § 3017.10, revise paragraphs (a) and (b) to read as follows:

§ 307.10 Pre-loan requirements.

(a) RLF Recipients must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The Plan must provide for compliance with applicable environmental laws and other regulations, including parts 302 and 314 of this chapter. The RLF Recipient also must adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations.

(b) RLF Recipients must ensure that prospective borrowers, consultants, or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. Accordingly, RLF loan agreements shall include applicable Federal requirements to ensure compliance and RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

* * * * *

■ 65. In § 307.11, revise paragraphs (b), (d), (e), and (f)(2) to read as follows:

§ 307.11 Disbursement of funds to Revolving Loan Funds.

* * * * *

(b) *Timing of request for disbursements.* An RLF Recipient shall request disbursements of Grant funds only to close a loan or disburse RLF funds to a borrower. The RLF Recipient must disburse the RLF funds to a borrower within 30 days of receipt of the Grant funds. Any Grant funds not disbursed within the 30 day period shall be refunded to EDA pursuant to paragraph (e) of this section.

* * * * *

(d) *Interest-bearing account.* All grant funds disbursed by EDA to the RLF Recipient for loan obligations incurred but not yet disbursed to an eligible RLF borrower must be deposited and held in an interest-bearing account by the Recipient until an RLF loan is made to a borrower.

(e) *Delays.* If the RLF Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the RLF Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA. Grant funds returned to EDA shall be available to the RLF Recipient for future draw-downs. When returning prematurely drawn Grant funds, the RLF Recipient must clearly identify on the face of the check or in the written notification to the applicable grants

officer ''EDA,'' the Grant award number, the words ''Premature Draw,'' and a brief description of the reason for returning the Grant funds.

(f) * * *

(2) When an RLF has a combination of In-Kind Contributions and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last 20 percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

■ 66. In § 307.12, revise paragraphs (a)(1) and (2) and (b) introductory text to read as follows:

§ 307.12 Revolving Loan Fund Income.

(a) * * *

(1) Such RLF Income and the administrative costs are incurred in the same six-month Reporting Period;

(2) RLF Income that is not used for administrative costs during the six-month Reporting Period is made available for lending activities;

* * * * *

(b) *Compliance guidance.* When charging costs against RLF Income, RLF Recipients must comply with applicable Federal cost principles and audit requirements as found in:

* * * * *

■ 67. In § 307.13, revise paragraphs (a) introductory text and (b)(2) and (3) to read as follows:

§ 307.13 Records and retention.

(a) *Closed Loan files and related documents.* The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

* * * * *

(b) * * *

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

(3) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three years old, unless fraud is at issue.

■ 68. In § 307.14, revise paragraph (c) to read as follows:

§ 307.14 Revolving Loan Fund semi-annual report and Income and Expense Statement.

* * * * *

(c) *RLF Income and Expense Statement.* An RLF Recipient using either 50 percent or more (or more than $100,000) of RLF Income for administrative costs in a six-month Reporting Period must submit to EDA a completed Income and Expense Statement (Form ED–209I or any successor form) for that Reporting Period in electronic format, unless EDA approves a paper submission. EDA may waive this requirement for an RLF Grant with a small RLF Capital Base, as determined by EDA.

■ 69. In § 307.15, revise paragraphs (b)(1), (c)(1), (c)(2), (d)(1) introductory text, and (d)(1)(iii) to read as follows:

§ 307.15 Prudent management of Revolving Loan Funds.

* * * * *

(b) * * *

(1) Within 60 days prior to the initial disbursement of EDA funds, a qualified independent accountant who preferably has audited the RLF Recipient in accordance with OMB Circular A–133 requirements, shall certify to EDA and the RLF Recipient that such system is adequate to identify, safeguard, and account for all RLF Capital, outstanding RLF loans, and other RLF operations.

* * * * *

(c) * * *

(1) *General rule.* An RLF Recipient may make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal,* or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four percent or 75 percent of the prime interest rate listed in the *Wall Street Journal.*

(2) *Exception.* Should the prime interest rate listed in the *Wall Street Journal* exceed 14 percent, the minimum RLF interest rate is not required to be raised above 10 percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy.

(d) * * *

(1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within 12 months of approval of an RLF loan, as part of the same business development project, and may include:

* * * * *

(iii) The non-guaranteed portions and 90 percent of the guaranteed portions of a Federal loan, including the U.S. Small Business Administration's 7(A) loans and 504 debenture loans and U.S. Department of Agriculture loans.

* * * * *

■ 70. In § 307.16, revise paragraphs (a)(1), (a)(2)(i), (c)(1), (c)(2)(i), (d)(1) introductory text, and (d)(1)(i) to read as follows:

§ 307.16 Effective utilization of Revolving Loan Funds.

(a) * * *

(1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the initial RLF Capital base within three years of the Grant award.

(2) * * *

(i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within 45 days of the deadline;

* * * * *

(c) * * *

(1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least 75 percent of the RLF Capital is loaned or committed, except that EDA may require an RLF Recipient with an RLF Capital base in excess of $4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) * * *

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the capital utilization standard for two consecutive Reporting Periods, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in § 314.5 of this chapter) of the RLF Grant shall be remitted to the

U.S. Treasury. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds.

* * * * *

(d) * * *

(1) EDA shall monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share of the RLF property, and request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:

(i) A written analysis of the RLF Recipient's portfolio, which shall consider the Recipient's RLF Plan, loan and collateral policies, loan servicing and collection policies and procedures, the rate of growth of the RLF Capital base, and detailed information on any loan in default; and

* * * * *

■ 71. In § 307.17, revise paragraphs (b)(6)(ii) and (c) to read as follows:

§ 307.17 Uses of capital.

* * * * *

(b) * * *

(6) * * *

(ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable period of time, as determined by EDA, following the date of refinancing.

(c) *Compliance and Loan Quality Review.* To ensure that the RLF Recipient makes eligible RLF loans consistent with its RLF Plan or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the RLF Grant every three years. The RLF Recipient may undertake this review as an administrative cost associated with the RLF's operations provided the requirements set forth in § 307.12 are satisfied.

* * * * *

■ 72. In § 307.18, revise the section heading, paragraph (a)(1), paragraph (b) heading, and paragraphs (b)(1) introductory text, (b)(1)(ii) and (iii), and (b)(2) introductory text to read as follows:

§ 307.18 Addition of lending areas; consolidation and merger of RLFs.

(a)(1) An RLF Recipient shall make loans only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the Plan. An RLF Recipient may add a lending area (an ''*Additional Lending Area*'') to its existing lending area to create a new merged lending area (the ''*New Lending Area*'') only with EDA's prior written approval and subject to the following provisions and conditions:

(i) The Additional Lending Area must meet the economic distress criteria for Economic Adjustment Assistance Investments under this part and in accordance with § 301.3(a) of this chapter;

(ii) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iii) The RLF Recipient must demonstrate that the Additional Lending Area is consistent with its CEDS, or modify its CEDS for any such Additional Lending Area, in accordance with § 307.9(b)(1);

(iv) The RLF Recipient shall modify its Plan to incorporate the Additional Lending Area and revise its lending strategy, as necessary;

(v) The RLF Recipient shall execute an amended financial assistance award, as necessary; and

(vi) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

* * * * *

(b) *Consolidation and merger of RLFs*—(1) *Single RLF Recipient.* An RLF Recipient with more than one EDA-funded RLF Grant may consolidate two or more EDA-funded RLFs into one surviving RLF with EDA's prior written approval and provided:

* * * * *

(ii) It demonstrates a rational basis for undertaking the consolidation (for example, the lending area(s) and borrower criteria identified in different RLF Plans are compatible, or will be compatible, for all RLFs to be consolidated);

(iii) It amends and consolidates its Plan to account for the consolidation of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

* * * * *

(2) *Multiple RLF Recipients.* Two or more RLF Recipients may merge their EDA-funded RLFs into one surviving RLF with EDA's prior written approval and provided:

* * * * *

■ 73. In § 307.19, remove paragraph (b), redesignate paragraphs (c) and (d) as paragrpahs (b) and (c), respectively, and revise newly designated paragraph (c) to read as follows:

§ 307.19 RLF loan portfolio Sales and Securitizations.

* * * * *

(c) Except as provided in paragraph (b), no provision of this section supersedes or otherwise affects the application of the ''securities laws'' (as such term is defined in section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

■ 74. In § 307.20, revise paragraphs (a) introductory text, (a)(1) and (2), and (c)(3) to read as follows:

§ 307.20 Partial liquidation; liquidation upon termination.

(a) *Partial liquidation or disallowance of a portion of an RLF Grant.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include the RLF Recipient:

(1) Having RLF loans that are more than 120 days delinquent;

(2) Having excess cash sequestered for 12 months or longer and EDA has not approved an extension request;

* * * * *

(c) * * *

(3) EDA may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or RLF Recipients;

* * * * *

■ 75. In § 307.21, revise paragraphs (a)(1) introductory text and (a)(1)(viii) to read as follows:

§ 307.21 Termination of Revolving Loan Funds.

(a)(1) EDA may suspend or terminate an RLF Grant for cause, including the RLF Recipient's failure to:

* * * * *

(viiii) Comply with the audit requirements set forth in OMB Circular A–133 and the related Compliance Supplement, including reference to the correctly valued EDA RLF Federal expenditures in the Schedule of Expenditures of Federal Awards

(''*SEFA*''), timely submission of audit reports to the Federal Audit Clearinghouse, and the correct designation of the RLF as a ''major program'' (as that term is defined in OMB Circular A–133);

* * * * *

PART 308—PERFORMANCE INCENTIVES

■ 76. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

■ 77. In § 308.2, revise paragraphs (a), (b) introductory text, (c), and (d) to read as follows:

§ 308.2 Performance awards.

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of section 215 of PWEDA in an amount not to exceed 10 percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

* * * * *

(c) A Recipient may receive a performance award no later than three years following the Project's closeout.

(d) A performance award may fund up to 100 percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-Federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-Federal funds.

* * * * *

■ 78. In § 308.3, revise paragraphs (a) introductory text, (a)(2) and (3), and (b) to read as follows:

§ 308.3 Planning performance awards.

(a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:

* * * * *

(2) The Project demonstrated exceptional fulfillment of one or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and

(3) The Recipient demonstrated exceptional collaboration with Federal, State, and local economic development entities throughout the development of the Project.

(b) The Recipient shall use the planning performance award to increase, up to 100 percent, the Federal share of the cost of a Project under this chapter.

* * * * *

PART 310—SPECIAL IMPACT AREAS

■ 79. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 3154; Department of Commerce Organization Order 10–4.

■ 80. In § 310.1, revise the introductory text to read as follows:

§ 310.1 Special Impact Area.

Upon the application of an Eligible Applicant, and with respect to that Eligible Applicant's Project only, the Assistant Secretary may designate the Region which the Project will serve as a Special Impact Area if the Eligible Applicant demonstrates that its proposed Project will:

* * * * *

■ 81. In § 310.2, revise paragraphs (a)(6), (b), and (c) introductory text to read as follows:

§ 310.2 Pressing need; alleviation of unemployment or underemployment.

(a) * * *

(6) Has been designated as a Federally Declared Disaster area; or

* * * * *

(b) For purposes of this part, excessive unemployment exists if the 24-month unemployment rate is at least 225 percent of the national average or the per capita income is not more than 50 percent of the national average. A Region demonstrates excessive underemployment if the employment of a substantial percentage of workers in the Region is less than full-time or at less skilled tasks than their training or abilities would otherwise permit. Eligible Applicants seeking a Special Impact Area designation under this criterion must present appropriate and compelling economic and demographic data.

(c) Eligible Applicants may demonstrate the provision of useful employment opportunities by quantifying and evidencing the Project's prospective:

* * * * *

PART 314—PROPERTY

■ 82–83. The authority citation for part 314 continues to read as follows:

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A [Removed]

■ 84. Remove the designation of subpart A for §§ 314.1 through 314.6.

■ 85. In § 314.1, revise the definition of *Real Property* to read as follows:

§ 314.1 Definitions.

* * * * *

Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is improved by the construction of Project infrastructure such as roads, sewers, and water lines that are not situated on or under the land, where the infrastructure contributes to the value of such land as a specific purpose of the Project.

* * * * *

■ 86. In § 314.3, revise paragraphs (a), (b), and (c) to read as follows:

§ 314.3 Authorized Use of Property.

(a) During the Estimated Useful Life of the Project, the Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for authorized Project purposes as set out in the terms of the Investment Assistance. Such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) Where EDA and the Recipient determine during the Estimated Useful Life of the Project that Property acquired or improved in whole or in part with Investment Assistance is no longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements, including

nondiscrimination and environmental compliance.

* * * * *

■ 87. In § 314.4, revise paragraph (c) to read as follows:

§ 314.4 Unauthorized Use of Property.

* * * * *

(c) Where the Disposition, encumbrance or use of any Property violates paragraph (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including the actions provided in §§ 302.3, 302.16, and 307.21 of this chapter. EDA may pursue its rights under paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest. When the Federal government is fully compensated for the Federal Share, the Federal Interest is extinguished as provided in § 314.2(b), and EDA will have no further interest in the ownership, use or Disposition of the Property.

■ 88. In § 314.5, revise paragraph (b) to read as follows:

§ 314.5 Federal Share.

* * * * *

(b) The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA's participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are $100, consisting of $50 of Investment Assistance and $50 of Matching Share, the Federal Share is 50 percent. If the Property is disposed of when its current fair market is $250, the Federal Share is $125 (*i.e.,* 50 percent of $250). If $10 is spent to put the Property into salable condition, the Federal Share is $120 (*i.e.,* 50 percent of ($250–$10)).

■ 89. In § 314.6, revise paragraph (b) to read as follows:

§ 314.6 Encumbrances.

* * * * *

(b) *Exceptions.* Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply in the following circumstances:

(1) *Shared first lien position.* EDA, at its discretion, may approve an encumbrance on Project Property where a lien holder and EDA enter into an inter-creditor agreement pursuant to which EDA and the other lien holder share a first lien position on terms satisfactory to EDA.

(2) *Utility encumbrances.* Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility encumbrances, which by their terms extend to additional Property connected to such facilities.

(3) *Pre-existing encumbrances.* Encumbrances already in place at the time EDA approves the Project where EDA determines that the requirements of § 314.7(b) of this chapter are met.

(4) *Encumbrances proposed proximate to Project approval.* Encumbrances required to secure debt, including time and maturity-limited debt, that finances the Project Property at the same proximate time that EDA approves the Project when all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause and legal authority to waive paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies, for related activities of which the Project is an essential part, or other activities that EDA determines are authorized under PWEDA;

(iii) A grantor or lender will not provide funds without the security of a lien on the Property;

(iv) The terms and conditions of the encumbrance are satisfactory to EDA; and

(v) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether:

(A) A Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body and all co-Recipients are jointly and severally responsible;

(B) The non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;

(C) The approximate value of the Project Property so that the total amount of all debt plus the Federal share of cost as reflected on the EDA Investment award, and any amendments as applicable, does not exceed the value of the Project Property as improved; and

(D) Such other factors as EDA deems appropriate.

(5) *Encumbrances proposed after Project approval.* Encumbrances proposed to be incurred after Project approval where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause and legal authority to waive paragraph (a) of this section;

(ii) All proceeds secured by the encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies, for related activities of which the Project is an essential part, or other activities that EDA determines are authorized under PWEDA;

(iii) A grantor or lender will not provide funds without the security of a lien on the Property;

(iv) The terms and conditions of the encumbrance are satisfactory to EDA; and

(v) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations. In determining whether an expectation is reasonable for purposes of this paragraph, EDA shall take into account whether:

(A) A Recipient that is a non-profit organization is joined in the Project with a co-Recipient that is a public body and all co-Recipients are jointly and severally responsible;

(B) The non-profit organization is financially strong and is an established organization with sufficient organizational life to demonstrate stability over time;

(C) The Recipient's equity in the Project Property based on the appraised value of the Project Property at the time the encumbrance is requested so that the total amount of all debt plus the Federal share of cost as reflected on the EDA Investment award, and any amendments as applicable, does not exceed the value of the Project Property as improved; and

(D) Such other factors as EDA deems appropriate.

* * * * *

Subpart B [Removed]

■ 90. Remove the designation of subpart B for §§ 314.7 and 314.8.

■ 91. In § 314.7:

■ a. Revise paragraph (a);

■ b. Add a paragraph (b) heading;

■ c. Revise paragraphs (b)(1) introductory text, (c)(1) introductory text, (c)(2) introductory text, (c)(3), (c)(4) introductory text, and (c)(5); and

■ d. Remove paragraph (c)(6).

The revisions and addition read as follows:

§ 314.7 Title.

(a) *General title requirement.* The Recipient must hold title to the Real

Property required for a Project at the time the Investment Assistance is awarded or as provided by paragraph (c) of this section and must maintain title at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient also must furnish evidence, satisfactory in form and substance to EDA, that title to Real Property required for a Project (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

(b) *Disclosure of encumbrances.* (1) The Recipient must disclose to EDA all encumbrances, including the following:

* * * * *

(c) * * *

(1) *Real Property acquisition.* Where the acquisition of Real Property required for a Project is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Real Property will be acceptable for purposes of paragraph (a) of this section if:

* * * * *

(2) *Leasehold interests.* EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of the Real Property required for a Project will be acceptable for purposes of paragraph (a) of this section if:

* * * * *

(3) *Railroad right-of-way construction.* When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate, and maintain that portion of the Project, if required by the railroad; and provided that, the construction is a minor but essential component of the Project.

(4) *Public highway construction.* When the Project includes construction on a public highway the owner of which is not the Recipient, EDA may allow the Project to be constructed in whole or in part in the right-of-way of such public highway, provided that:

* * * * *

(5) *Construction of Recipient-owned facilities to serve Recipient or privately owned Real Property*—(i) *General.* At EDA's discretion, when an authorized purpose of the Project is to construct Recipient-owned facilities to serve Recipient or privately owned Real Property, including industrial or commercial parks, for sale or lease to private parties, such ownership, sale, or lease, as applicable, is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property;

(B) In cases where an authorized purpose of the Project is to lease Real Property, the Recipient or Owner, as applicable, provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the EDA disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient provides adequate assurances that the Project and the development of land and improvements on the Recipient or privately owned Real Property to be served by or that provides the economic justification for the Project will be completed according to the terms of the Investment Assistance;

(D) The sale or lease of any portion of the Project or of Real Property served by the Project or that provides the economic justification for the Project during the Project's Estimated Useful Life must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purpose(s) of the Project must continue to be fulfilled after such sale or lease; and

(E) The Recipient agrees that EDA may deem the termination, cessation, abandonment or other failure on behalf of the Recipient, Owner, purchaser, or lessee (as the case may be) to complete the Project or the development of land and improvements on Real Property served by or that provides the economic justification for the Project by the five-year anniversary of the award date of the Investment Assistance constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project.

(ii) *Additional conditions on sale or lease.* EDA also may condition the sale or lease on the satisfaction by the Recipient, Owner, purchaser, or lessee (as the case may be) of any additional requirements that EDA may impose, including EDA's pre-approval of the sale or lease.

(iii) *Agreement between Recipient and Owner.* In addition to paragraphs (c)(5)(i) and (ii) of this section, when an authorized purpose of the Project is to construct facilities to serve privately owned Real Property, the Recipient and the Owner must agree to use the Real Property improved or benefited by the EDA Investment Assistance only for the authorized purposes of the Project and in a manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project.

(iv) *Unauthorized Use and compensation of Federal Share.* EDA may deem that a violation of this paragraph (c)(5) by the Recipient, Owner, purchaser, or lessee (as the case may be) constitutes an Unauthorized Use of the Real Property and the Recipient must agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

■ 92. In § 314.8, revise the section heading and add paragraph (d) to read as follows:

§ 314.8 Recorded statement for Real Property.

* * * * *

(d) In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect EDA's interest in Project Property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with paragraph (a) of this section is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services and letters of credit shall be paid by Recipient.

Subpart C [Removed]

■ 93. Remove the designation of subpart C for § 314.9.

■ 94. Revise § 314.9 to read as follows:

§ 314.9 Recorded statement for Personal Property.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including ships, machinery, equipment, removable fixtures or structural components of buildings, the Recipient shall execute a Uniform Commercial Code Financing Statement (Form UCC–1, as provided by State law) or other statement of EDA's interest in the Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required

by EDA to be recorded, the Recipient must hold title to the Personal Property acquired or improved as part of the Project, except as otherwise provided in this part.

Subpart D [Removed]

■ 95. Remove the designation of subpart D for § 314.10.

■ 96. Revise § 314.10 to read as follows:

§ 314.10 Procedures for release of EDA's Property interest.

(a) *General.* As provided in § 314.2 of this chapter, the Federal Interest in Property acquired or improved with Investment Assistance extends for the duration of the Estimated Useful Life of the Project. While EDA determines the length of the Estimated Useful Life at the time of Investment award, in recent years, the length generally extends for 15 to 20 years, depending on the nature of the improvement. Prior to 1999, the Estimated Useful Life of some Projects, such as water and wastewater Projects, could extend for 40 years or more. Upon request of the Recipient, EDA will release the Federal Interest in Project Property upon expiration of the Estimated Useful Life as established in the terms and conditions of the Investment Assistance and in accord with the requirements of this section and part. This section provides procedures to govern the manner of obtaining a release of the Federal Interest.

(b) *Release of Property after the expiration of the Estimated Useful Life.* At the expiration of a Project's Estimated Useful Life and upon the written request of a Recipient, the Assistant Secretary may release the Federal Interest in Project Property if EDA determines that the Recipient has made a good faith effort to fulfill all terms and conditions of the Investment Assistance. The determination provided for in this paragraph shall be established at the time of Recipient's written request and shall be based, at least in part, on the facts and circumstances provided in writing by Recipient. For a Project in which a Recorded Statement as provided for in §§ 314.8 and 314.9 of this chapter has been recorded, EDA will provide for the release by executing an instrument in recordable form. The release will terminate the Investment as of the date of its execution and satisfy the Recorded Statement.

(c) *Release prior to expiration of the Estimated Useful Life.* If the Recipient will no longer use the Project Property in accord with the requirements of the terms and conditions of the Investment within the time period of the Estimated Useful Life, EDA will determine if such use by the Recipient constitutes an Unauthorized Use of Property and require compensation for the Federal Interest as provided in § 314.4 and this part. EDA may release the Federal Interest in connection with such Property upon receipt of full payment in compensation of the Federal Interest.

(d) *Release of certain Property after 20 years.* In accord with section 601(d)(2) of PWEDA, upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project that exceeds 20 years, EDA may release any Real Property or tangible Personal Property interest held by EDA, in connection with Investment Assistance after the date that is 20 years after the date on which the Investment Assistance was awarded.

(e) *Limitations and Covenant of Use.* (1) EDA's release of the Federal Interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause or as otherwise required by law, as determined in EDA's sole discretion. As deemed appropriate, EDA may require the Recipient to take some action as a condition of the release.

(2) In determining whether to release the Federal Interest, EDA will review EDA's legal authority to release its interest, including the Recipient's performance under and conformance with the terms and conditions of the Investment Assistance; any use of Project Property in violation of § 314.3 or § 314.4 of this part; and other such factors as EDA deems appropriate.

(3) Notwithstanding any release of the Federal Interest under this section, a Recipient must ensure that Project Property is not used for inherently religious activities in violation of applicable Federal law and in violation of nondiscrimination requirements set forth in § 302.20 of this chapter. Accordingly, upon the release of the Federal Interest, the Recipient must execute a covenant of use that prohibits use of Real Property or tangible Personal Property for inherently religious activities prohibited by applicable Federal law and for any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter.

(i) With respect to Real Property, the Recipient must record a covenant under this subsection in the jurisdiction where the Real Property is located in accordance with § 314.8.

(ii) With respect to items of tangible Personal Property, the Recipient must perfect and record a covenant under this subsection in accordance with applicable law, with continuances re-filed as appropriate, in accordance with § 314.9.

Dated: December 4, 2014.

Roy K.J. Williams,

Assistant Secretary for Economic Development.

[FR Doc. 2014–28806 Filed 12–18–14; 8:45 am]

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Part IV

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2014–BT–STD–0021]

RIN 1904–AD24

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential dishwashers. EPCA also requires the U.S. Department of Energy (DOE) to determine whether amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this notice, DOE proposes amended energy conservation standards for residential dishwashers. The notice also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than February 17, 2015. See section VII Public Participation for details.

DOE will hold a public meeting on Thursday, February 5, 2015, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII Public Participation for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *foreignvisit@ee.doe.gov* so that the necessary procedures can be completed. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to section VII of this document (Public Participation).

Any comments submitted must identify the NOPR for Energy Conservation Standards for residential dishwashers, and provide docket number EERE–2014–BT–STD–0021 and/or regulatory information number (RIN) number 1904–AD24. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: ResDishwashers2014STD0021@ee.doe.gov*. Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov*.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0021. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section VII for further information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *dishwashers@ee.Doe.Gov*.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 202–586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

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I. Summary of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Public Law 94–163 (as codified in 42 U.S.C. 6291–6309).[2] These products include residential dishwashers, the subject of today's notice.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) In accordance with these and other statutory provisions discussed in this notice, DOE proposes amended energy conservation standards for residential dishwashers. The proposed standards, which are the maximum annual energy use and maximum per-cycle water consumption for each product class, are shown in Table I.1. These proposed standards, if adopted, would apply to all products listed in Table I.1 and manufactured in, or imported into, the United States on or after the date 3 years after the publication of any final rule for this rulemaking. For purposes of the analysis conducted in support of this proposed rule, DOE used 2016 as the expected year of publication of any final standards.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

[Compliance Starting 2019]

Product class	Maximum annual energy use*	Maximum per-cycle water consumption
1. Standard (≥8 place settings plus 6 serving pieces).	234 kilowatt-hours per year (kWh/year).	3.1 gallons per cycle (gal/cycle).
2. Compact (<8 place settings plus 6 serving pieces).	203 kWh/year.	3.1 gal/cycle.

* Annual energy use, expressed in kilowatt-hours (kWh) per year, is calculated as: The sum of the annual standby electrical energy in kWh and the product of (1) the representative average dishwasher use cycles per year and (2) the sum of machine electrical energy consumption per cycle in kWh, the total water energy consumption per cycle in kWh, and, for dishwashers having a truncated normal cycle, the drying energy consumption divided by 2 in kWh. A truncated normal cycle is defined as the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse option.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of residential dishwashers, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings are positive for both the standard and compact product classes. The PBP for both product classes are also less than the projected

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).

[3] The average LCC savings are measured relative to the base-case efficiency distribution, which depicts the dishwasher market in the compliance year (see section IV.F.9). The simple PBP, which is designed to compare specific dishwasher efficiency levels, is measured relative to the baseline dishwasher (see section IV.C.1.a).

average lifetime of this product of approximately 15 years.

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL DISHWASHERS

Product class	Average LCC savings (2013$)	Simple payback period (years)
Standard	21	9.0
Compact	8	4.5

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2014 to 2048). Using a real discount rate of 8.5 percent, DOE estimates that the INPV for manufacturers of residential dishwashers is $586.6 million in 2013$. Under the proposed standards, DOE expects that manufacturers may lose up to 34.7 percent of their INPV, which is approximately $203.7 million. Additionally, based on its analysis of available information, DOE does not expect any plant closings or significant loss of employment.

C. National Benefits [4]

DOE's analyses indicate that the proposed standards would save a significant amount of energy. The lifetime savings for residential dishwashers purchased in the 30-year period that begins in the year of compliance with amended standards (2019–2048) amount to 1.06 quadrillion Btu (quads) [5] and 0.24 trillion gallons of water. This is a savings of 12 percent relative to the energy use of this product in the base case.[6]

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for residential dishwashers ranges from $0.23 billion (at a 7-percent discount rate) to $ 2.14 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for products purchased in 2019–2048.

In addition, the proposed standards would have significant environmental benefits. The energy savings described above would result in cumulative emission reductions (over the same period as for energy savings) of 61.9 million metric tons (Mt) [7] of carbon dioxide (CO_2), 345.1 thousand tons of methane, 42.9 thousand tons of sulfur dioxide (SO_2), 126.7 thousand tons of nitrogen oxides (NO_X), 0.7 thousand tons of nitrous oxide (N_2O), and 0.1 tons of mercury (Hg).[8] The cumulative reduction in CO_2 emissions through 2030 amounts to 14.6 Mt.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[9] The derivation of the SCC values is discussed in section IV.L of this notice. Using discount rates appropriate for each set of SCC values, DOE estimates the present monetary value of the CO_2 emissions reduction described above is between $0.4 billion and $6.1 billion. DOE also estimates the present monetary value of the NO_X emissions reduction is $0.08 billion at a 7-percent discount rate and $0.17 billion at a 3-percent discount rate.[10]

Table I.3 summarizes the national economic costs and benefits expected to result from the proposed standards for residential dishwashers.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS *

Category	Present value billion 2013$	Discount rate
Benefits		
Operating Cost Savings	4.1	7%
	9.2	3%
CO_2 Reduction Monetized Value ($12.0/t case) **	0.4	5%
CO_2 Reduction Monetized Value ($40.5/t case) **	2.0	3%
CO_2 Reduction Monetized Value ($62.4/t case) **	3.1	2.5%
CO_2 Reduction Monetized Value ($119/t case) **	6.1	3%
NO_X Reduction Monetized Value (at $2,684/ton)	0.1	7%
	0.2	3%
Total Benefits †	6.2	7%
	11.4	3%
Costs		
	3.9	7%
Incremental Installed Costs	7.1	3%
Total Net Benefits		
	2.3	7%
Including Emissions Reduction Monetized Value †	4.3	3%

* This table presents the costs and benefits associated with residential dishwashers shipped in 2019 – 2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019 – 2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

[4] All monetary values in this section are expressed in 2013 dollars and are discounted to 2014.

[5] A quad is equal to 10^{15} British thermal units (Btu).

[6] The base case assumptions are described in section IV.G.

[7] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[8] DOE calculated emissions reductions relative to the *Annual Energy Outlook 2014* (*AEO 2014*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2013.

[9] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government. May 2013; revised November 2013. *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.*

[10] DOE is currently investigating valuation of avoided Hg and SO_2 emissions.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate.

The benefits and costs of today's proposed standards, for products sold in 2019–2048, can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value of the benefits from consumer operation of products that meet the new or amended standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[11]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of residential dishwashers shipped in 2019–2048. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in today's rule is $413million per year in increased equipment costs, while the benefits are $437 million per year in reduced equipment operating costs, $113 million in CO_2 reductions, and $8.37 million in reduced NO_X emissions. In this case, the net benefit amounts to $146 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.5/t in 2015, the cost of the standards proposed in today's rule is $406 million per year in increased equipment costs, while the benefits are $529 million per year in reduced operating costs, $113 million in CO_2 reductions, and $9.95 million in reduced NO_X emissions. In this case, the net benefit amounts to $246 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7%	437	388	506.
	3%	529	462	624.
CO_2 Reduction Monetized Value ($12.0/t case)*.	5%	34	30	39.
CO_2 Reduction Monetized Value ($40.5/t case)*.	3%	113	100	131.
CO_2 Reduction Monetized Value ($62.4/t case)*.	2.5%	165	146	191.
CO_2 Reduction Monetized Value ($119/t case)*.	3%	351	311	406.
NO_X Reduction Monetized Value (at $2,684/ton).	7%	8.37	7.53	9.49.
	3%	9.95	8.86	11.43.
Total Benefits †	7% plus CO_2 range	479 to 796	425 to 706	555 to 921.
	7%	558	496	647.
	3% plus CO_2 range	572 to 890	501 to 782	674 to 1,041.
	3%	652	572	766.
Costs				
Consumer Incremental Product Costs	7%	413	468	371.
	3%	406	465	361.

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS—Continued

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Net Benefits				
Total†	7% plus CO_2 range	66 to 383	−43 to 238	183 to 550.
	7%	146	28	275.
	3% plus CO_2 range	167 to 484	36 to 317	313 to 680.
	3%	246	106	405.

* This table presents the annualized costs and benefits associated with residential dishwashers shipped in 2019 − 2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019 − 2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2014* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product prices in the Primary Estimate, a low decline rate for projected product prices in the Low Benefits Estimate, and a high decline rate for projected product prices in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.2 of this notice.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate. In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for the product classes covered by today's proposal.[12] See chapter 10, section 10.2 for more discussion of the base case efficiency distribution. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more and less stringent energy efficiency levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the proposed standard level achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

[12] Currently 12.1 percent of the standard product class and 48.1 percent of the compact product class are at the minimum efficiency level.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for residential dishwashers.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Public Law 94–163 (as codified in 42 U.S.C. 6291–6309). The program covers most major household appliances (collectively referred to as ''covered products''), which includes the types of residential dishwashers that are the subject of this rulemaking. (42 U.S.C. 6292(a)(6)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(1) and (10)(A)), and directed DOE to conduct further rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (10)(B)) In addition, the agency must periodically review its already established energy conservation standards for a covered product. (42 U.S.C. 6295(m)) Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of any final rule establishing or amending a standard for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. *Id.* The DOE test procedures for residential dishwashers currently appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix C1 (appendix C1).

DOE must follow specific statutory criteria for prescribing amended standards for covered products. As indicated above, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and

economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including residential dishwashers, if no test procedure has been established for the product, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;
3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy and water conservation; and
7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

Additionally, EPCA specifies requirements when promulgating a standard for a type or class of covered product that has two or more subcategories. (42 U.S.C. 6295(q)(1)) DOE must specify a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6294(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

Any final rule for new or amended energy conservation standards promulgated after July 1, 2010 must also address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into the standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures and standards for residential dishwashers address standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards it adopts in the final rule.

DOE has also reviewed this regulation pursuant to Executive Order (E.O.) 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. To the extent permitted by law, agencies are required by E.O. 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized. Consistent with E.O. 13563, and the range of impacts analyzed in this rulemaking, the energy efficiency

standards proposed herein by DOE achieve maximum net benefits.

B. Background

1. Current Standards

In a direct final rule published on May 30, 2012 (hereinafter the ''May 2012 direct final rule''), DOE prescribed the current energy conservation standards for residential dishwashers manufactured on or after May 30, 2013. 77 FR 31918. The current standards are set forth in Table II.1.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL DISHWASHERS

Product class	Annual energy use *(kWh/year)*	Per-cycle water consumption *(gal/cycle)*
Standard	307	5.0
Compact	222	3.5

2. History of Standards Rulemaking for Residential Dishwashers

The National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12 (March 17, 1989), amended EPCA and required that residential dishwashers be equipped with an option to dry without heat. NAECA further required that DOE conduct two cycles of rulemakings to determine if amended standards are justified. (42 U.S.C. 6295(g)(1) and (4))

On May 14, 1991, DOE issued a final rule establishing performance standards for residential dishwashers to complete the first required rulemaking cycle. 56 FR 22250. Compliance with the new standards, codified at 10 CFR 430.32(f), was required on May 14, 1994.

DOE then conducted a second standards rulemaking for residential dishwashers. DOE issued an advance notice of proposed rulemaking (ANOPR) on November 14, 1994 to consider amending the energy conservation standards for residential clothes washers, dishwashers, and clothes dryers. 59 FR 56423. Subsequently, DOE published a Notice of Availability of the ''Rulemaking Framework for Commercial Clothes Washers and Residential Dishwashers, Dehumidifiers, and Cooking Products.'' 71 FR 15059 (Mar. 27, 2006). On November 15, 2007, DOE published a second ANOPR addressing energy conservation standards for these products. 72 FR 64432. On December 19, 2007, Congress enacted EISA 2007, which, among other things, established maximum energy and water use levels for residential dishwashers manufactured on or after January 1, 2010. (42 U.S.C. 6295(g)(10)) DOE codified the statutory standards for these products in a final rule published March 23, 2009. 74 FR 12058.

The current energy conservation standards for residential dishwashers were submitted to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups on September 25, 2010. This collective set of comments, titled ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''Joint Petition'' [13]), recommended specific energy conservation standards for residential dishwashers that, in the commenters' view, would satisfy the EPCA requirements. (42 U.S.C. 6295(o)) DOE conducted its rulemaking analyses on multiple residential dishwasher efficiency levels, including those suggested in the Joint Petition. In the May 2012 direct final rule, DOE established energy conservation standards for residential dishwashers manufactured on or after May 30, 2013, consistent with the levels suggested in the Joint Petition. 77 FR 31918 (May 30, 2012).

DOE is conducting the current energy conservation standards rulemaking pursuant to 42 U.S.C. 6295(m), which requires that within 6 years of issuing any final rule establishing or amending a standard, DOE shall publish either a notice of determination that amended standards are not needed or a NOPR including new proposed standards. Because the current standards were established in the final rule issued on May 12, 2012, publication of this notice within the 6-year timeframe satisfies these requirements. The rulemaking will consider any information not available at the time of the May 2012 direct final rule. The definition of the TSLs considered in this NOPR is discussed in section V.A of this notice.

3. Residential Dishwasher Test Procedure History

DOE originally established its test procedure for residential dishwashers at Title 10 of CFR, part 430, subpart B, appendix C (appendix C) in 1977. 42 FR 39964 (Aug. 8, 1977). In 1983, DOE amended the test procedure to revise the representative average-use cycles to more accurately reflect consumer use and to address products that use 120 degrees Fahrenheit (°F) inlet water. 48 FR 9202 (Mar. 3, 1983). DOE amended the test procedure again in 1984 to redefine the term ''water heating dishwasher.'' 49 FR 46533 (Nov. 27, 1984). In 1987, DOE amended the test procedure to address models that use 50°F inlet water. 52 FR 47549 (Dec. 15, 1987).

In 2001, DOE revised the test procedure's testing specifications to improve testing repeatability, changed the definitions of ''compact dishwasher'' and ''standard dishwasher,'' and reduced the average number of use cycles per year from 322 to 264. 66 FR 65091, 65095–97 (Dec. 18, 2001).

In 2003, DOE again revised the test procedure to more accurately measure residential dishwasher efficiency, energy use, and water use. The 2003 residential dishwasher test procedure amendments included the following revisions: (1) The addition of a method to rate the efficiency of soil-sensing products; (2) the addition of a method to measure standby power; and (3) a reduction in the average-use cycles per year from 264 to 215. 68 FR 51887, 51899–903 (Aug. 29, 2003).

In 2012, DOE established a new test procedure for residential dishwashers in appendix C1. Appendix C1 follows the same general procedures as those included in the previously used appendix C, with updates to: (1) Revise the provisions for measuring energy consumption in standby mode or off mode; (2) add requirements for residential dishwashers with water softeners to account for regeneration cycles; (3) require an additional preconditioning cycle; (4) include clarifications regarding certain definitions, test conditions, and test setup; and (5) replace obsolete test load items and soils. 77 FR 65942, 65982–65987 (Oct. 31, 2012).

[13] DOE Docket No. EERE–2011–BT–STD–0060, Comment 1.

The current version of the test procedure at 10 CFR 430.23(c) includes provisions for determining estimated annual energy use (EAEU), estimated annual operating cost (EAOC), and water consumption expressed in gal/cycle. Because appendix C is now obsolete, DOE proposes to delete it in this rulemaking and re-designate appendix C1 as appendix C.

III. General Discussion

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justifies a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Existing energy conservation standards divide residential dishwashers into two product classes based on capacity (*i.e.,* the number of place settings and serving pieces that can be loaded in the product as specified in American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DW–1–2010, *Household Electric Dishwashers*):

- Standard (capacity equal to or greater than eight place settings plus six serving pieces); and
- Compact (capacity less than eight place settings plus six serving pieces).

In this NOPR, DOE proposes to maintain the existing standard and compact product classes for residential dishwashers. Based on a survey of products available on the market, DOE determined that compact residential dishwashers provide unique utility by means of their countertop or drawer configurations.

B. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and working prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. As defined in 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i), DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Section IV.B of this NOPR discusses the results of the screening analysis for residential dishwashers, particularly the designs DOE considered, those it screened out, and those that are the basis for the TSLs in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR Technical Support Document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for residential dishwashers, using the design parameters for the most efficient products available on the market or in working prototypes. (See chapter 5 of the NOPR TSD.) The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this proposed rule.

C. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the residential dishwashers that are the subject of this rulemaking purchased in the 30-year period that begins in the expected year of compliance with any amended standards (2019–2048).[14] The savings are measured over the entire lifetime of residential dishwashers purchased in the 30-year analysis period.[15] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. The base case represents a projection of energy consumption in the absence of amended mandatory efficiency standards, and it considers market forces and policies that affect demand for more efficient products.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from amended standards for the products that are the subject of this rulemaking. The NIA spreadsheet model (described in section IV.H of this NOPR) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of the savings in the energy that is used to generate and transmit the site electricity. To calculate this quantity, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) most recent *Annual Energy Outlook* (*AEO*). The *AEO* used for this rulemaking is *AEO 2014.*

DOE has begun to also estimate full-fuel-cycle (FFC) energy savings, as discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51281 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy efficiency standards. DOE's evaluation of FFC savings resulted in part by the National Academy of Science's (NAS) report on FFC measurement approaches for DOE's Appliance Standards Program.[16] The FFC methodology estimates how much additional energy, and in turn how many tons of emissions, may be displaced if the estimated quantity of energy was not consumed by the residential dishwashers covered in this rulemaking. For more information on

[14] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[15] In the past, DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has modified its presentation of national energy savings consistent with the approach used for its national economic analysis.

[16] ''Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy- Efficiency Standards,'' (Academy report) was completed in May 2009 and included five recommendations. A copy of the study can be downloaded at: *http://www.nap.edu/catalog.php?record_id=12670.*

FFC energy savings, see section IV.H.1 of this NOPR.

2. Significance of Savings

To adopt more-stringent standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for today's proposed standards (presented in section V.B.3.a of this notice) are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J of this notice. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include INPV, which values the industry on the basis of expected future cash flows; cash flows by year; changes in revenue and income; and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

a. Savings in Operating Costs Compared To Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product compared to any increases in the price of the covered product that are likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards.

The LCC savings for the considered efficiency levels are calculated relative to a base case that reflects projected market trends in the absence of amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this NOPR.

b. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H.1 of this NOPR, DOE uses the NIA spreadsheet to project national energy savings.

c. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE evaluates standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data from internal testing and the availability of products on the market, DOE has determined that the standards proposed in this NOPR would not reduce the utility or performance of the products under consideration in this rulemaking.

d. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will address the Attorney General's determination in the final rule.

e. Need for National Energy Conservation

In evaluating the need for national energy conservation, DOE expects that the energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from today's standards, and from each TSL it considered, in section V.B.6 of this NOPR. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this NOPR.

f. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to

be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII))

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's savings in energy (and water, if applicable) resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts the required economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment. (42 U.S.C. 6295(o)(2)(B)(i)) The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.11 of this proposed rule.

IV. Methodology and Discussion

DOE used two spreadsheet tools to estimate the impact of this NOPR. The first spreadsheet calculates LCCs and PBPs of potential new energy conservation standards. The second provides shipments forecasts and then calculates impacts of potential energy efficiency standards on national energy savings and net present value. The two spreadsheets are available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=106*. The Department also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts on utilities and the environment of energy conservation standards for residential dishwashers. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely known baseline energy forecast for the United States. For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb.1998), available at: *http://www.eia.gov/oiaf/aeo/overview/*.

The version of NEMS used for appliance standards analysis, which makes minor modifications to the *AEO* version, is called NEMS–BT.[17] NEMS–BT accounts for the interactions among the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this residential dishwasher rulemaking include: (1) Scope and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies that could improve the energy efficiency of residential dishwashers. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Scope and Product Classes

In 10 CFR 430.2, DOE defines dishwasher as ''a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system.''

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) For this rulemaking, DOE proposes to maintain the scope of coverage as defined by its current regulations for residential dishwashers, which include two product classes based on capacity as specified in ANSI/AHAM Standard DW–1–2010:

- Compact (capacity less than eight place settings plus six serving pieces); and
- Standard (capacity equal to or greater than eight place settings plus six serving pieces).

2. Technology Options

DOE identified 16 technology options that would be expected to improve the efficiency of residential dishwashers: condensation drying; control strategies; fan or jet drying; flow-through heating; improved fill control; finer filters; increased motor efficiency; optimized spray-arm geometry; increased insulation; low standby-loss electronic controls; microprocessor controls (including soil-sensing controls); modified sump geometry, with and without dual pumps; reduced inlet water temperature; supercritical carbon dioxide washing; ultrasonic washing; and variable washing pressures and flow rates.

After identifying all potential technology options for improving the efficiency of residential dishwashers, DOE performed the screening analysis (see section IV.B of this notice and chapter 4 of the NOPR TSD) on these technologies to determine which to consider further in the analysis and which to eliminate.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant

[17] EIA approves the use of the name ''NEMS'' to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. (BT stands for DOE's Building Technologies Program.)

adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

1. Screened-Out Technologies

Reduced Inlet-Water Temperature

Reduced inlet-water temperature requires that residential dishwashers tap the cold water line for their water supply. Because most residential dishwashers in the United States tap the hot water line, this design option would require significant alteration of existing residential dishwasher installations to accommodate newly purchased units incorporating this design option. Therefore, DOE believes that it would not be practicable to install this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard.

Supercritical Carbon Dioxide Washing

Supercritical carbon dioxide washing, which uses supercritical carbon dioxide instead of conventional detergent and water to wash dishes, has been researched but has not been implemented in commercially available dishwashers. Thus, DOE believes that it would not be practicable to manufacture, install and service this technology on the scale necessary to serve the relevant market at the time of the effective date of an amended standard. Furthermore, because this technology has not progressed beyond the research stage, it is not yet possible to assess whether it will have any adverse impacts on equipment utility to consumers or equipment availability, or any adverse impacts on consumers' health or safety.

Ultrasonic Washing

A residential dishwasher using ultrasonic waves to generate a cleaning mist was produced for the Japanese market in 2002. However, this model is no longer available on the market. Available information indicates that the use of a mist with ion generation instead of water with detergent would decrease cleaning performance, impacting consumer utility.

Ultrasonic dishwashing based upon soiled-dish immersion in a fluid that is then excited by ultrasonic waves has not been demonstrated. In an immersion-based ultrasonic dishwasher, standing ultrasonic waves within the washing cavity and the force of bubble cavitation implosion can damage fragile dishware. Because no manufacturers currently produce ultrasonic dishwashers, it is impossible to assess whether this design option would have any impacts on consumers' health or safety, or product availability.

2. Remaining Technologies

Through a review of each technology, DOE found that all of the other identified technologies met all four screening criteria to be examined further in DOE's analysis. In summary, DOE did not screen out the following technology options: condensation drying; control strategies; fan or jet drying; flow-through heating; improved fill control; finer filters; increased motor efficiency; optimized spray-arm geometry; increased insulation; low standby-loss electronic controls; microprocessor controls (including soil-sensing controls); modified sump geometry, with and without dual pumps; and variable washing pressures and flow rates.

All of these technology options are technologically feasible, given that the evaluated technologies are being used in commercially available products or working prototypes. Therefore, all of the energy conservation levels evaluated in this notice are technologically feasible. DOE also finds that all of the remaining technology options also meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

In the engineering analysis DOE establishes the relationship between the manufacturer production cost (MPC) and improved residential dishwasher efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products.

For this analysis, DOE relied on a hybrid approach of the three methods. DOE selected units available at each of the analyzed efficiency levels to develop a detailed BOM for each product, similar to the reverse-engineering approach. However, DOE did not assume the costs derived from the BOMs represented the MPC at each efficiency level. DOE used the design option approach to add features that can improve efficiency to the baseline BOM to estimate the MPC at higher efficiency levels, similar to the design-option approach. For residential dishwashers, it is difficult to assign a specific energy or water savings to a particular design option. DOE observed the sets of design options incorporated into units available on the market at each efficiency level to assign design options to each of the analyzed efficiency levels, similar to the efficiency-level approach. Using this hybrid approach, DOE developed the relationship between MPC and residential dishwasher efficiency.

This section provides more detail on how DOE selected the efficiency levels used for its analysis and developed the MPC at each efficiency level. Chapter 5 of the NOPR TSD contains further description of the engineering analysis.

1. Efficiency Levels

a. Baseline Efficiency Levels

A baseline unit is a unit that just meets current Federal energy conservation standards and provides basic consumer utility.[18] DOE identified products available on the market rated at the current energy conservation standards levels (see Table IV.1 below). Accordingly, DOE analyzed these

[18] The current Federal energy conservation standards went into effect on May 30, 2013.

products as baseline units. DOE uses the baseline unit for comparison in several phases of the NOPR analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher energy efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a unit at each higher efficiency level to the price of a unit at the baseline. Additional details on the selection of baseline units may be found in chapter 5 of the NOPR TSD.

Table IV.1 presents the baseline levels identified for each residential dishwasher product class.

TABLE IV.1—BASELINE EFFICIENCY LEVELS

Product class	Annual energy use (*kWh/year*)	Per-cycle water consumption (*gal/cycle*)
Standard	307	5.0
Compact	222	3.5

b. Higher Energy Efficiency Levels

Table IV.2 shows the efficiency levels DOE selected for standard residential dishwashers in this NOPR analysis.

TABLE IV.2—RESIDENTIAL DISHWASHER EFFICIENCY LEVELS—STANDARD PRODUCT CLASS

Efficiency level	Annual energy use (*kWh/year*)	Per-cycle water consumption (*gal/cycle*)
0—Baseline	307	5.00
1	295	4.25
2	280	3.50
3	234	3.10
4—Max-Tech	180	2.22

For standard residential dishwashers, DOE selected efficiency levels according to key levels identified in other efficiency programs and based on availability of products on the market. Efficiency Level 1 corresponds to the existing ENERGY STAR [19] criteria for standard residential dishwashers. Efficiency Level 2 corresponds to potential ENERGY STAR criteria identified during the process of setting the current ENERGY STAR criteria. This level was included in the Draft 2 V5.0 Dishwashers Specification, released on February 3, 2011.[20] Efficiency Level 3 is a gap-fill level developed as described below. Efficiency Level 4 is the max-tech efficiency level, as defined by the maximum available technology that DOE identified on the market at the time of its analysis. DOE did not identify any working prototypes that were more efficient than this maximum available technology.[21]

To determine the appropriate Efficiency Level 3, DOE surveyed the products currently available on the market in the United States. DOE's Compliance Certification Database [22] contains standard residential dishwasher models with a range of rated annual energy consumption and per-cycle water consumption between the max-tech and baseline. However, after removing products certified using a cold-water connection, which DOE screened out as a technology option as discussed in section IV.B of this NOPR, DOE observed that very few products are available with rated annual energy consumption below 234 kWh/year and per-cycle water consumption below 3.1 gal/cycle. Figure IV.1 shows the distribution of standard residential dishwashers included in DOE's Compliance Certification Database, after removing models certified using a cold-water connection. DOE developed efficiency level 3 based on this distribution.

[19] Information on the ENERGY STAR program can be found at energystar.gov.

[20] The draft specification document is available at *https://www.energystar.gov/products/specs/sites/products/files/ES_Draft_2_V5.0_Dishwashers_Specification.pdf*. DOE notes that this level was removed from the Final V5.0 Dishwashers Specification, and subsequent specification versions 5.1 and 5.2; however, the energy and water consumption represent a technically feasible efficiency level beyond the current ENERGY STAR criteria.

[21] DOE notes that a standard residential dishwasher is available with rated annual energy consumption of 171 kWh/year and water consumption of 4.1 gal/cycle. These ratings are based on a cold-water connection, which DOE eliminated from consideration as a technology option in the screening analysis.

[22] DOE's Compliance Certification Database is accessible at *http://www.regulations.doe.gov/certification-data/*.

[23] Units certified using a cold-water connection removed. Database accessed on May 22, 2014.

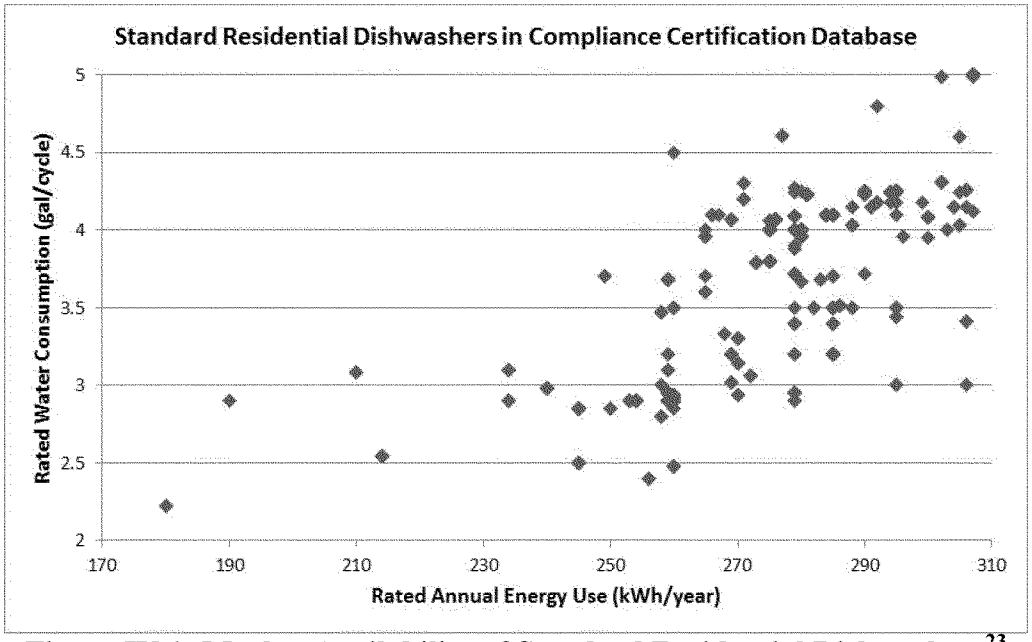

Figure IV.1: Market Availability of Standard Residential Dishwashers[23]

Table IV.3 shows the efficiency levels DOE considered for compact residential dishwashers in this NOPR analysis.

TABLE IV.3—RESIDENTIAL DISHWASHER EFFICIENCY LEVELS—COMPACT PRODUCT CLASS

Efficiency Level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)
0—Baseline	222	3.50
1	203	3.10
2—Max-Tech	141	2.00

Based on basic model numbers listed in DOE's Compliance Certification Database, DOE expects that fewer than 10 individual compact basic models are currently available on the market. The majority of models included in the Compliance Certification Database are also rated either at the baseline or max-tech efficiency level. In the ENERGY STAR Draft 2 Version 6.0 Residential Dishwasher Specification [24], however, the Environmental Protection Agency proposed eligibility criteria for compact residential dishwashers consistent with Efficiency Level 1 shown in Table IV.3. As part of its proposal, ENERGY STAR discussed feasible energy and water improvements for compact products with manufacturers. ENERGY STAR's supporting analysis included the expected design options manufacturers would use to reach this intermediate efficiency level. Accordingly, DOE considered the proposed compact ENERGY STAR criteria as an efficiency level in this analysis. Efficiency Level 2 is the maximum available efficiency level, as defined by the maximum available technology that DOE could identify on the market at the time of its analysis. DOE did not identify any working prototypes that were more efficient than the maximum available technology.

2. Manufacturer Production Cost Estimates

Based on product teardowns and cost modeling, DOE developed overall cost-efficiency relationships for the standard and compact residential dishwasher product classes. DOE selected products covering the range of efficiencies available on the market for the teardown analysis. During the teardown process, DOE created detailed BOMs that included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as an input to a cost model, which was used to calculate the MPC for each product torn down.

As discussed earlier in this section, DOE used a hybrid approach of the design-option, efficiency-level, and reverse-engineering approaches in this engineering analysis. During the teardown process, DOE observed the combinations of design options manufacturers used to reach higher efficiency levels. Using the BOMs from the products torn down, DOE constructed typical BOMs for each efficiency level to estimate the MPC based on the expected combinations of design options at each efficiency level. Table IV.4 and Table IV.5 show the incremental MPCs for each of the analyzed residential dishwasher efficiency levels compared to the baseline efficiency level MPC. For additional details, see chapter 5 of the NOPR TSD.

TABLE IV.4—COST-EFFICIENCY RELATIONSHIP FOR STANDARD RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturer production cost (2013$)
0—Baseline	307	5.00	$ -

[24] Information on the ENERGY STAR specification is available at: *https://www.energystar.gov/products/specs/residential_dishwasher_specification_version_6_0_pd.*

TABLE IV.4—COST-EFFICIENCY RELATIONSHIP FOR STANDARD RESIDENTIAL DISHWASHERS—Continued

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturer production cost (2013$)
1	295	4.25	$ 9.52
2	280	3.50	$ 36.53
3	234	3.10	$ 74.72
4—Max-Tech	180	2.22	$ 74.72

TABLE IV.5—COST-EFFICIENCY RELATIONSHIP FOR COMPACT RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-Cycle Water Consumption (gal/cycle)	Incremental manufacturer production cost (2013$)
0—Baseline	222	3.50	$ -
1	203	3.10	$ 8.01
2—Max-Tech	141	2.00	$ 21.50

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the MPC estimates derived in the engineering analysis to consumer prices. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For residential dishwashers, the main parties in the distribution chain are manufacturers and retailers.

The manufacturer markup converts MPC to manufacturer selling price (MSP). DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes residential dishwashers.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more efficient products (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price. DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[25]

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for residential dishwashers.

E. Energy and Water Use Analysis

DOE's energy and water use analysis estimated the range of energy and water use of residential dishwashers in the field, *i.e.,* as they are actually used by consumers. The energy and water use analysis provided the basis for other analyses DOE performed, particularly assessments of the energy and water savings and the savings in consumer operating costs that could result from DOE's adoption of amended standards.

DOE determined a range of annual energy use and per-cycle water consumption of residential dishwashers by multiplying the per-cycle energy use and per-cycle water use of each considered design by the number of cycles per year in a representative sample of U.S. households.[26]

DOE analyzed per-cycle energy consumption based on two components: (1) Water-heating energy, and (2) machine (motor) and drying energy, values for which are taken from data developed by DOE in the engineering analysis. See chapter 5 of the NOPR TSD for more information. The largest component of residential dishwasher energy consumption is water-heating energy use, which is the energy required to heat the inlet water to the temperature for dishwashing. The machine energy consists of the motor energy (for water pumping and food disposal), and drying energy consists of heat to dry cleaned dishes.

DOE estimated the per-cycle water-heating energy consumption based on DOE's residential dishwasher test procedure (which refers to this quantity as ''water energy consumption''). DOE estimated this energy consumption for residential dishwashers that operate with a nominal inlet water temperature of 120 °F[27], the most common situation in U.S. homes. For a residential dishwasher using electrically heated water, the water-heating energy consumption, expressed in kWh per cycle, is equal to the water consumption per cycle times a nominal water heater temperature rise of 70 °F times the specific heat of water (0.0024 kWh per gallon per °F).[28] For a residential dishwasher using gas-heated or oil-heated water, the calculation is the same, but also incorporates a nominal water heater recovery efficiency of 0.80 for gas-fired water heating and 0.78 for oil-fired water heating.[29]

The energy used to operate the machine powers the motor (to pump water and dispose of food) and the heating element, which boosts the supplied water's temperature to the

[25] U.S. Census, 2007 Annual Retail Trade Survey (ARTS), Electronics and Appliance Stores sectors.

[26] For the dishwasher standards rulemaking, DOE estimated consumer usage (cycles per year) to establish dishwasher annual energy use within the life-cycle cost (LCC) and payback period (PBP) analysis. To estimate average dishwasher usage, DOE utilized a 2001 Arthur D. Little (ADL) report that focused solely on dishwashers. Information from the ADL report was used to determine an average usage of 215 cycles per year. DOE used the *Residential Energy Consumption Survey 2009* (*RECS 2009*) to characterize household variability of dishwasher usage.

[27] *Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products.* Available at *https://www.federalregister.gov/articles/2012/05/25/2012-11155/energy-conservation-program-test-procedures-for-residential-dishwashers-dehumidifiers-and#h-58.*

[28] The water heater temperature rise of 70 °F assumes an average water heater inlet temperature of 50 °F, as specified as the national average in the dishwasher test procedure.

[29] The recovery efficiency indicates how efficient a water heater is at heating water. The DOE test procedure for dishwashers specifies a recovery efficiency of 0.80 for gas-fired water heating and 0.78 for oil-fired water heating, which is representative of gas and oil water heaters currently in the housing stock.

required washing temperature. DOE estimated the per-cycle machine and drying energy consumption for representative units at each efficiency level by subtracting the per-cycle water-heating energy consumption from the per-cycle dishwasher energy consumption as determined in the engineering analysis.

Standby power is defined as a product's minimum power consumption while plugged in and not performing any active mode function.[30] DOE estimated the per-cycle energy use by subtracting the annual energy use associated with standby power from the total annual energy use and dividing the result by the national average number of residential dishwasher cycles per year. DOE used data provided by AHAM for the May 2012 direct final rule on the total annual residential dishwasher energy use and the standby power use for each considered efficiency level.[31]

DOE determined the standby annual energy consumption by multiplying the energy use in standby mode per hour by the hours the residential dishwasher is in standby mode, which is the difference between the number of hours in a year and the active hours, which is equal to the number of residential dishwasher cycles per year multiplied by cycle time, which is estimated to be 1 hour.[32]

DOE estimated the per-cycle water use by efficiency level in its engineering analysis, as described in chapter 5 of the NOPR TSD.

To estimate the number of cycles per year in a representative sample of U.S. households, DOE considered the following data sources. DOE analyzed data from the Energy Information Administration (EIA)'s *2009 Residential Energy Consumption Survey* (*RECS 2009*), which was the most recent such survey available at the time of DOE's analysis.[33] *RECS* is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. Of the more than 12,000 households in *RECS,* almost 7,400 have residential dishwashers. For each household using a residential dishwasher, *RECS* provides data on the number of residential dishwasher cycles in the following bins: (1) Less than once per week, (2) once per week, (3) 2–3 times per week, (4) 4–6 times per week, (5) at least once per day. DOE converted the above information to annual values and created a triangular or uniform distribution for each bin. DOE randomly assigned a specific numerical value from within the appropriate bin to each household in the residential dishwasher sample. The average number of cycles per year derived from the *RECS 2009* data is 171.

While the *RECS* data represent the most recent nationally representative sample of dishwasher usage, the binning approach that the RECS survey uses to collect the data does not allow for the derivation of a point estimate to help determine annual energy and water use without making assumptions about the distribution of usage within bins. For example, of the 18% of national households that responded that they used their dishwashers at least once per day, it is not known what percentage of these households use their dishwashers more than once a day or if viewed weekly, more than 7 times a week. Because the *RECS* data do not include point estimates of usage, DOE relies on survey data it used to develop the 2003 residential dishwasher test procedure amendments and analyzed again during the 2012 standards rulemaking[34] to estimate the average number of residential dishwasher cycles per year. In the review, survey data on consumers' residential dishwasher usage habits from the 1990's were collected from a number of sources including several residential dishwasher manufacturers, detergent manufacturers, energy and consumer interest groups, independent researchers, and government agencies. This study provides a large data set of point estimates which DOE believes is the best source of information on usage rates at present. This survey review was used in the development of the 2003 residential dishwasher test procedure amendments to reduce the average cycles per year from 264 to 215, which DOE believed was more reflective of dishwasher use nation-wide at the time and was not inconsistent with the steady decrease over the previous 20 years in the average-use cycles for a dishwasher.[35] Because of the facts detailed above, DOE is proposing in this document to use an average usage of 215 cycles per year as the value for average residential dishwasher use instead of 171 cycles estimated from the RECS survey data. DOE notes that 215 cycles per year is the number of cycles required to be used to calculate energy usage in DOE's test procedure for residential dishwashers which is also the basis for the ENERGY GUIDE label administered by the Federal Trade Commission. DOE further notes that alternative analysis that relies on additional assumptions regarding use patterns within the ''binned'' RECS data could yield results similar to those from the earlier data, depending on the assumptions made for each of the bins. DOE does recognize that dishwasher usage data are a key input when calculating energy and water use and ultimately have a direct effect on the benefits derived from estimated energy and water use savings described by this proposed rulemaking. DOE is aware that a point estimate for the annual number of dishwasher cycles is subject to uncertainty given how data on this topic are collected. Given this uncertainty, DOE encourages the public to comment on its use of these surveys and the limitations of each.

DOE did not assume that all dishwashers are operated exactly at the average usage per year and used other survey data to characterize the variability in the usage. For purposes of conducting the LCC and PBP analysis, DOE characterized each usage bin with a probability distribution. To capture the uncertainty inherent to the usage response for each household in the RECS sample, DOE used a Monte Carlo

[30] Active mode includes the main functions of washing, rinsing, or drying (when a drying process is included), or is involved in functions necessary for these main functions, such as admitting water into the dishwasher, pumping water out of the dishwasher, circulating air, or regenerating an internal water softener. For more information, see the DOE dishwasher test procedure at 10 CFR part 430, subpart B, appendix C1.

[31] For more information, see chapter 7 of the NOPR TSD.

[32] The 1-hour cycle time is an estimate of the typical cycle time for a dishwasher. Actual cycle times vary based on wash selection, load, and model of dishwasher.

[33] Arthur D. Little. ''Review of Survey Data to Support Revisions to DOE's Dishwasher Test Procedure,'' December 18, 2001. Prepared for the U.S. Department of Energy by Arthur D. Little: Cambridge, MA. Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0021-0001*.

[34] Arthur D. Little. ''Review of Survey Data to Support Revisions to DOE's Dishwasher Test Procedure,'' December 18, 2001. Prepared for the U.S. Department of Energy by Arthur D. Little: Cambridge, MA. Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0021-0001*

Note that several of the surveys used in this review share the problem of defining a single value for a category (i.e, a point estimate), but to a much less extent than the RECS data. Generally the other surveys minimize this issue by including more categories, by better distributing categories, and by having more bounded categories.

[35] 68 FR 51887 (Aug. 29, 2003) and Arthur D. Little. ''Review of Survey Data to Support Revisions to DOE's Dishwasher Test Procedure,'' December 18, 2001. Prepared for the U.S. Department of Energy by Arthur D. Little: Cambridge, MA. Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0021-0001*. The 215 value was based on the review's recommendation that the number of average-use cycles per year be reduced into the range of 200 to 233 cycles.

simulation in the LCC and PBP analysis that selects a value for usage within the distribution that is used to characterize each bin. The result of using probability distribution to characterize the RECS response bins provided a weighted-average dishwasher usage of 171 cycles per year.

Although DOE characterized the usage bins with probability distributions, it is certainly possible and equally likely that the weighted-average value is as low as 146 and as high as 453. This uncertainty led DOE to conclude that the ADL survey review, which focused more closely and solely on dishwasher usage habits, provided a more representative value for the average number of cycles per year that did the *RECS* survey. The sorting of user responses in RECS into usage frequency bins, however, allowed DOE to use *RECS 2009* to capture dishwasher usage variability from household to household (since not every household will run the average number of dishwasher cycles per year). The LCC and PBP analysis normalized the dishwasher usage by the ratio of 215-to-171 cycles per year. The resulting range of values used in the LCC analysis is consistent with the average use in the DOE residential dishwasher test procedure.

Table IV.6 and Table IV.7 show the estimated average annual energy and water use for each efficiency level analyzed for standard residential dishwashers.

TABLE IV.6—STANDARD RESIDENTIAL DISHWASHERS: AVERAGE ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

Efficiency Level	Annual Energy Use				
	Water Heating*	Machine + Drying	Standby †	Total	
				kWh/year	kWh/year
Baseline	177.0	130.0	0.0	307	1,075.0
1	150.4	140.3	4.3	295	913.8
2	123.9	151.8	4.3	280	752.5
3	109.7	120.0	4.3	234	666.5
4	78.6	97.1	4.3	180	477.3

* Shown for the case of electrically heated water.
† Standby annual energy use based on a dishwasher cycle length of one hour. Standby hours = 8760 hours − (215 cycles × 1 hour) = 8545 hours.

TABLE IV.7—COMPACT RESIDENTIAL DISHWASHERS: AVERAGE ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

Efficiency Level	Annual Energy Use				
	Water Heating*	Machine + Drying	Standby †	Total	
				kWh/year	kWh/year
Baseline	123.9	78.4	19.7	222	752.5
1	109.7	78.7	14.5	203	666.5
2	70.8	65.9	4.3	141	430.0

* Shown for the case of electrically heated water.
† Standby annual energy use based on a dishwasher cycle length of 1 hour. Standby hours = 8760 hours—(215 cycles × 1 hour) = 8545 hours.

Chapter 7 of the NOPR TSD provides details on DOE's energy and water use analysis for residential dishwashers.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for residential dishwashers. The LCC is the total consumer expense over the life of a product, consisting of purchase and installation costs plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more stringent standard by the change in annual operating cost for the year that new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to an estimate of the base-case appliance efficiency distribution. The base-case estimate reflects the market in the absence of new or amended energy conservation standards, including the market for products that exceed the current energy conservation standards. In contrast, the PBP is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the 2009 *RECS*. For each sample household, DOE determined the energy consumption for the residential dishwasher and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of residential dishwashers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy and water prices and price projections, repair and maintenance costs, product lifetimes, discount rates, and the year that compliance with standards is required. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each

value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and residential dishwasher user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run.

DOE calculated the LCC and PBP for all customers as if each were to purchase a new product in the year that compliance with any amended standards is expected to be required. Any amended standards would apply to residential dishwashers manufactured 3 years after the date on which any final amended standard is published. (42 U.S.C. 6295(g)(10)(B)) For today's NOPR, DOE estimates publication of any final standards in 2016. Therefore, for purposes of its analysis, DOE used 2019 as the first year of compliance with any amended standards.

Table IV.8 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and its appendices of the NOPR TSD.

TABLE IV.8—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.
Annual Energy and Water Use	The sum of the total per-cycle annual energy and water use multiplied by the number of cycles per year and the standby annual energy use. Average number of cycles based on ADL field data. Variability: Based on the 2009 *RECS* normalized to the average number of cycles.
Energy and Water Prices	Electricity: Based on EIA's Form 861 data for 2012. Gas: Based on EIA's Natural Gas Navigator for 2012. LPG: Based on EIA's State Energy Consumption, Price and Expenditures Estimates for 2012. Variability: Regional energy prices determined for 27 regions. Water: Based on 2012 AWWA/Raftelis Survey. Variability: By census region.
Energy and Water Price Trends	Energy: Forecasted using *AEO 2014* price forecasts. Water: Forecasted using BLS historic water price index information.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Estimated using survey results from *RECS* (1990, 1993, 1997, 2001, 2005, 2009) and the U.S. Census American Housing Survey (2005, 2007), along with historic data on appliance shipments. Variability: Characterized using Weibull probability distributions.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's SCF ** for 1989, 1992, 1995, 1998, 2001, 2004, 2007, and 2010.
Compliance Date	2019

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.
** Survey of Consumer Finances.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the supply-chain markups described above (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. Experience curve analysis focuses on entire industries (often operating globally) and aggregates over many causal factors that may not be well characterized. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level.[36]

For the default price trend for this NOPR, DOE estimated an experience rate for residential dishwashers based on an analysis of long-term historical data. Producer Price Index (PPI) data specific to residential dishwashers were not available. Instead, DOE derived a residential dishwasher price index from 1988 to 2013 using Producer Price Index (PPI) data for miscellaneous household appliances from the Bureau of Labor Statistics (BLS). An inflation-adjusted price index was calculated using the implicit price deflators for GDP for the same years. This proxy for historic price data was then regressed on the cumulative quantity of residential dishwashers produced, based on a corresponding series for total shipments of residential dishwashers.

To calculate an experience rate, a least-squares power-law fit was performed on the residential dishwasher price index versus cumulative shipments (including imports). DOE then derived a price factor index, with the price in 2013 equal to 1, to forecast prices in the year of compliance for amended energy conservation standards in the LCC and PBP analysis, and for the NIA, for each subsequent year through 2048. The index value in each year is a function of the experience rate and the cumulative production through that year. To derive the latter, DOE used projected shipments from the base-case projections made for the NIA (see section IV.G of this notice). The average annual rate of price decline in the default case is 1.33 percent.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous

[36] Taylor, M. and Fujita, K.S. *Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique.* LBNL–6195E. Lawrence Berkeley National Laboratory, Berkeley, CA. April 2013. *http://escholarship.org/uc/item/3c8709p4#page-1.*

materials and parts needed to install the product. DOE used data from the 2013 RS Means Plumbing Cost data book [37] to estimate the baseline installation cost. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy and Water Consumption

For each sampled household, DOE determined the energy and water consumption for a residential dishwasher at different efficiency levels using the approach described above in section IV.E of this notice.

4. Energy Prices

DOE derived average annual residential electricity prices for 27 geographic regions using data from EIA's Form EIA–861 database (based on ''Annual Electric Power Industry Report'').[38] DOE calculated an average annual regional residential price by: (1) Estimating an average residential price for each utility (by dividing the residential revenues by residential sales); and (2) weighting each utility by the number of residential consumers it served in that region. The NOPR analysis used the data for 2012.

DOE calculated average residential natural gas prices for each of the 27 geographic regions using data from EIA's ''Natural Gas Monthly.'' [39] DOE calculated average annual regional residential prices by: (1) Estimating an average residential price for each state; and (2) weighting each state by the number of residential consumers. The NOPR analysis used the data for 2012.

DOE calculated average residential LPG prices for each of the 27 geographic regions using data from EIA's ''State Energy Consumption, Price, and Expenditures Estimates (SEDS).'' [40] DOE calculated average annual regional residential prices by: (1) Estimating an average residential price for each State; and (2) weighting each State by the number of residential consumers. The NOPR analysis used the data for 2012.

To estimate energy prices in future years, DOE multiplied the average regional energy prices discussed in the preceding section by the forecast of annual national-average residential energy price changes in the Reference case from *AEO 2014,* which has an end year of 2040.[41] To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040.

5. Water and Wastewater Prices

For today's NOPR, DOE obtained data on water and wastewater prices for 2012 from the Water and Wastewater Rate Survey conducted by Raftelis Financial Consultants and the water utility association, American Water Works Association. The survey, which analyzes each industry separately, covers approximately 290 water utilities and 214 wastewater utilities. The water survey includes, for each utility, the cost to consumers of purchasing a given volume of water or treating a given volume of wastewater. The data provide a division of the total consumer cost into fixed and volumetric charges. DOE's calculations use only the volumetric charge to calculate water and wastewater prices, because only this charge is affected by a change in water use. Average water and wastewater prices were estimated for each of four census regions. Each *RECS* household was assigned a water and wastewater price depending on its census region location.

To estimate the future trend for water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) from 1970 through 2012, combined with the all-products CPI for this same period. It extrapolated a future trend based on the linear inflation-adjusted growth during the 1970 to 2012 period. DOE used the projected inflation-adjusted water price trend to forecast water and wastewater prices for residential dishwashers.

Chapter 8 of the NOPR TSD provides more detail about DOE's approach to developing water and wastewater prices.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

During the rulemaking for the May 2012 direct final rule, DOE requested information as to whether maintenance and repair costs are a function of efficiency level and product class. Manufacturers responded that these costs would not increase with efficiency. DOE does not expect repair costs to have changed since the last rulemaking; therefore, DOE did not assume that more efficient residential dishwashers would have greater repair or maintenance costs.

DOE did not have data showing how many households would repair rather than replace their dishwashers. The replacement frequency is determined by a survival function which is part of the shipments model. DOE used an accounting method that tracks the total stock of units by vintage. DOE estimated a stock of dishwashers by vintage by integrating historical shipments starting from 1972. Depending on the vintage, a certain percentage of units will fail and need to be replaced. To estimate how long a unit will function before failing, DOE used a survival function based on a product lifetime distribution having an average value of approximately 15 years. Because DOE assumed that a consumer's decision to replace or repair their dishwasher was not impacted by an increase in dishwasher efficiency, the replacement frequency was unaffected by the increased installed cost, the repair cost, and the energy costs savings associated with more efficient dishwashers.

7. Product Lifetime

Because the lifetime of appliances varies depending on utilization and other factors, DOE develops a distribution of lifetimes from which specific values are assigned to the appliances in the household sample. DOE conducted an analysis of residential dishwasher lifetimes in the field based on a combination of shipments data and *RECS* 2009 data on the ages of the residential dishwashers reported in the household stock. As described in chapter 8 of the NOPR TSD, the analysis yielded an estimate of mean age for residential dishwashers of approximately 15 years. It also yielded a survival function that DOE incorporated as a probability distribution in its LCC analysis. See chapter 8 of the NOPR TSD for further details on the method and sources DOE used to develop product lifetimes.

8. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for dishwashers based on consumer financing costs and opportunity cost of funds related to

[37] RS Means, *Residential Cost Data, 2013.*

[38] Available at: *www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[39] Available at: *http://www.eia.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[40] Available at: *http://www.eia.gov/state/seds/seds-data-fuel.cfm?sid=US.*

[41] U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2013 with Projections to 2040* (Available at: *http://www.eia.gov/forecasts/aeo/*).

appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE's approach involved identifying all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings and maintenance costs. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010.[42] Using the SCF and other sources, DOE then developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each class, is 4.49 percent. See chapter 8 in the NOPR TSD for further details on the development of consumer discount rates.

9. Base-Case Efficiency Distribution

To accurately estimate the share of consumers that would be affected by a standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution of product efficiencies that consumers purchase under the base case (*i.e.,* the case without new energy efficiency standards). DOE refers to this distribution of product of efficiencies as a base-case efficiency distribution.

To estimate the base-case efficiency distribution of standard residential dishwashers for 2019, DOE relied on data submitted by AHAM for the May 2012 direct final rule. These data provide shares of shipments by efficiency level for 2002–2005 and 2008–2010. These data show a significant increase in the share of ENERGY STAR products in both periods. To predict the market shares for each efficiency level in 2019, DOE conducted efficiency distribution analysis based on the DOE's Compliance Certification Database for standard residential dishwashers and considered the market trends present in the AHAM data, and assumed these trends would continue in a manner consistent with the decline in average energy use. This trend is described in chapter 10 of the NOPR TSD. DOE also conducted efficiency distribution analysis based on DOE's Compliance Certification Database for compact residential dishwashers.

The estimated shares for the base-case efficiency distribution for residential dishwashers are shown in Table IV–9. See chapter 8 of the NOPR TSD for further information on the derivation of the base-case efficiency distributions. For standard residential dishwashers, DOE also considered an alternative base-case efficiency distribution that uses a different set of historical data. This distribution is described in appendix 8–F of the NOPR TSD.

TABLE IV.9—RESIDENTIAL DISHWASHER BASE-CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2013

Efficiency level	Standard		Compact	
	Annual energy use (kWh/year)	% of shipments	Annual energy use (kWh/year)	% of shipments
Baseline	307	12.1	222	48.1
1	295	43.9	203	14.8
2	234	3.2	141	37.0
3	180	0.4	.....	.....

10. Inputs to Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

11. Rebuttable-Presumption Payback Period

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy and water savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy and water price forecast for the year in which compliance with the amended standard would be required. The results of the rebuttable payback period analysis are summarized in section V.B.1.c of this NOPR.

G. Shipments

DOE uses forecasts of product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. DOE develops shipment projections based on historical data and an analysis of key market drivers for residential dishwashers. In DOE's shipments model, shipments of products are driven by new construction and stock replacements. The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the existing stock. Stock accounting uses

[42] Note that two older versions of the SCF are also available (1989 and 1992); these surveys are not used in this analysis because they do not provide all of the necessary types of data (*e.g.,* credit card interest rates). DOE determines that the 15-year span covered by the six surveys included is sufficiently representative of recent debt and equity shares and interest rates.

product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. DOE also considers the impacts on shipments from changes in product purchase price and operating cost associated with higher energy efficiency levels.

New housing forecasts and residential dishwasher saturation data comprised the two primary inputs for DOE's estimates of new construction shipments. ''New housing'' includes newly-constructed single-family and multi-family units (referred to as ''new housing completions'') and mobile home placements. For new housing completions and mobile home placements, DOE used *AEO 2014* for forecasts of new housing, and adopted the projections from *AEO 2014* for later years.

DOE calibrated the shipments model against historical residential dishwasher shipments. In general, DOE estimated replacements using a product retirement function developed from product lifetime. DOE based the retirement function on a probability distribution for the product lifetime that was developed in the LCC analysis. The shipments model assumes that no units are retired below a minimum product lifetime and that all units are retired before exceeding a maximum product lifetime.

DOE applied a price elasticity parameter to estimate the effect of standards on residential dishwasher shipments. DOE estimated the price elasticity parameter from a regression analysis that used purchase price and efficiency data specific to several residential appliances during 1980–2002. The estimated ''relative price elasticity'' incorporates the impacts from purchase price, operating cost, and household income. Based on evidence that the price elasticity of demand is significantly different over the short run and long run for other consumer goods (*i.e.,* automobiles),[43] DOE assumed that the relative price elasticity declines over time. DOE estimated shipments in each standards case using the relative price elasticity along with the change in the relative price between a standards case and the base case. For details on the shipments analysis, see chapter 9 of the NOPR TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the national net present value NPV of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual appliance shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[44] For the present analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of products sold from 2019 through 2048.

DOE evaluates the impacts of new and amended standards by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. DOE compares these projections with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the base-case forecast, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. For the standards cases, DOE also considers how a given standard would likely affect the market shares of efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. The TSD that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

For the results presented in today's notice, DOE used projections of energy prices and housing starts from the *AEO 2014* Reference case. As part of the NIA, DOE analyzed scenarios that used inputs from the *AEO 2014* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case, as well as higher and lower housing starts, which result in higher and lower appliance shipments to new homes. NIA results based on these cases are presented in appendix 10–C of the NOPR TSD.

Table IV.10 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2019.
Base-Case Forecasted Efficiencies	Efficiency distributions are forecasted based on historical efficiency data.
Standards-Case Forecasted Efficiencies	Used a ''roll-up'' scenario.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each CSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each CSL. Incorporates forecast of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	*AEO 2014* forecasts (to 2040) and extrapolation through 2048.
Energy Site-to-Source Conversion Factor	Varies yearly and is generated by NEMS–BT.
Discount Rate	Three and seven percent real.
Present Year	Future expenses discounted to 2014, when the NOPR will be published.

[43] S. Hymans. Consumer Durable Spending: Explanation and Prediction, *Brookings Papers on Economic Activity,* 1971. Vol. 1971, No. 1, pp. 234–239.

[44] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

1. National Energy and Water Savings

The national energy and water savings analysis involves a comparison of national energy and water consumption of the considered products in each potential standards case (TSL) with consumption in the base case with no new or amended energy and water conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). Vintage represents the age of the product. DOE calculated annual NES based on the difference in national energy consumption for the base case (without amended efficiency standards) and for each higher efficiency standard. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy using annual conversion factors derived from the *AEO 2014* version of NEMS. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

DOE has historically presented NES in terms of primary energy savings. In the case of electricity use and savings, this quantity includes the energy consumed by power plants to generate delivered (site) electricity.

In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012).

a. Forecasted Efficiency in the Base Case and Standards Cases

A key component of the NIA is the trend in energy efficiency forecasted for the base case (without new or amended standards) and each of the standards cases. Section IV.F.9 of this notice describes how DOE developed a base-case energy efficiency distribution (which yields a shipment-weighted average efficiency) for each of the considered product classes for the first year of the forecast period. To project the trend in efficiency for standard residential dishwashers over the entire forecast period, DOE utilized the historical trend in shipment-weighted average efficiency from 2002 to 2010, as provided by AHAM, model-weighted data from the DOE's Compliance Certification Database and considered the potential effect of programs such as ENERGY STAR. The historical trend demonstrates that the shipment-weighted average annual energy use decreased by almost 75 percent from 2002 to 2010, reaching 309 kWh/year. DOE fit an exponential function to the 2002 to 2010 data that indicated that the base-case shipment-weighted average annual energy use will asymptotically approach a value of 280 kWh/year by 2048 and remain at that level. This trend is described in chapter 10 of the NOPR TSD.

DOE determined that a roll-up scenario is most appropriate to establish the distribution of efficiencies for the year that compliance with revised residential dishwasher standards would be required. Under the ''roll-up'' scenario, DOE assumes: (1) Product efficiencies in the base case that do not meet the standard level under consideration would ''roll-up'' to meet the new standard level; and (2) product efficiencies above the standard level under consideration would not be affected. The details of DOE's approach to forecast efficiency trends are described in chapter 10 of the NOPR TSD.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers of considered appliances are: (1) Total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor. DOE calculates net savings each year as the difference between the base case and each standards case in total savings in operating costs and total increases in installed costs. DOE calculates operating cost savings over the life of each product shipped during the forecast period.

The operating cost savings are primarily energy cost savings. These are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices discussed in the preceding section by the forecast of annual national-average residential energy price changes in the Reference case from *AEO 2014,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For today's NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[45] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

a. Total Installed Cost per Unit

As discussed in section IV.F.1 of this NOPR, DOE developed a residential dishwasher price trend based on an experience rate for miscellaneous household appliances. It used this trend to forecast the prices of residential dishwashers sold in each year in the forecast period. DOE applied the same values to forecast prices for each product class at each considered efficiency level. By 2048, which is the end date of the forecast period, the price is forecasted to drop 37.4 percent relative to 2013. DOE's projection of product prices for residential dishwashers is described in further detail in appendix 10–C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price forecasts on the consumer NPV for the considered TSLs for residential dishwashers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) A high price decline case based on an exponential fit using PPI data for 1988 to 2013; (2) a low price decline case based on an experience rate derived using PPI and shipments data for 1991 to 2000. The derivation of these price trends and the results of these sensitivity cases are described in

[45] OMB Circular A–4 (Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs. Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html.*

appendix 10–C of the NOPR TSD. In the high price decline case, the NPV is significantly higher than in the default case. In the low price decline case, the NPV is slightly lower than in the default case. The rank order of the TSLs is the same in all of the cases.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a national standard. DOE evaluated impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this rulemaking, DOE analyzed the impacts of the considered standard levels on low-income households and senior-only households. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

The following sections address the various steps taken to analyze the impacts of the amended standards on manufacturers.

1. Overview

In determining whether an amended energy conservation standard for residential dishwashers is economically justified, DOE is required to consider ''the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(I)) The statute also calls for an assessment of the impact of any lessening of competition that is likely to result from the adoption of a standard as determined by the Attorney General. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE conducted the MIA to estimate the financial impact of amended energy conservation standards on manufacturers, and to assess the impacts of such standards on employment and manufacturing capacity.

The MIA involves both quantitative analysis and qualitative evaluation. The quantitative elements of the MIA rely on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for this rulemaking. See section IV.J.2 of this notice for details on the GRIM. The qualitative parts of the MIA address factors such as product characteristics, characteristics of particular firms, and market trends. The complete MIA is discussed in chapter 12 of the NOPR TSD. DOE conducted the MIA in the three phases described below.

a. Phase 1, Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the residential dishwasher manufacturing industry based on the market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the present and past market structure and characteristics of the industry, tracking trends in market share data, product attributes, product shipments, manufacturer markups, and the cost structure for various manufacturers.

The profile also included an analysis of manufacturers in the industry using Security and Exchange Commission 10–K filings,[46] Standard & Poor's stock reports,[47] and corporate annual reports released by both public and privately held companies. DOE used this and other publicly available information to derive preliminary financial inputs for the GRIM including industry revenues, cost of goods sold, and depreciation, as well as selling, general, and administrative (SG&A), and research and development (R&D) expenses. Based on its analysis, DOE used the same industry average financial parameters developed in support of the May 2012 direct final rule.

b. Phase 2, Industry Cash Flow Analysis

Phase 2 focused on the financial impacts of potential amended energy conservation standards on the industry as a whole. Amended energy conservation standards can affect manufacturer cash flows in three distinct ways: (1) By creating a need for increased investment, (2) by raising production costs per unit, and (3) by altering revenue due to higher per-unit prices and/or possible changes in sales volumes. DOE used the GRIM to model these effects in a cash-flow analysis of the residential dishwasher manufacturing industry. In performing this analysis, DOE used the financial parameters from the 2012 residential dishwasher energy conservation standards rulemaking, the cost-efficiency curves from the engineering analysis, and the shipment assumptions from the NIA.

c. Phase 3, Sub-Group Impact Analysis

Using average cost assumptions to develop an industry-cash-flow estimate may not adequately assess differential impacts of amended energy conservation standards among manufacturer subgroups. For example, small businesses, manufacturers of niche products, or companies exhibiting a cost structure that differs significantly from the industry average could be more negatively affected. While DOE did not identify any other subgroup of manufacturers of residential dishwashers that would warrant a separate analysis, DOE specifically investigated impacts on small business manufacturers. See section VI.B of this notice for more information.

The MIA also addresses the direct impact on employment tied to the manufacturing of residential dishwashers. Using the GRIM, census data and information gained through manufacturer interviews conducted in support of the May 2012 direct final rule, DOE estimated the domestic labor expenditures and number of domestic production workers in the base case and at each TSL from 2014 to 2048.

2. GRIM

DOE uses the GRIM to quantify the changes in cash flow that alter industry value. The GRIM is a standard, discounted cash-flow model that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs, and models changes in manufacturing costs, shipments, investments, and margins that may result from amended energy conservation standards. The GRIM uses these inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2014, and continuing to 2048. DOE uses the industry-average weighted-average cost of capital (WACC) of 8.5 percent, as this represents the minimum rate of return necessary to cover the debt and equity obligations manufacturers use to finance operations.

DOE used the GRIM to compare INPV in the base case with INPV at various TSLs (the standards cases). The difference in INPV between the base and standards cases represents the financial impact of the amended standard on manufacturers. Additional details about the GRIM can be found in chapter 12 of the NOPR TSD.

a. GRIM Key Inputs

Manufacturer Production Costs

Changes in the MPCs of residential dishwashers can affect revenues, gross margins, and cash flow of the industry, making product cost data key inputs for DOE's analysis. DOE estimated the MPCs for standard and compact product classes at the baseline and higher efficiency levels, as described in section IV.C of this notice. The cost model also disaggregated the MPCs into the cost of materials, labor, overhead, and

[46] Available online at *www.sec.gov*.

[47] Available online at *www.standardandpoors.com*.

depreciation. DOE used the MPCs and cost breakdowns as described in section IV.C of this NOPR, and further detailed in chapter 5 of the NOPR TSD, for each efficiency level analyzed in the GRIM.

Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues in each year of the forecast based in part on total unit shipments and the distribution of these values by efficiency level and product class. Changes in the efficiency mix and total shipments at each standard level affect manufacturer finances. For this analysis, the GRIM uses the NIA shipments forecasts from 2013 to 2048, the end of the analysis period.

To calculate shipments, DOE developed a shipments model for each product class based on an analysis of key market drivers for residential dishwashers. For greater detail on the shipments analysis, see section IV.G of this NOPR and chapter 9 of the NOPR TSD.

Product and Capital Conversion Costs

Amended energy conservation standards may cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. For the MIA, DOE classified these costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs focused on making product designs comply with the amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment needed to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

DOE's estimates of the product and capital conversion costs for the residential dishwasher manufacturing industry can be found in section V.B.2 of this NOPR and in chapter 12 of the NOPR TSD.

b. GRIM Scenarios

Standards-Case Shipments Forecasts

The MIA results presented in section V.B.2 of this NOPR all use shipments from the NIA in the GRIM. For standards case shipments, DOE assumed that base-case shipments of products that did not meet the new standard would roll up to meet the standard in the compliance year. These forecasts also include the impact of relative price elasticity on shipment volumes. In this regard the balance of first costs and operating costs factor into the total shipments in the standards case. See section IV.G of this NOPR for a description of the standards-case efficiency distributions.

The NIA also used historical data to derive a price scaling index to forecast product costs. The MPCs and MSPs in the GRIM use the default price forecast for all scenarios. See section IV.F.1 of this notice for a discussion of DOE's price forecasting methodology.

Capital Conversion Cost Scenarios

DOE developed two model scenarios for the capital conversion costs required to meet each TSL. One scenario is based on the capital conversion costs developed for the energy conservation standards from the May 2012 direct final rule, scaled to reflect the new efficiency levels for each product class considered in this NOPR. Additionally, DOE developed a separate capital conversion cost scenario using the engineering cost model. For this estimate, DOE identified the design pathways considered in the engineering analysis, estimated the cost of the changes in production equipment to implement each design option, and aggregated these costs to reflect the industry-wide investment using market information about the number of platform and product families currently on the market from each manufacturer.

Markup Scenarios

MSP is equal to MPC times a manufacturer markup. The MSP includes direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. DOE used the baseline manufacturer markup, 1.24, developed for the May 2012 direct final rule for all products when modeling the base case in the GRIM.

For the standards case in the GRIM, DOE modeled two markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards. For both GRIM markup scenarios, DOE placed no premium on higher efficiency products. This assumption is informed by a market structure in which 88 percent of product shipments currently adhere to ENERGY STAR standards, leaving little to no room for differentiation by efficiency level alone. The two standards-case markup scenarios are (1) a preservation of gross margin as a percentage of revenues markup scenario, and (2) a preservation of earnings before interest and taxes (EBIT) markup scenario. Modifying these markups from the base case to the standards cases yields different sets of impacts on industry revenues and cash flow.

The preservation of gross margin as a percentage of revenues markup scenario assumes that the baseline markup of 1.24 is maintained for all products in the standards case. This scenario represents the upper bound of industry profitability as manufacturers are able to fully pass through additional costs due to standards to their customers under this scenario.

The preservation of EBIT markup scenario is similar to the preservation of gross margin as a percentage of revenues markup scenario with the exception that in the standards case, minimally compliant products lose a fraction of the baseline markup. This scenario represents the lower bound profitability and a more substantial impact on the dishwasher industry as manufacturers accept a lower margin in an attempt to offer price competitive entry level products while maintaining the same level of EBIT they saw prior to amended standards.

3. Manufacturer Interviews

For this rulemaking, DOE relies on information gathered from manufacturer interviews conducted in support of the May 2012 direct final rule. For that rulemaking, DOE interviewed manufacturers representing more than 80 percent of residential dishwasher sales. These interviews were in addition to those DOE conducted as part of the engineering analysis for the May 2012 direct final rule. DOE used these interviews to tailor the GRIM for today's rule to incorporate unique financial characteristics of the industry. All interviews provided information that DOE used to evaluate the impacts of potential amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels. See appendix 12–A of the NOPR TSD for additional information on the previous MIA interviews. The following sections describe the most significant issues identified by manufacturers during the interviews conducted in support of the May 2012 direct final rule.

a. Dishwasher Performance

All manufacturers interviewed expressed concerns about the potential impacts of amended standards on product performance, citing several adverse consequences of standards above those agreed upon in the Joint Petition. For higher efficiency standards, the performance metrics

manufacturers expected to be most severely impacted include wash performance, drying performance, cycle time, and the noise levels reached in operation. In considering these metrics, manufacturers anticipated negative reactions ranging from small but meaningful changes in consumer behavior to higher rates of service calls and returns. For efficiency standards well above those proposed in the Joint Petition, manufacturers expected blanket rejection of poorly performing products in the market. In considering impacts to wash performance, manufacturers cited an increase in unnecessary rinsing or washing of dishes prior to loading the dishwasher, switching to a more aggressive cycle, and running multiple cycles when dishes are not adequately cleaned in a single cycle as the most likely changes in consumer behavior. Manufacturers suggested that any of these changes would result in an increase in both energy and water consumption over that used by a dishwasher of satisfactory performance. To mitigate the impact of future standards on product performance, several manufacturers recommended the adoption of a performance metric into the test procedure and standard.

While all manufacturers suggested that the efficiency level specified in the Joint Petition would not likely have a substantial negative impact on wash performance, some manufacturers noted that standards above this level would result in a decrease in performance unless substantially higher-cost technology changes were implemented. The comments did not indicate the specific technology changes that would be required. Even without such technology changes, however, several manufacturers offer or have offered products at efficiency levels above those specified by the Joint Petition, including the max-tech efficiency level identified in today's proposed rule. Accordingly, DOE evaluated these higher efficiency levels as part of this rulemaking.

DOE conducted investigative testing to assess cleaning performance in support of this NOPR according to the ENERGY STAR Test Method for Determining Dishwasher Cleaning Performance (Cleaning Performance Test Method).[48] The testing included multiple units from different manufacturers at multiple efficiency levels. Based on this internal testing and the availability of products on the market, DOE determined that products from the baseline efficiency level to Efficiency Level 3 for standard residential dishwashers are able to maintain cleaning performance.

b. Test Procedures

During interviews conducted as part of the development of the May 2012 direct final rule for residential dishwashers, manufacturers raised concerns over the DOE dishwasher test procedure and the multitude of additional dishwasher test procedures in the field at that time. Several manufacturers suggested that the DOE test procedure did not accurately capture the energy used by dishwashers in the field. These manufacturers cited the single cycle specification and lack of performance metrics in the test procedure as providing an easy avenue for circumvention of the standards. In the scenario described, manufacturers could optimize a particular cycle to perform well on the DOE test procedure with the implicit understanding that this cycle will not meet customer expectations and thus will not be used in the field as customers opt for a different, more energy-intensive cycle.

In contrast, other manufacturers raised concerns over expanding the test procedure to cover multiple cycles, citing the additional testing burden this would generate. Similarly, some manufacturers raised concerns over how DOE would implement a performance test, noting that there already exist numerous performance tests in the industry including those developed by AHAM, IEC, and Consumer Reports and that each performance test procedure favors a different machine cycle algorithm.

As discussed in sections II.A and II.B.3 of this NOPR, the DOE test procedure for residential dishwashers is found at Title 10 of CFR part 430, subpart B, appendix C1 (proposed to be redesignated as appendix C in this rulemaking). Although appendix C1 does not include provisions for measuring cleaning performance, the ENERGY STAR program recently finalized the Cleaning Performance Test Method. The Cleaning Performance Test Method harmonizes with the procedures in appendix C1, requiring manufacturers to test on the same cycles. Appendix C1 also requires that testing be conducted on the cycles recommended for completely washing a full load of normally soiled dishes.

c. Increased Competition

During interviews conducted in support of the May 2012 direct final rule, manufacturers of both baseline and high efficiency products anticipated an increase in competition in industry stemming from amended standards. Manufacturers whose market share was largely attributed to baseline products expected to see either the removal of features from higher efficiency units as a means to cut costs to maintain a low-cost minimally-compliant product, or the disappearance of entry-level models as they are forced to add other features and cost in line with current higher efficiency products. If the latter approach prevails, manufacturers of higher efficiency products expected to see increased competition as manufacturers that previously focused on low efficiency products moved into their target segment of the market. As noted in section III.D.1.c of this NOPR, the Attorney General provides DOE with a determination and analysis of the impact of any lessening of competition that is likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

d. Cumulative Regulatory Burden

During interviews conducted in support of the May 2012 direct final rule, several manufacturers noted that residential dishwashers are but one of a suite of appliances they produce and that the cumulative burden of research and development to meet standards, capital expenditures and retraining of staff to produce products at the new standards, and product testing to certify compliance of new products represent a significant burden when taken in combination across their various product lines. Manufacturers suggested that the ability to establish standards in a coordinated fashion by such vehicles as the Joint Petition and receiving adequate notice of DOE's plans for amended standards are both necessary elements in mitigating the cumulative burden and aligning changes in efficiency regulations with the product development cycle. Cumulative regulatory burden is discussed further in section V.B.2.e of this NOPR and chapter 12 of the NOPR TSD.

K. Emissions Analysis

In the emissions analysis, DOE estimates the reduction in power sector emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and mercury (Hg) from potential energy conservation standards for residential dishwashers. In addition to estimating impacts of standards on power sector emissions, DOE estimates emissions impacts in production activities (extracting, processing, and transporting fuels) that provide the energy inputs to power plants. These are referred to as ''upstream'' emissions. Together, these emissions account for the FFC. In accordance with DOE's FFC

[48] * * *

Statement of Policy (76 FR 51281 (Aug. 18, 2011) as amended at 77 FR 49701 (August 17, 2012)), the FFC analysis also includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as greenhouse gases.

DOE primarily conducted the emissions analysis using emissions factors for CO_2 and most of the other gases derived from data in *AEO 2014.* Combustion emissions of CH_4 and N_2O were estimated using emissions intensity factors published by the Environmental Protection Agency (EPA) in its Greenhouse Gas (GHG) Emissions Factors Hub.[49] DOE developed separate emissions factors for power sector emissions and upstream emissions. The method that DOE used to derive emissions factors is described in chapter 13 of the NOPR TSD.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of the greenhouse gas by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[50] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

EIA prepares the *AEO* using NEMS. Each annual version of NEMS incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2014* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2013.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR, which created an allowance-based trading program that operates along with the Title IV program, was remanded to the EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[51] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (Aug. 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR.[52] The court ordered EPA to continue administering CAIR. The emissions factors used for today's NOPR, which are based on *AEO 2014,* assume that CAIR remains a binding regulation through 2040.[53]

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Beginning in 2016, however, SO_2 emissions will decline significantly as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2014* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that energy efficiency standards will reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[54] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in today's NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps. DOE estimated mercury emissions using emissions factors based on *AEO 2014,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this NOPR.

For today's NOPR, DOE relied on a set of values for the SCC that was developed by a Federal interagency process. The basis for these values is summarized below, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from

[49] See *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[50] IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[51] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[52] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[53] On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion. The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain states due to their impacts in other downwind states was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR. See *EPA* v. *EME Homer City Generation,* No 12–1182, slip op. at 32 (U.S. April 29, 2014). Because DOE is using emissions factors based on *AEO 2014* for today's NOPR, the NOPR assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of SO_2 emissions.

[54] CSAPR also applies to NO_X, and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X is slight.

increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council [55] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[56] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.11 presents the values in the 2010 interagency group report,[57] which is

[55] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use* (2009). National Academies Press: Washington, DC.

[56] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[57] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at:

Continued

reproduced in appendix 14–A of the NOPR TSD.

TABLE IV.11—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

(2007$ per metric ton CO_2)

Year	Discount Rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for today's notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature.[58]

Table IV.12 shows the updated sets of SCC estimates in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14–B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.12—ANNUAL SCC VALUES FROM 2013 INTERAGENCY REPORT, 2010–2050

(2007$ per metric ton CO_2)

Year	Discount Rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	11	32	51	89
2015	11	37	57	109
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2050	26	71	97	220

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The 2009 National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report adjusted to 2013$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. For each of the four sets of SCC values, the values for emissions in 2015 were $12.0, $40.5, $62.4, and $119 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the

www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf).

[58] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

As noted above, DOE has taken into account how amended energy conservation standards would reduce site NO_X emissions nationwide and increase power sector NO_X emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of net NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing NO_X from stationary sources range from $476 to $4,893 per ton in 2013$.[59] DOE calculated monetary benefits using a medium value for NO_X emissions of $2,684 per short ton (in 2013$), and real discount rates of 3 percent and 7 percent.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the power generation industry that would result from the adoption of new or amended energy conservation standards. In the utility impact analysis, DOE analyzes the changes in installed electrical capacity and generation that would result for each trial standard level. The utility impact analysis is based on published output from NEMS, which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. Each year, NEMS is updated to produce the AEO reference case as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses those published side cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of energy savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards. Chapter 15 of the NOPR TSD describes the utility impact analysis in further detail.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[60] The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[61] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from amended standards for residential dishwashers.

For the amended standard levels considered in this NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[62] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rulemaking. Because ImSET predicts small job impacts resulting from this rulemaking, regardless of these uncertainties, the actual job impacts are likely to be negligible in the overall economy. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential energy conservation standards for residential dishwashers for both product classes. It addresses the TSLs examined by DOE and the projected impacts of each of these levels if adopted as energy conservation standards for residential dishwashers. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this notice.

[59] U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2006) (Available at: *www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf*).

[60] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.* Available at: *www.bls.gov/news.release/prin1.nr0.htm.*

[61] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* Washington, DC. U.S. Department of Commerce, 1992.

[62] J.M. Roop, M.J. Scott, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory, 2009. Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL–18412.pdf*

A. Trial Standard Levels

DOE analyzed the benefits and burdens of three TSLs for residential dishwashers. These TSLs were developed using combinations of efficiency levels for the standard and compact product classes analyzed by DOE. DOE presents the results for those TSLs in today's rule. DOE presents the results for all efficiency levels that it analyzed in the NOPR TSD. Table V.1 presents the TSLs and the corresponding efficiency levels for residential dishwashers. TSL 3 represents the maximum technologically feasible (''max-tech'') improvements in energy efficiency for both standard and compact residential dishwashers. TSL 2 consists of the next efficiency level below the max-tech level for both standard and compact residential dishwashers. TSL 1 consists of the first efficiency level considered above the baseline for standard residential dishwashers, and the baseline level for compacts.

TABLE V.1—TRIAL STANDARD LEVELS FOR RESIDENTIAL DISHWASHERS

TSL	Standard		Compact	
	CSL	Annual energy use (*kWh*)	CSL	Annual energy use (*kWh*)
1	1	295	Baseline	222
2	3	234	1	203
3	4	180	2	141

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on residential dishwasher consumers by looking at the effects potential amended standards would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of potential amended energy conservation standards on consumers of residential dishwashers, DOE conducted LCC and PBP analyses for each TSL. In general, higher-efficiency products would affect consumers in two ways: (1) Purchase price would increase, and (2) annual operating costs would decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate.

Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the LCC and PBP results for all efficiency levels considered for both standard and compact residential dishwashers. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second tables, the LCC savings are measured relative to the base-case efficiency distribution in the compliance year (see section IV.F.9 of this NOPR). No impacts occur when the base-case efficiency for a specific consumer equals or exceeds the efficiency at a given TSL; a standard would have no effect because the product installed would be at or above that standard level without amended standards.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD RESIDENTIAL DISHWASHERS

TSL	Efficiency level	Average costs *2013$*				Simple payback *years*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
—	0	483	45	518	1,000	—
1	1	495	43	492	987	6.1
—	2	531	40	462	993	10.8
2	3	582	34	387	970	9.0
3	4	582	26	296	879	5.3

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR STANDARD RESIDENTIAL DISHWASHERS

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	*2013$*
1	1	6	2
—	2	39	−2
2	3	53	21

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR STANDARD RESIDENTIAL DISHWASHERS—Continued

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	*2013$*
3	4	33	112

* The calculation includes households with zero LCC savings (no impact).

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR COMPACT RESIDENTIAL DISHWASHERS

TSL	Efficiency level	Average costs *2013$*				Simple payback *years*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
1	0	456	26	302	758	.....
2	1	467	24	274	741	4.5
3	2	485	16	188	673	2.9

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR COMPACT RESIDENTIAL DISHWASHERS

TSL	Efficiency level	Life-cycle cost savings	
		% of consumers that experience	Average savings *
		Net cost	*2013*
1	0	.....	.....
2	1	9	8
3	2	6	51

Note: The calculation includes households with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

As described in section IV.I of this notice, DOE determined the impact of the considered TSLs on low-income households and senior-only households.[63] Table V.6 compares the average LCC savings at each efficiency level for the two consumer subgroups, along with the average LCC savings for the entire sample for each product class for residential dishwashers. The average LCC savings for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the two subgroups.

TABLE V.6—STANDARD RESIDENTIAL DISHWASHERS: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (*2013$*)			Simple payback period (*years*)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	2	1	2	6.2	8.4	6.1
2	15	1	21	9.5	11.6	9.0
3	100	71	112	5.6	6.8	5.3

[63] DOE did not analyze subgroup impacts for compact dishwashers because the saturation of these products is extremely small.

c. Rebuttable Presumption Payback

As discussed above, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy and water savings resulting from the standard. In calculating a rebuttable presumption payback period for the considered standard levels, DOE used discrete values rather than distributions for input values, and, as required by EPCA, based the energy and water use calculation on the DOE test procedures for residential dishwashers. As a result, DOE calculated a single rebuttable presumption payback value, and not a distribution of payback periods, for each efficiency level. Table V.7 presents the rebuttable-presumption payback periods for the considered TSLs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this proposed rule are economically justified through a more detailed analysis of the economic impacts of those levels pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

TABLE V.7—RESIDENTIAL DISHWASHERS: REBUTTABLE PBPS

Product class	Trial standard level		
	1	2	3
Standard (*years*)	3.9	7.1	4.2
Compact (*years*)	.....	3.1	2.0

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of residential dishwashers. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

DOE modeled two scenarios using different markup assumptions and two scenarios using different conversion cost assumptions for a total of four different scenarios. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These assumptions correspond to the bounds of a range of market responses that DOE anticipates could occur in the standards case. The tables below depict the financial impacts on manufacturers (represented by changes in INPV) and the conversion costs DOE estimates manufacturers would incur at each TSL. The first two tables correspond to the scenarios using scaled estimates of the capital conversion costs from the May 2012 direct final rule with the preservation of gross margin markups and the preservation of EBIT markups respectively. The third and fourth tables correspond to the scenarios using estimates of the capital conversion from the current engineering cost model, again with the preservation of gross margin markups and the preservation of EBIT markups respectively. Those scenarios with the preservation of gross margin markups reflect the lower (less severe) bound of impacts whereas the scenarios with the preservation of EBIT markups reflect the upper (more severe) bound of impacts.

The INPV results refer to the difference in industry value between the base case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2014) through the end of the analysis period (2048). The discussion also notes the difference in cash flow between the base case and the standards case in the year before the compliance date of potential amended energy conservation standards. This figure provides an estimate of the required conversion costs relative to the cash flow generated by the industry in the base case.

TABLE V.8—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—SCALED CAPITAL CONVERSION COSTS FROM THE MAY 2012 DIRECT FINAL RULE WITH THE PRESERVATION OF GROSS MARGIN MARKUPS SCENARIO

	Units	Base case	Trial standard level		
			1	2	3
INPV	(*2013$ millions*)	586.6	507.3	483.0	426.0
Change in INPV	(*2013$ millions*)	.....	(79.2)	(103.6)	(160.5)
	(*%*)	.....	−13.5%	−17.7%	−27.4%
Product Conversion Costs	(*2013$ millions*)	.....	38.3	61.7	80.2
Capital Conversion Costs	(*2013$ millions*)	.....	79.2	172.0	236.7
Total Conversion Costs	(*2013$ millions*)	.....	117.5	233.7	316.9

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—SCALED CAPITAL CONVERSION COSTS FROM THE MAY 2012 DIRECT FINAL RULE WITH THE PRESERVATION OF EBIT MARKUPS SCENARIO

	Units	Base case	Trial standard level		
			1	2	3
INPV	(*2013$ millions*)	586.6	506.1	404.2	346.8
Change in INPV	(*2013$ millions*)	.....	(80.5)	(182.3)	(239.8)
	(*%*)	.....	−13.7%	−31.1%	−40.9%
Product Conversion Costs	(*2013$ millions*)	.....	38.3	61.7	80.2

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—SCALED CAPITAL CONVERSION COSTS FROM THE MAY 2012 DIRECT FINAL RULE WITH THE PRESERVATION OF EBIT MARKUPS SCENARIO—Continued

	Units	Base case	Trial standard level		
			1	2	3
Capital Conversion Costs	(*2013$ millions*)		79.2	172.0	236.7
Total Conversion Costs	(*2013$ millions*)		117.5	233.7	316.9

TABLE V.8—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—CAPITAL CONVERSION COSTS FROM THE 2014 ENGINEERING COST MODEL WITH THE PRESERVATION OF GROSS MARGIN MARKUPS SCENARIO

	Units	Base case	Trial standard level		
			1	2	3
INPV	(*2013$ millions*)	586.6	543.1	465.2	445.5
Change in INPV	(*2013$ millions*)		(43.5)	(121.4)	(141.1)
	(*%*)		−7.4%	−20.7%	−24.0%
Product Conversion Costs	(*2013$ millions*)		38.3	61.7	80.2
Capital Conversion Costs	(*2013$ millions*)		35.4	219.7	236.1
Total Conversion Costs	(*2013$ millions*)		73.7	281.4	316.3

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—CAPITAL CONVERSION COSTS FROM THE 2014 ENGINEERING COST MODEL WITH THE PRESERVATION OF EBIT MARKUPS SCENARIO

	Units	Base case	Trial standard level		
			1	2	3
INPV	(*2013$ millions*)	586.6	541.8	382.9	362.6
Change in INPV	(*2013$ millions*)		(44.7)	(203.7)	(224.0)
	(*%*)		−7.6%	−34.7%	−38.2%
Product Conversion Costs	(*2013$ millions*)		38.3	61.7	80.2
Capital Conversion Costs	(*2013$ millions*)		35.4	219.7	236.1
Total Conversion Costs	(*2013$ millions*)		73.7	281.4	316.3

Because standard residential dishwashers represent over 99 percent of shipments in the year leading up to amended standards, changes to this product class contribute the majority of impacts to INPV across all TSLs analyzed in this rulemaking.

At TSL 1, DOE estimates impacts on INPV to range from −$43.5 million to −$80.5 million, or a change in INPV of −7.4 percent to −13.7 percent. At this level, industry free cash flow is estimated to decrease by as much as 99.0 percent to $0.5 million, compared to the base-case value of $47.3 million in the year leading up to the amended energy conservation standards. As TSL 1 corresponds to the current ENERGY STAR criteria for standard residential dishwashers, and these products represent 88 percent of shipments in the year leading up to amended standards, only a small fraction of the market is affected at this efficiency level. In either markup scenario, the impact on INPV at TSL 1 stems largely from the conversion costs required to switch production lines from manufacturing baseline units to those meeting the standards set at Efficiency Level 1 for standard residential dishwashers.

As a large fraction of the energy used in dishwashing is associated with heating the wash water, the design options proposed to meet this efficiency level relate primarily to minimizing the amount of wash water through spray-arm optimization, filter improvements, and enabling greater control over the wash water temperature. Both of these practices are in common use in higher efficiency platforms across the industry and contribute to an MPC of $213.24 for standard dishwashers. Because the industry already produces a substantial number of products at this efficiency level, product and capital conversion costs are limited to $73.7 million based on the engineering cost model, or $117.5 million based on the scaled conversion costs taken from the May 2012 direct final rule.

At TSL 2, DOE estimates impacts on INPV to range from −$103.6 million to −$203.7 million, or a change in INPV of −17.7 percent to −34.7 percent. At this level, industry free cash flow is estimated to decrease by as much as 247.1 percent to −$69.6 million, compared to the base-case value of $47.3 million in the year leading up to the amended energy conservation standards.

DOE expects manufacturers would make more extensive improvements to meet TSL 2 compared to TSL 1. For standard dishwashers, these improvements include exchanging a heated drying system for a condensation drying system, further optimizing the hydraulic system (extending to a redesign of both the sump and water lines and further improvements to the filters), and incorporating a flow meter, temperature sensor, and soil sensor to finely tune water consumption, temperature, and the drying cycle. The component changes required to enable these improvements contribute to an MPC of $278.44 for standard dishwashers. For standard dishwashers, only 3.7 percent of shipments currently meet the standards specified at TSL 2. In contrast, 51.9 percent of shipments of compact dishwashers currently meet the standards specified at TSL 2. Because only a few standard residential

dishwashers currently employ these energy and water saving measures, the product and capital conversion costs for standard dishwashers rise to $223.9 million based on the scaled conversion costs taken from the May 2012 direct final rule, or $249.2 million based on the engineering cost model, as the production lines responsible for producing over 95 percent of standard product shipments would need retooling and upgrades. For manufacturers of compact dishwashers, these investments total $9.8 million based on the scaled conversion costs taken from the May 2012 direct final rule, or $32.2 million based on the engineering cost model. Accordingly, the conversion costs required to design and produce compliant standard dishwashers contribute to the majority of impacts on INPV at TSL 2.

At TSL 3, DOE estimates impacts on INPV to range from −141.1 million to −$239.8 million, or a change in INPV of −24.0 percent to −40.9 percent. At this level, industry free cash flow is estimated to decrease by as much as 274.7 percent to −$82.6 million, compared to the base-case value of $47.3 million in the year leading up to the amended energy conservation standards. The impact to INPV is most severe at TSL 3 as less than 1 percent of shipments in the year leading up to amended standards meet this efficiency level. Only 0.4 percent of standard dishwasher shipments and 37.0 percent of compact dishwasher shipments currently meet the standards specified at TSL 3. As such, standards at TSL 3 would affect nearly all platforms and will result in substantial capital conversion costs associated with improvements to nearly all production facilities. Because so few products exist at this level, nearly all manufacturers would face complete redesigns for products to meet this standard. Accordingly, the product conversion costs increase to reflect this substantial research effort. The capital and product conversion costs required to bring products into compliance rise to a total of $316.9 million based on the scaled conversion costs taken from the May 2012 direct final rule, or $316.3 million based on the engineering cost model. Production lines responsible for producing over 99 percent of product shipments would need retooling and upgrades at TSL 3. The conversion costs at TSL 3 stem from both the research programs needed to develop such optimized products and the capital investment required to change over production lines responsible for producing over 99 percent of product shipments.

DOE expects manufacturers of standard residential dishwashers would incorporate similar design options at TSL 3 as at TSL 2, extended to include more highly optimized control strategies that would further reduce the wash and rinse water temperatures. Although the component changes required to enable these improvements contribute to the same MPC of $278.44 for standard dishwashers at TSL 3 as for TSL 2, the levels specified at TSL 3 significantly impact INPV because of the larger conversion costs associated with developing and producing these highly optimized products. For compact residential dishwashers, moving from TSL 2 to TSL 3 would require significant changes to the portion of the market that is not currently at the max-tech efficiency level. These changes would result in a range of INPV impacts for compact manufacturers ranging from −241 percent to −1,262 percent. Because these impacts are attributed to manufacturers of baseline compact residential dishwashers in the countertop configuration, DOE expects that manufacturers would exit the market for these products at TSL 3.

b. Impacts on Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each TSL from 2014 to 2048. DOE used the labor content of each product and the MPCs from the engineering analysis to estimate the total annual labor expenditures associated with residential dishwashers sold in the United States. Using statistical data from the most recent U.S. Census Bureau's 2011 ''Annual Survey of Manufactures'' (ASM) and interviews with manufacturers from the May 2012 direct final rule, DOE estimates that 95 percent of residential dishwashers sold in the United States are manufactured domestically and hence that portion of total labor expenditures is attributable to domestic labor. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

Using the GRIM, DOE forecasts the domestic labor expenditure for residential dishwasher production labor in 2019 will be approximately $290.7 million. Using the $27.17 hourly wage rate including fringe benefits and 2,042 production hours per year per employee found in the 2011 *ASM,* DOE estimates there will be approximately 5,240 domestic production workers involved in manufacturing residential dishwashers in 2019, the year in which any amended standards would go into effect. In addition, DOE estimates that 1,250 non-production employees in the United States will support residential dishwasher production. The employment spreadsheet of the residential dishwasher GRIM shows the annual domestic employment impacts in further detail.

The production worker estimates in this section cover workers only up to the line-supervisor level who are directly involved in fabricating and assembling dishwashers within an Original Equipment Manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as material handling with a forklift, are also included as production labor. Additionally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 13 of the NOPR TSD.

Table V.10 depicts the potential levels of production employment that could result following amended energy conservation standards as calculated by the GRIM. The employment levels shown reflect the scenario in which manufacturers continue to produce the same scope of covered products in domestic facilities and domestic production is not shifted to lower-labor-cost countries. If all existing production were moved outside of the United States, the expected impact to domestic manufacturing employment would be a loss of 5,240 jobs, the equivalent of the total base-case domestic production employment. Because there is a risk of manufacturers evaluating sourcing decisions in response to amended energy conservation standards, the expected impact to domestic production employment falls between the potential increases as shown in Table V.10, and the levels of job loss associated with all domestic manufacturing of residential dishwashers moving outside of the United States. The discussion below includes a qualitative evaluation of the likelihood of negative domestic production employment impacts at the various TSLs.

TABLE V.10—TOTAL NUMBER OF DOMESTIC RESIDENTIAL DISHWASHER PRODUCTION WORKERS IN 2019

	Base case	Trial standard level		
		1	2	3
Total Number of Domestic Production Workers in 2019 (without changes in production locations)	5,240	5,252	5,426	5,485

The design options specified at some higher ELs increase the labor content (measured in dollars) of standard residential dishwashers by as much as 17 percent. All examined TSLs show modest gains in domestic manufacturing employment levels provided manufacturers do not relocate production facilities outside of the United States. However, at higher TSLs, some of the design options analyzed greatly impact the ability of manufacturers to make product changes within existing platforms. Because of the higher labor content, the very large upfront capital costs, and the fact that so few existing units meet the standards proposed in this NOPR, some manufacturers may consider relocating some or all of their domestic production of residential dishwashers to lower labor cost countries.

c. Impacts on Manufacturing Capacity

Less than 5 percent of shipments of residential dishwashers already comply with the amended energy conservation standards proposed in this rulemaking. Not every manufacturer that ships standard residential dishwashers offers products that meet these amended energy conservation standards. Because manufacturers would need to make substantial platform changes by the 2019 compliance date, many would have to run parallel production between the announcement of the final rule and the compliance date. This requirement may impact manufacturing capacity during this interim period. DOE seeks additional comment on the impact to manufacturing capacity between the issuance date and the compliance date of any amended energy conservation standards for residential dishwashers.

d. Impacts on Sub-Groups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE examined the potential for disproportionate impacts on small business manufacturers, as discussed in section VI.B of this NOPR. DOE did not identify any other manufacturer subgroups for this rulemaking.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its energy conservation standards rulemakings.

In interviews conducted in support of the May 2012 direct final rule, manufacturers provided comments on some of these regulations. DOE summarized and addressed these comments in section IV.J.3 of this NOPR. For the cumulative regulatory burden, DOE attempts to quantify or describe the impacts of other Federal regulations that have a compliance date within approximately 3 years of the compliance date of this rulemaking. Most of the major regulations identified by DOE that meet this criterion are other energy conservation standards for products and equipment also made by manufacturers of residential dishwashers. See chapter 12 of the NOPR TSD for the results of DOE's analysis of the cumulative regulatory burden.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for residential dishwashers, DOE compared the energy consumption of those products under the base case to their anticipated energy consumption under each TSL. Table V.11 presents DOE's projections of the national energy savings and national water savings for each TSL considered for residential dishwashers. The savings were calculated using the approach described in section IV.H.1 of this NOPR.

TABLE V.11—RESIDENTIAL DISHWASHERS (FOR STANDARD AND COMPACT PRODUCT CLASSES): CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS (2019–2048)

Savings	Trial standard level		
	1	2	3
Source Energy Savings (*quads*)	0.00	1.00	2.39
FFC Energy Savings (*quads*)	0.01	1.06	2.53
Water Savings (*trillion gallons*)	0.03	0.24	0.99

OMB Circular A–4 [64] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of

[64] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[65] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to residential dishwashers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.12. The impacts are counted over the lifetime of residential dishwashers purchased in 2019–2027.

TABLE V.12—RESIDENTIAL DISHWASHERS (FOR STANDARD AND COMPACT PRODUCT CLASSES): CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027

Savings	Trial standard level		
	1	2	3
Source Energy Savings (*quads*)	0.00	0.27	0.68
FFC Energy Savings (*quads*)	0.00	0.28	0.72
Water (*trillion gallons*)	0.01	0.05	0.27

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV to the nation of the total costs and savings for consumers that would result from particular standard levels for residential dishwashers. In accordance with the OMB's guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V.13 shows the consumer NPV results for each TSL DOE considered for residential dishwashers. The impacts are counted over the lifetime of products purchased in 2019–2048.

TABLE V.13—RESIDENTIAL DISHWASHERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2048

Discount rate	Trial standard level		
	1	2	3
	Billion 2013$		
3 percent	0.15	2.14	15.7
7 percent	0.05	0.23	5.56

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.14. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, such results are presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.14—RESIDENTIAL DISHWASHERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2027

Discount rate	Trial standard level		
	1	2	3
	Billion 2013$		
3 percent	0.06	0.13	4.96
7 percent	0.03	−0.14	2.43

The above results reflect the use of a default trend to estimate the change in price for residential dishwashers over the analysis period (see section IV.F.1 of this NOPR). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10–C of the NOPR TSD.

[65] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

c. Impacts on Employment

DOE develops estimates of the indirect employment impacts of potential standards on the economy in general. As discussed above, DOE expects energy conservation standards for residential dishwashers to reduce energy bills for consumers of those products, and the resulting net savings to be redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this NOPR, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced.

The results suggest that today's standards are likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results.

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this proposed rule, discussed in section IV.C.1.b, DOE concluded that the TSL proposed in this NOPR would not reduce the utility or performance of the residential dishwashers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed today's standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to DOE, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

DOE will transmit a copy of today's NOPR and the accompanying TSD to the Attorney General, requesting that the DOJ provide its determination on this issue. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed with the proposed energy conservation standards. DOE will also publish and respond to DOJ's comments in the **Federal Register** in a separate notice.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the nation's energy security, strengthens the economy, and reduces the environmental impacts or costs of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in generating capacity for the TSLs that DOE considered in this rulemaking.

Energy savings from amended standards for residential dishwashers could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.15 provides DOE's estimate of cumulative emissions reductions to result from the TSLs considered in this rulemaking. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.15—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048

	Trial standard level		
	1	2	3
Power Sector and Site Emissions			
CO_2 (*million metric tons*)	0.2	57.9	137.5
SO_2 (*thousand tons*)	−0.4	42.4	98.1
NO_X (*thousand tons*)	2.3	68.9	171.0
Hg (*tons*)	0.0	0.1	0.3
N_2O (*thousand tons*)	0.0	0.7	1.7
CH_4 (*thousand tons*)	0.0	5.0	11.7
Upstream Emissions			
CO_2 (*million metric tons*)	0.1	4.0	9.7
SO_2 (*thousand tons*)	0.0	0.5	1.2
NO_X (*thousand tons*)	1.2	57.8	141.6
Hg (*tons*)	0.0	0.0	0.0
N_2O (*thousand tons*)	0.0	0.0	0.1
CH_4 (*thousand tons*)	7.1	340.1	834.5
Total FFC Emissions			
CO_2 (*million metric tons*)	0.3	61.9	147.2
SO_2 (*thousand tons*)	−0.4	42.9	99.4
NO_X (*thousand tons*)	3.4	126.7	312.6
Hg (*tons*)	0.0	0.1	0.3
N_2O (*thousand tons*)	0.0	0.7	1.7
N_2O (*thousand tons* CO_2*eq*)*	−1.2	196.9	462.3
CH_4 (*thousand tons*)	7.0	345.1	846.2

TABLE V.15—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS FOR PRODUCTS SHIPPED IN 2019–2048—Continued

	Trial standard level		
	1	2	3
CH_4 (*thousand tons CO_2eq*)*	197.3	9,663.4	23,693.2

* CO_2eq is the quantity of CO_2 that would have the same GWP.
Negative values refer to an increase in emissions.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for residential dishwashers. As discussed in section IV.L of this notice, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2013$) are represented by $12.0/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.5/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.4/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $119/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (emissions-related costs) as the projected magnitude of climate change increases.

Table V.16 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.16—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS

TSL	SCC Case*			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
	Million 2013$			
Site and Power Sector Emissions				
1	1.7	7.7	12.1	23.9
2	400.3	1,849.1	2,936.9	5,724.7
3	901.5	4,245.7	6,772.6	13,138.4
Upstream Emissions				
1	0.5	2.4	3.8	7.4
2	27.1	125.8	200.0	389.8
3	62.4	296.1	473.1	917.1
Total FFC Emissions				
1	2.3	10.1	15.9	31.3
2	427.4	1,974.9	3,136.9	6,114.5
3	963.8	4,541.8	7,245.7	14,056.0

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reducing CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for residential dishwashers. The dollar-per-ton values that DOE used are discussed in section IV.L of this notice. Table V.17 presents the cumulative present values for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.17—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER RESIDENTIAL DISHWASHERS TRIAL STANDARD LEVELS

TSL	3% discount rate	7% discount rate
	*Million 2013$ **	
Power Sector and Site Emissions		
1	3.2	1.6
2	95.5	44.4
3	221.4	98.5
Upstream Emissions		
1	1.7	0.8
2	77.9	34.8
3	178.9	76.9
Total FFC Emissions		
1	4.9	2.4
2	173.3	79.2
3	400.3	175.4

* Negative values refer to an increase in emissions.

7. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this rulemaking. Table V.18 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of customer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.18—NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Customer NPV at 3% discount rate added with:			
	SCC case $12.0/ metric ton CO_2* and medium value for NO_X	SCC case $40.5/ metric ton CO_2* and medium value for NO_X	SCC case $62.4/ metric ton CO_2* and medium value for NO_X	SCC case $119/ metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	0.2	0.2	0.2	0.2
2	2.7	4.3	5.5	8.4
3	17.1	20.6	23.3	30.2
TSL	Customer NPV at 7% discount rate added with:			
	SCC case $12.0/ metric ton CO_2* and medium value for NO_X	SCC case $40.5/ metric ton CO_2* and medium value for NO_X	SCC case $62.4/ metric ton CO_2* and medium value for NO_X	SCC case $119/ metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	0.1	0.1	0.1	0.1
2	0.7	2.3	3.4	6.4
3	6.7	10.3	13.0	19.8

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$).

Although adding the value of customer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2019 to 2048. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

8. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) DOE did not consider any other factors for this NOPR.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

The Department considered the impacts of standards at each TSL, beginning with a maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then

considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each trial standard level, tables present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. Those include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard. Section IV.I of this notice presents the estimated impacts of each TSL for these subgroups.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases (for example, an inefficient ventilation fan in a new building or the delayed replacement of a water pump); (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (that is, renter versus owner; builder versus purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways: First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products used by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides detailed estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[66]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[67] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Residential Dishwashers

Table V.19 and Table V.20 summarize the quantitative impacts estimated for each TSL for residential dishwashers. The efficiency levels contained in each TSL are described in section V.A of this NOPR.

TABLE V.19—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3
Cumulative FFC Energy Savings *quads*			
	0.01	1.06	2.53
NPV of Customer Benefits *2013$ billion*			
3% discount rate	0.1	2.1	15.7
7% discount rate	0.1	0.2	5.6
Cumulative FFC Emissions Reduction			
CO_2 *million metric tons*	0.3	61.9	147.2
NO_X *thousand tons*	3.4	126.7	312.6
Hg *tons*	0.0	0.1	0.3
N_2O *thousand tons*	0.0	0.7	1.7
N_2O *thousand tons* CO_2eq*	−1.2	196.9	462.3
CH_4 *thousand tons*	7.0	345.1	846.2
CH_4 *thousand tons* CO_2eq*	197.3	9,663.4	23,693
SO_2 *thousand tons*	−0.4	42.9	99.4

[66] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies* (2005) 72, 853–883.

[67] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory. 2010. Available online at: *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf.*

TABLE V.19—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3
Value of Emissions Reduction			
CO_2 *2013$ million***	2.3 to 31.3	427.4 to 6,114.5	963.8 to 14,056
NO_X—3% discount rate *2013$ million*	4.9	173.3	400.3
NO_X—7% discount rate *2013$ million*	2.4	79.2	175.4

* CO_2eq is the quantity of CO_2 that would have the same GWP.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.20—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1 *	TSL 2 *	TSL 3 *
Manufacturer Impacts			
Impact to Industry NPV (*2013$ million, 8.5% discount rate*)	(43.5)–(80.5)	(103.6)–(203.7)	(141.1)–(239.8)
Industry NPV *(% change)*	(7.4)–(13.7)	(17.7)–(34.7)	(24.0)–(40.9)
Direct Employment Impacts			
Potential Increase in Domestic Production Workers in 2018	12	186	245
Consumer Average LCC Savings (*2013$*)			
Standard Dishwasher	2	21	112
Compact Dishwasher	n.a.	8	51
Consumer Simple PBP (*years*)			
Standard Dishwasher	6.1	9.0	5.3
Compact Dishwasher	n.a.	4.5	2.9
Distribution of Consumer LCC Impacts			
Standard Dishwasher.			
Net Cost (%)	6%	53%	33%
Compact Dishwasher.			
Net Cost (%)	n.a.	9%	6%

* Parentheses indicate negative (−) values. The entry "n.a." means not applicable because there is no change in the standard at certain TSLs.

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save 2.53 quads of energy and 0.99 trillion gallons of water, amounts DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $5.6 billion using a discount rate of 7 percent, and $15.7 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 147.2 Mt of CO_2, 312.6 thousand tons of NO_X, 99.4 thousand tons of SO_2, 0.3 tons of Hg, 1.7 thousand tons of N_2O, and 846.2 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $963.8 million to $14,056 million.

At TSL 3, the average LCC impact is a savings of $112 for standard residential dishwashers and a savings of $51 for compact residential dishwashers. The simple payback period is 5.3 years for standard residential dishwashers and 2.9 years for compact residential dishwashers. The fraction of consumers experiencing either an LCC benefit net cost is 33 percent for standard residential dishwashers and 6 percent for compact residential dishwashers.

DOE testing suggested that manufacturers may have to consider extending the cycle time in order to maintain cleaning performance in dishwashers with reduced energy and water use at TSL 3. While DOE did not modify current dishwasher designs in order to assess how long the cycle may need to be extended in order to maintain current cleaning performance, DOE is concerned that current dishwasher designs with TSL 3 energy and water use may result in consumer utility concerns.

At TSL 3, the projected change in INPV ranges from a decrease of $141.1 million to a decrease of $239.8 million, equivalent to 24.0 percent and 40.9 percent, respectively. Products that meet the efficiency standards specified by this TSL are forecast to represent less than 1 percent of shipments in the year leading up to amended standards. As such, manufacturers would have to redesign nearly all products by the expected 2019 compliance date to meet demand. Redesigning all units to meet the current max-tech efficiency levels would require considerable capital and product conversion expenditures. At TSL 3, the capital conversion costs total as much as $236.7 million, 2.5 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that complete platform redesigns would cost the industry $80.2 million in product conversion costs. These conversion costs largely relate to the extensive research programs required to develop new products that meet the efficiency standards set forth by TSL 3. These

costs are equivalent to 1.8 times the industry annual budget for research and development. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 3 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 3. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 3 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss to manufacturers of 40.9 percent of INPV. DOE also notes that the significant impacts on the INPV of compact residential dishwasher manufacturers, as discussed in V.B.2.a, would likely result in the elimination of countertop products from the market.

The Secretary tentatively concludes that at TSL 3 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential burden on all consumers from loss of product utility, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 1.06 quads of energy and 0.24 trillion gallons of water, amounts DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.2 billion using a discount rate of 7 percent, and $2.1 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 61.9 Mt of CO_2, 126.7 thousand tons of NO_X, 42.9 thousand tons of SO_2, 0.1 ton of Hg, 0.7 thousand tons of N_2O, and 345.1 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $427.4 million to $6,114.5 million.

At TSL 2, the average LCC impact is a savings of $21 for standard residential dishwashers and a savings of $8 for compact residential dishwashers. The simple payback period is 9.0 years for standard residential dishwashers and 4.5 years for compact residential dishwashers. The fraction of consumers experiencing an LCC net cost is 53 percent for standard residential dishwashers and 9 percent for compact residential dishwashers.

At TSL 2, the projected change in INPV ranges from a decrease of $103.6 million to a decrease of $203.7 million, decreases of 17.7 percent and 34.7 percent, respectively. Products that meet the efficiency standards specified by this TSL represent less than 5 percent of shipments in the year leading up to amended standards. As such, manufacturers would have to overhaul a significant fraction of products by the 2019 compliance date to meet demand, although DOE testing suggested that the design changes would not require extension of the cycle time in order to maintain cleaning performance in dishwashers at the energy and water use associated with TSL 2. Redesigning significant component systems or developing entirely new platforms to meet the efficiency levels specified by this TSL would require considerable capital and product conversion expenditures. At TSL 2, the estimated capital conversion costs total as much as $219.7 million, which is 2.3 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that the redesigns necessary to meet these standards would cost the industry $61.7 million in product conversion costs. These conversion costs largely relate to the research programs required to develop products that meet the efficiency standards set forth by TSL 2, and are 1.4 times the industry annual budget for research and development in the year leading up to amended standards. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 2 would still require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 2 would yield impacts closer to the high end of the range of INPV impacts as indicated by the preservation of EBIT markup scenario. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 34.7 percent in INPV to manufacturers of residential dishwashers.

The Secretary tentatively concludes that at TSL 2 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

After considering the analysis and the benefits and burdens of TSL 2, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE today proposes TSL 2 for residential dishwashers. The proposed amended energy conservation standards for residential dishwashers, which are a maximum allowable annual energy use and maximum allowable per-cycle water consumption, are shown in Table V.21.

TABLE V.21—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

Product class	Compliance date: May 30, 2019	
	Maximum annual energy use *	Maximum per-cycle water consumption
1. Standard (≥8 place settings plus 6 serving pieces)	234 kWh/year	3.1 gal/cycle.

TABLE V.21—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS—Continued

Product class	Compliance date: May 30, 2019	
	Maximum annual energy use *	Maximum per-cycle water consumption
2. Compact (<8 place settings plus 6 serving pieces)	203 kWh/year	3.1 gal/cycle.

* Annual energy use, expressed in kilowatt-hours (kWh) per year, is calculated as: The sum of the annual standby electrical energy in kWh and the product of (1) the representative average dishwasher use cycles per year and (2) the sum of machine electrical energy consumption per cycle in kWh, the total water energy consumption per cycle in kWh, and, for dishwashers having a truncated normal cycle, the drying energy consumption divided by 2 in kWh. A truncated normal cycle is defined as the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse option.

2. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of today's standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2013$, of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[68] The value of the CO_2 reductions, otherwise known as the SCC, is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table V.22 shows the annualized values for residential dishwashers under TSL 2, expressed in 2013$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $40.5/ton in 2015 (in 2013$), the cost of the standards for residential dishwashers in today's rule is $413 million per year in increased equipment costs, while the annualized benefits are $437 million per year in reduced equipment operating costs, $113 million in CO_2 reductions, and $8.37 million in reduced NO_X emissions. In this case, the net benefit amounts to $146 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $40.5/ton in 2015 (in 2013$), the cost of the standards for residential dishwashers in today's rule is $406 million per year in increased equipment costs, while the benefits are $529 million per year in reduced operating costs, $113 million in CO_2 reductions, and $9.95 million in reduced NO_X emissions. In this case, the net benefit amounts to $246 million per year.

TABLE V.22—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 2) FOR RESIDENTIAL DISHWASHERS SOLD IN 2019–2048

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	437	388	506.
	3%	529	462	624.
CO_2 Reduction at $12.0/t **	5%	34	30	39.
CO_2 Reduction at $40.5/t **	3%	113	100	131.
CO_2 Reduction at $62.4/t **	2.5%	165	146	191.
CO_2 Reduction at $119/t **	3%	351	311	406.
NO_X Reduction at $2,684/t	7%	8.37	7.53	9.49.
	3%	9.95	8.86	11.43.
Total †	7% plus CO_2 range	479 to 796	425 to 706	555 to 921.
	7%	558	496	647.
	3% plus CO_2 range	572 to 890	501 to 782	674 to 1,041.
	3%	652	572	766.

[68] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table V.22. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE V.22—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 2) FOR RESIDENTIAL DISHWASHERS SOLD IN 2019–2048—Continued

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Costs				
Consumer Incremental Product Costs	7%	413	468	371.
	3%	406	465	361.
Total Net Benefits				
Total †	7% plus CO_2 range	66 to 383	−43 to 238	183 to 550.
	7%	146	28	275.
	3% plus CO_2 range	167 to 484	36 to 317	313 to 680.
	3%	246	106	405.

* The results include benefits to consumers which accrue after 2048 from the dishwashers purchased from 2019 through 2048. Costs incurred by manufacturers, some of which may be incurred prior to 2019 in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The extent of the costs and benefits will depend on the projected price trends of dishwashers, as the consumer demand for dishwashers is a function of dishwasher prices. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices and housing starts from the *AEO 2014* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate in the Low Benefits Estimate, and a high decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.2.a of this notice.

** The CO_2 values represent global values (in 2013$) of the social cost of CO_2 emissions in 2013 under several scenarios. The values of $12.0, $40.5, and $62.4 per ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $119 per ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate.

† Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, which is $40.5/ton in 2015 (in 2013$). In the rows labeled as ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. 58 FR 51735 (Oct. 4, 1993). The problems that today's standards address are as follows.

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the residential dishwasher market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of residential dishwashers that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is a ''significant regulatory action'' under Executive Order 12866. DOE presented to the Office of Information and Regulatory Affairs (OIRA) in the OMB for review the draft rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA), and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed

for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 601 *et seq.*) As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

For manufacturers of residential dishwashers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Residential dishwasher manufacturing is classified under NAICS 335228, ''Other Major Household Appliance Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of small businesses which could be impacted by the amended energy conservation standards, DOE conducted a market survey using all available public information to identify potential small manufacturers. To identify small business manufacturers, DOE surveyed the May 2012 direct final rule for residential dishwasher energy conservation standards, the AHAM membership directory, several product databases (DOE's Compliance Certification Database, CEC, and ENERGY STAR databases) and individual company Web sites. DOE screened out companies that did not themselves manufacture products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign owned and operated.

Approximately half of the total domestic market for residential dishwashers is manufactured in the United States by one corporation. Together, this manufacturer and three other manufacturers do not meet the definition of a small business manufacturer and comprise 99 percent of the residential dishwasher market. The small portion of the remaining residential dishwasher market (approximately 69,000 units) is supplied by a combination of approximately 20 companies, all of which have small market shares. All of these companies are either foreign-owned and operated, re-brand dishwashers manufactured by other companies, or exceed the SBA's employment threshold for consideration as a small business under the appropriate NAICS code. Therefore, DOE did not identify any domestic small business manufacturers of residential dishwashers.

Based on the discussion above, DOE certifies that the standards for residential dishwashers set forth in this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit this certification to the SBA as required by 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of residential dishwashers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential dishwashers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential dishwashers. 76 FR 12422 (Mar. 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, appendix B, B5.1(b); 1021.410(b) and appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (Aug. 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector (Pub. L. 104–4, sec. 201, as codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel*.

Although today's proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more on the private sector. Specifically, the proposed rule will likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include: (1) Investment in research and development and in capital expenditures by residential dishwashers manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency residential dishwashers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(g) and (o), today's proposed rule would establish energy conservation standards for residential dishwashers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act of 2001 provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. (44 U.S.C. 3516, note) OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. 66 FR 28355 (May 22, 2001). A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the

supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today's regulatory action, which sets forth energy conservation standards for residential dishwashers, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=106*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this proposed rule. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this proposed rule. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name

(if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the efficiency levels selected for its analysis. Specifically, DOE requests feedback on whether cleaning performance or any other consumer utility is affected at any of the analyzed efficiency levels.

2. DOE requests comment on the estimated MPCs for each of the analyzed efficiency levels. DOE seeks input on what design options manufacturers are likely to incorporate into residential dishwashers at each of the analyzed efficiency levels, and their associated costs.

3. DOE requests comment on what impact, if any, the proposed energy conservation standards would have on domestic manufacturing facilities and their associated employment. DOE requests information on whether domestic manufacturers would move production overseas or source an increased number of products from foreign OEMs under the proposed standards.

4. DOE requests comment on the potential rebound effect from setting the proposed energy conservation standards for standard-size dishwashers and compact dishwashers. DOE requests comments on the potential technology options identified by DOE for improving the efficiency of residential dishwashers and its screening analysis used to select the most viable options for consideration in setting today's proposed standards. (see sections IV.A and B of this notice.)

5. DOE requests comment on its estimate that standards do not impact a consumer's decision to replace or repair a failed dishwasher. Specifically, DOE seeks any data that indicate how dishwasher replace versus repair decisions are impacted by increased total installed cost, increased repair cost, and energy cost savings.

6. DOE requests comment and information on the number of annual dishwasher cycles.

7. DOE requests comment on utility issues, if any, that consumers may face under the proposed energy conservation standards.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business

information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on December 10, 2014.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 2. Section 430.3 is amended by:

■ a. Removing paragraph (h)(2);

■ b. Redesignating paragraphs (h)(3) through (7) as (h)(2) through (6), respectively; and

■ c. Removing ''C1'' from redesignated paragraph (h)(2) and adding ''C'' in its place.

Appendix C to Subpart B of Part 430—[Removed]

■ 3. Appendix C to subpart B of part 430 is removed.

Appendix C1 to Subpart B of Part 430—[Redesignated as Appendix C Subpart B of Part 430]

■ 4. Appendix C1 to subpart B of part 430 is redesignated as appendix C to subpart B of part 430.

■ 5. In § 430.32 add paragraph (f)(4) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(f) * * *

(4) All dishwashers manufactured on or after [Date 3 years after the publication in the **Federal Register** of the final rule] shall meet the following standard—

(i) Standard size dishwashers shall not exceed 234 kwh/year and 3.1 gallons per cycle.

(ii) Compact size dishwashers shall not exceed 203 kwh/year and 3.1 gallons per cycle.

* * * * *

[FR Doc. 2014–29519 Filed 12–18–14; 8:45 am]

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Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 170

Tribal Transportation Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[BIA 2014–0005; K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.I A000113]

25 CFR Part 170

RIN 1076–AF19

Tribal Transportation Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the Tribal Transportation Program regulations (formerly the Indian Reservation Roads Program) to comply with the current surface transportation authorization, Moving Ahead for Progress in the 21st Century, as extended, reflect changes in the delivery options for the program that have occurred since the regulation was published in 2004, remove certain sections that were provided for informational purposes only, and make technical corrections.

DATES: Comments on this rule must be received by March 20, 2015. Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule. Comments on the information collection burden should be received by January 20, 2015 to ensure consideration, but must be received no later than February 17, 2015.

ADDRESSES: You may submit comments by any of the following methods:

— *Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2014–0005.

—*Mail:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240. Include the number 1076–AF19 in the submission.

—*Hand delivery:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240. Include the number 1076–AF19 in the submission.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed here will not be included in the docket for this rulemaking.

Comments on the information collections in this proposed regulation are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395–5806 or email to the OMB Desk Officer for the Department of the Interior at *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.* You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule

The proposed rule would:

- Revise 25 CFR part 170 to comply with legislation governing the Tribal Transportation Program;
- Update the regulation to reflect changes in the delivery options for the Tribal Transportation Program that are available to tribal governments;
- Make technical corrections to clarify program-related responsibilities and requirements for tribal governments, the Bureau of Indian Affairs, and the Federal Highway Administration (FHWA); and
- Clarify the requirements for proposed roads and access roads to be added to or remain in the National Tribal Transportation Facility Inventory (formerly known as the Indian Reservation Roads Inventory).
- Remove certain sections of the current rule that were provided for informational purposes only while directing the reader to BIA or FHWA Web sites where the most current information is now available.

BIA and FHWA distributed draft revisions to 25 CFR part 170 to tribes and published a notice in the **Federal Register** of consultations on the draft that were conducted at three locations in May of 2013. *See* 78 **Federal Register** 21861 (April 12, 2013). Written comments were accepted at the consultations as well as email and mail until June 14, 2013.

Consultation sessions on the proposed rule will be held on the following dates at the following locations:

Meeting date	Location	Time
January 13, 2015	Sacramento, CA	9 a.m.–4:00 p.m.
January 15, 2015	Phoenix, AZ	9 a.m.–4:00 p.m.
January 27, 2015	Minneapolis, MN	9 a.m.–4:00 p.m.
January 29, 2015	Oklahoma City, OK	9 a.m.–4:00 p.m.
February 10, 2015	Anchorage, AK	9 a.m.–4:00 p.m.
February 12, 2015	Seattle, WA	9 a.m.–4:00 p.m.

Meeting Agenda (All Times Local)

9:00 a.m.–9:15 a.m. Welcome and Introductions
9:15 a.m.–10:30 a.m. Review Proposed Rule—Subparts A–C
10:30 a.m.–10:45 a.m. Break
11:45 a.m.–11:45 a.m. Review Proposed Rule—Subparts D–F
11:45 a.m.–1:00 p.m. Lunch
1:00 p.m.–2:15 p.m. Continue Review—Subparts G–H
2:15 p.m.–2:30 p.m. Break
2:30 p.m.–3:45 p.m. Questions and Answers
3:45 p.m.–4:00 p.m. Closing Comments
4:00 p.m. Adjourn

II. Background

Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, a reauthorization of the surface transportation act, was signed into law on July 6, 2012, and became effective on October 1, 2012. MAP–21 was extended by the Highway and Transportation Funding Act of 2014, Public Law 113–159 (August 8, 2014).

Section 1119 of MAP–21 struck the existing laws governing the Indian Reservation Roads Program from 23 U.S.C. 201–204, and established the Tribal Transportation Program (TTP) under 23 U.S.C. 201 and 202. In addition, Section 1103 of MAP–21 provided new definitions for terms utilized in the TTP.

Section 1119 of MAP–21 created a new formula for distribution of TTP funds among tribes, which had the effect of overriding the existing Relative Need Distribution Formula (RNDF) that was published in 2004 at 25 CFR part 170, subpart C. *See* 23 U.S.C. 202(b)(3). Although the RNDF is no longer applicable under the new TTP formula, certain historical aspects of the former RNDF continue to be relevant in the new TTP formula. MAP–21 also identified how certain roads included in the National Tribal Transportation Program Facility Inventory (NTTFI) impact funding within the new formula. *See* 23 U.S.C. 202(b)(1).

The current regulation was published in the **Federal Register** in 2004 (69 FR 43090, July 19, 2004). Congress later enacted the Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Public Law 100–59 (August 10, 2005). Certain provisions of 25 CFR part 170 were amended as a result of SAFETEA–LU but the regulation was not revised at that time. The primary purpose of the proposed rule is to bring the regulation into compliance with MAP–21, which amends or renders obsolete parts of the existing rule.

There have also been significant changes in how TTP is delivered to tribes since 25 CFR part 170 was published in 2004, and the proposed rule reflects these changes. When 25 CFR part 170 was published, BIA delivered the IRR program either by direct service to tribes or by contracting with tribes to carry out certain program functions under the Indian Self-Determination and Education Assistance Act. (P.L. 93–638, as amended). Under SAFETEA–LU, FHWA and the BIA developed an additional delivery option known as ''program agreements'' which allow tribes that meet certain administrative and financial management requirements to carry out all but the inherently Federal functions of the TTP. MAP–21 carried forward the authority of SAFETEA–LU in this area and the proposed rule incorporates these changes.

Additionally, the proposed rule codifies the requirements that Proposed Roads or Access Roads must meet in order to be added to or remain in the NTTFI. Tribes, BIA, and FHWA have identified the lack of these requirements for Proposed and Access Roads to be added to or remain in the NTTFI as an area of concern in the current regulation for many years. Proposed roads are currently defined by 25 CFR 170.5 as ''a road which does not currently exist and needs to be constructed.'' A primary access route is the shortest practicable route connecting two points, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings. *See* 23 U.S.C. 202(b)(1).

During 2012, BIA and FHWA conducted thirteen tribal consultation meetings throughout the country on a joint BIA and FHWA recommendation for changing how proposed roads and access roads would contribute to the RNDF for Indian Reservation Roads Program funds. *See* 25 CFR part 170, subpart C. Although MAP–21 replaces the RNDF as discussed above, the proposed rule would clarify the requirements that proposed roads or access roads must meet in order to be added to or remain in the NTTFI.

III. Explanation of Revisions

Subpart A—General Provisions and Definitions

This subpart is revised to:

- Be consistent with the language used throughout 23 U.S.C. 201 and 202;
- Outline the policies, guidance manuals, directives, and procedures that govern the TTP under the program delivery options that are available to tribes; and
- Include new and updated definitions that are used throughout the rule.

Subpart B—Tribal Transportation Program Policy and Eligibility

This subpart is revised to be consistent with MAP–21 by:

- Revising the language discussing Federal, tribal, state, and local governments' coordination, collaboration, and consultation responsibilities;
- Updating the list of eligible uses of TTP funding and the point of contact information for fund eligibility requests;
- Updating the regulation regarding cultural access roads, toll roads, recreation, tourism, trails, airport access roads, transit facilities and seasonal transportation routes;
- Changing the name ''Indian Local Technical Assistance Program'' was changed to ''Tribal Technical Assistance Centers'' (TTACs).

MAP–21 established a TTP safety funding set-aside, and the proposed rule describes the eligible uses and distribution of these funds. The TTP Coordinating Committee was established by the current rule. The proposed rule updates the responsibilities of the Committee regarding information dissemination requirements and scheduling of Committee meetings.

Subpart C—Tribal Transportation Program Funding

This subpart is revised as to do the following:

- Remove the chart showing the flow of TTP funds.
- Reflect the statutory formula and methodology established by MAP–21 to distribute TTP funds including new formula factors, set-asides, supplemental funding and transition period.
- Remove the sections of the current regulation governing the Indian Reservation Roads Program High Priority Projects because Section 1123 of MAP–21 established the Tribal High Priority Projects Program as a separate, stand-alone program.
- Revise how the National Tribal Transportation Facility Inventory (NTTFI) relates to the long-range tribal transportation planning process.
- Revise the appeal process for fund distribution to be consistent with MAP–21.
- Remove the appendices to Subpart C of the current regulation because they are not applicable to the statutory funding formula established by MAP–21.

Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities

This proposed subpart contains revisions to the sections involving NTTFI submissions, review and approval of plans, specifications and estimates (PS&Es). A section on the TTP Bridge Program was added to reflect changes as a result of the enactment of MAP–21. The appendices to this subpart were removed because they contained only reference information that is now available on BIA and FHWA Web sites.

Subpart E—Service Delivery for Tribal Transportation Program

This subpart revises the sections involving Notice of Funds Availability (NOFA), Contracts and Agreements including savings. The Appendix to Subpart E is updated to be consistent with MAP–21.

Subpart F—Program Oversight and Accountability

This subpart revises the stewardship and oversight roles and responsibilities for the TTP to reflect changes in the way the TTP is delivered to tribes. The current regulations regarding Program Reviews are moved to this subpart and

are updated to be consistent with MAP–21.

Subpart G—Maintenance

This subpart is updated to reflect changes in MAP–21 and clarify the eligible activities funded only through TTP. The Appendix to Subpart G of the existing regulation was removed and that information that is now available on BIA and FHWA Web sites.

Subpart H—Miscellaneous

This subpart is updated to be consistent with statutory references that changed due to the enactment of MAP–21. The sections involving Emergency Relief and Hazardous and Nuclear Waste Transportation were removed because they contained only reference information that is now available on BIA and FHWA Web sites. The section regarding the Tribal High Priority Projects Program was also removed because it is authorized under Section 1123 of MAP–21 is therefore not a part of the TTP.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' E.O. 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. During development of this proposed rule, the Department discussed this topic with tribal leaders, and will further consult specifically on the proposed rule during the public comment period.

I. Paperwork Reduction Act

OMB Control Number: 1076–0161.

Title: 25 CFR 170, Tribal Transportation Program.

Brief Description of Collection: Some of the information such as the providing inventory updates (25 CFR 170.444), the development of a long range transportation plan (25 CFR 170.411 and 170. 412), the development of a tribal transportation improvement program (25 CFR 170.421), and priority list (25 CFR 170.420) are mandatory to determine how funds will allocated to implement the Tribal Transportation Program. Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.438). While other information, such as a request for exception from design standards (25 CFR 170.456), are voluntary.

Type of Review: Revision of currently approved collection.

Respondents: Federally recognized Indian Tribal governments.

Number of Respondents: 1,349 on average (each year).

Number of Responses: 1,349 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 17,828 hours.

Citation 25 CFR 170	Information	Average number of hours	Average number per year	Estimated annual burden hours
170.444	Provide and Review Information	20	141	2,820
170.411	Long Range Transportation Plan Contents	40	113	4,520
170.421	Reporting Requirement for Tribal Transportation Improvement Program (TTIP).	10	281	2,810
170.420	Reporting Requirement for Tribal Priority List	10	281	2,810
170.412	Submission of Long Range Transportation Plan to BIA and Public, and Further Development.	40	113	4,520
170.437	Notice of Requirements for Public Hearing	½	205	103
170.439	Record keeping Requirement—Record of Public Hearing	1	205	205
170.456	Provide Information for Exception	4	10	40

OMB Control No. 1076–0161 currently authorizes the collections of information contained in 25 CFR part 170. If this proposed rule is finalized, the annual burden hours for respondents will decrease by approximately 1,800 hours because two previously identified information collection requirements have been deleted under this rule.

You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB. We invite comments on the information collection requirements in the proposed rule. You may submit comments to OMB by facsimile to (202) 395–5806 or you may send an email to the attention of the OMB Desk Officer for the Department of the Interior: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. *Note that the request for comments on the rule and the request for comments on the information collection are separate.* To best ensure consideration of your comments on the information collection, we encourage you to submit them by January 20, 2015; while OMB has 60 days from the date of publication to act on the information collection request, OMB may choose to act on or after 30 days. Comments on the information collection should address: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology. Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians-lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to revise part 170 in Title 25 of the Code of Federal Regulations to read as follows:

PART 170—TRIBAL TRANSPORTATION PROGRAM

Subpart A—Policies, Applicability, and Definitions

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170.1 What does this part do?
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170.4 How does this part affect existing tribal rights?
170.5 What definitions apply to this part?
170.6 Information collection.

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Authority: Pub. L. 112–141, 23 U.S.C. 202.

PART 170—TRIBAL TRANSPORTATION PROGRAM

Subpart A—Policies, Applicability, and Definitions

§ 170.1 What does this part do?

This part provides rules and a funding formula for the Department of the Interior (DOI), in cooperation with the Department of Transportation (DOT), to implement the Tribal Transportation Program (TTP). Included in this part are other Title 23 and Title 25 transportation programs administered by the Secretary of the Interior and the Secretary of Transportation (Secretaries) and implemented by tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), as amended, program agreements, and other appropriate agreements.

§ 170.2 What policies govern the TTP?

(a) The Secretaries' policy for the TTP is to:

(1) Provide a uniform and consistent set of rules;

(2) Foster knowledge of the programs by providing information about them and the opportunities that they create;

(3) Facilitate tribal planning, conduct, and administration of the programs;

(4) Encourage inclusion of these programs under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements;

(5) Make available all contractible non-inherently Federal administrative functions under self-determination contracts, self-governance agreements,

program agreements, and other appropriate agreements.

(6) Carry out policies, procedures, and practices in consultation with Indian tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

(b) Where this part differs from provisions in the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), this part should advance the policy of increasing tribal autonomy and discretion in program operation.

(c) This part is designed to enable Indian tribes to participate in all contractible activities of the TTP and BIA Road Maintenance program. The Secretary of the Interior will afford Indian tribes the flexibility, information, and discretion to design roads programs under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements to meet the needs of their communities consistent with this part.

(d) Programs, functions, services, and activities, regardless of how they are administered, are an exercise of Indian tribes' self-determination and self-governance.

(1) The tribe is responsible for managing the day-to-day operation of its contracted Federal programs, functions, services, and activities.

(2) The tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements for:

(i) Use of the funds; and

(ii) Satisfactory performance of all activities funded under the contract or agreement.

(3) The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of tribes and the trust resources of individual Indians.

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by this part in the government-to-government agreements authorized under ISDEAA.

(f) The administrative functions referenced in paragraph (a)(5) of this section are contractible without regard to the organizational level within the DOI that carries out these functions. Including TTP administrative functions under self-determination contracts, self-governance agreements, program agreements or other appropriate agreements, does not limit or reduce the funding for any program or service serving any other tribe.

(g) The Secretaries are not required to reduce funding for a tribe under these programs to make funds available to another tribe.

(h) This part must be liberally construed for the benefit of tribes and to implement the Federal policy of self-determination and self-governance.

(i) Any ambiguities in this part must be construed in favor of the tribes to facilitate and enable the transfer of programs authorized by 23 U.S.C. 201 and 202 and title 25 of the U.S.C.

§ 170.3 When do other requirements apply to the TTP?

TTP policies, guidance, and directives apply, to the extent permitted by law, only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR 900.5 for when a tribe must comply with other unpublished requirements.

§ 170.4 How does this part affect existing tribal rights?

This part does not:

(a) Affect tribes' sovereign immunity from suit;

(b) Terminate or reduce the trust responsibility of the United States to tribes or individual Indians;

(c) Require a tribe to assume a program relating to the TTP; or

(d) Impede awards by other agencies of the United States or a State to tribes to administer programs under any other law.

§ 170.5 What definitions apply to this part?

AASHTO means the American Association of State Highway and Transportation Officials.

Access road as defined in 23 CFR 635.117(e) means a road that extends outward from the tribal boundary to a point at which it intersects with a road functionally classified as a collector or higher classification in both urban and rural areas. The maximum length of an Access road will not exceed 15 miles.

Agreement means a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement, to fund and manage the programs, functions, services and activities transferred to a tribe.

Appeal means a request by a tribe or consortium for an administrative review of an adverse agency decision.

Asset management as defined in 23 U.S.C. 101(a)(2) means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIADOT means the Bureau of Indian Affairs, Indian Services—Division of Transportation—Central Office.

BIA Force Account means the performance of work done by BIA employees.

BIA Road System means the Bureau of Indian Affairs Road System under the National Tribal Transportation Facility Inventory (NTTFI) and includes only those existing and proposed facilities for which the BIA has or plans to obtain legal right-of-way.

BIA System Inventory means Bureau of Indian Affairs System Inventory under the NTTFI that included the BIA road system, tribally owned public roads, and facilities not owned by an Indian tribal government or the BIA in the States of Oklahoma and Alaska that were used to generate road mileage for computation of the funding formula in the Indian Reservation Roads Program prior to October 1, 2004.

BIA Transportation Facility means any of the following:

(1) Road systems and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc.;

(2) Highway bridges and drainage structures;

(3) Airport runways and heliport pads, including runway lighting;

(4) Boardwalks;

(5) Adjacent parking areas;

(6) Maintenance yards;

(7) Bus stations;

(8) System public pedestrian walkways, paths, bike and other trails;

(9) Motorized vehicle trails;

(10) Public access roads to heliports and airports;

(11) BIA and tribal post-secondary school roads and parking lots built with TTP Program funds; and

(12) Public ferry boats and boat ramps.

CFR means the United States Code of Federal Regulations.

Construction, as defined in 23 U.S.C. 101(a)(4), means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a tribal transportation facility, as defined in 23 U.S.C. 101(a)(31). The term includes—

(1) Preliminary engineering, engineering, and design-related services directly relating to the construction of a tribal transportation facility project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping

(including the establishment of temporary and permanent geodetic control under specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;

(2) Reconstruction, resurfacing, restoration, rehabilitation, and preservation;

(3) Acquisition of rights-of-way;

(4) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(5) Elimination of hazards of railway-highway grade crossings;

(6) Elimination of roadside hazards;

(7) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(8) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

Construction contract means a fixed price or cost reimbursement self-determination contract for a construction project or an eligible TTP funded road maintenance project, except that such term does not include any contract—

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the housing improvement program or roads maintenance program of the BIA administered by the Secretary of the Interior; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

Consultation means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Provide meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

Contract means a self-determination contract as defined in section 4(j) of ISDEAA or a procurement document issued under Federal or tribal procurement acquisition regulations.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period will carry over to the next business day unless otherwise prohibited by law.

Design means services related to preparing drawings, specifications, estimates, and other design submissions specified in a contract or agreement, as well as services during the bidding/negotiating, construction, and operational phases of the project.

DOI means the Department of the Interior.

DOT means the Department of Transportation.

FHWA means the Federal Highway Administration of the Department of Transportation.

Financial Constraint or Fiscal Constraint means that a plan (metropolitan transportation plan, TIP, or STIP) includes financial information demonstrating that projects can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is adequately operated and maintained. (See 23 U.S.C. 134 and 135.)

(1) For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year.

(2) Projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available'' or ''committed.'' *See* 23 CFR 450.104.

FTA means the Federal Transit Administration within the Department of Transportation.

Governmental subdivision of a tribe means a unit of a federally-recognized tribe which is authorized to participate in a TTP activity on behalf of the tribe.

Indian means a person who is a member of a Tribe or as otherwise defined in 25 U.S.C. 450b.

ISDEAA means the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Maintenance means the preservation of the tribal transportation facilities, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the facility as defined in 23 U.S.C. 101(31).

NBTI means the National Bridge and Tunnel Inventory, which is the database of structural and appraisal data collected to fulfill the requirements of the National Bridge and Tunnel Inspection Standards, as defined in 23 U.S.C. 144. Each State and BIA must maintain an inventory of all bridges and tunnels that are subject to the NBTI standards and provide this data to the Federal Highway Administration (FHWA).

National Tribal Transportation Facility Inventory (NTTFI) means at a minimum, transportation facilities that are eligible for assistance under the tribal transportation program that an Indian tribe has requested, including facilities that meet at least one of the following criteria:

(1) Were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004.

(2) Are owned by an Indian tribal government (''owned'' means having the authority to finance, build, operate, or maintain the facility (see 23 U.S.C. 101(a)(20)).

(3) Are owned by the Bureau of Indian Affairs (''owned'' means having the authority to finance, build, operate, or maintain the facility (See 23 U.S.C. 101(a)(20)).

(4) Were constructed or reconstructed with funds from the Highway Trust Fund under the Indian reservation roads program since 1983.

(5) Are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives.

(6) Are public roads within or providing access to either:

(i) An Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government; or

(ii) Indian or Alaska Native villages, groups, or communities whose residents include Indians and Alaska Natives whom the Secretary has determined are eligible for services generally available to Indians under Federal laws applicable to Indians.

(7) Are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

Population Adjustment Factor means a special portion of the former Indian Reservation Roads (IRR) Program distribution formula that was calculated annually and provided for broader participation in the IRR Program.

Program means any program, function, service, activity, or portion thereof.

Program agreement means an agreement between the tribe and Assistant Secretary—Indian Affairs or

the Administrator of the Federal Highway Administration, or their respective designees, that transfers all but the inherently federal program functions, services and activities of the Tribal Transportation Program to the tribe.

Project planning means project-related activities that precede the design phase of a transportation project. Examples of these activities are: Collecting data on traffic, accidents, or functional, safety or structural deficiencies; corridor studies; conceptual studies, environmental studies; geotechnical studies; archaeological studies; project scoping; public hearings; location analysis; preparing applications for permits and clearances; and meetings with facility owners and transportation officials.

Proposed road or facility means a road or facility that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist.

Public authority as defined in 23 U.S.C. 101(a)(20) means a Federal, State, county, town, or township, Indian tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Real property means any interest in land together with the improvements, structures, fixtures and appurtenances.

Regionally significant project means a project (other than projects that may be grouped in the STIP/TIP under 23 CFR 450) that:

(1) Is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves); and

(2) Would normally be included in the modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Rehabilitation means the work required to restore the structural integrity of transportation facilities as well as work necessary to correct safety defects.

Relative Need Distribution Factor means a mathematical formula used for distributing construction funds under the former Indian Reservation Roads Program.

Relocation means the adjustment of transportation facilities and utilities required by a highway project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on the new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

Relocation services means payment and assistance authorized by the Uniform Relocation and Real Property Acquisitions Policy Act, 42 U.S.C. 4601 *et seq.,* as amended.

Rest area means an area or site established and maintained within or adjacent to the highway right-of-way or under public supervision or control for the convenience of the traveling public.

Seasonal transportation route means a non-recreational transportation route in the national tribal transportation facility inventory such as snowmobile trails, ice roads, and overland winter roads that provide access to Indian communities or villages and may not be open for year-round use.

Secretaries means the Secretary of the Interior and the Secretary of Transportation or designees authorized to act on their behalf.

Secretary means the Secretary of the Interior or a designee authorized to act on the Secretary's behalf.

Secretary of Transportation means the Secretary of Transportation or a designee authorized to act on behalf of the Secretary.

State Transportation Department as defined in 23 U.S.C. 101(a)(28) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

STIP means Statewide Transportation Improvement Program. It is a financially constrained, multi-year list of transportation projects. The STIP is developed under 23 U.S.C. 134 and 135, and 49 U.S.C. 5303–5305. The Secretary of Transportation reviews and approves the STIP for each State.

Transit means services, equipment, and functions associated with the public movement of people served within a community or network of communities provided by a tribe or other public authority using Federal funds.

Transportation planning means developing land use, economic development, traffic demand, public safety, health and social strategies to meet transportation current and future needs.

Tribal road system means the tribally owned roads under the National Tribal Transportation Facility Inventory (NTTFI). For the purposes of fund distribution as defined in 23 U.S.C. 202(b), the tribal road system includes only those existing and proposed facilities that are approved and included in the NTTFI as of fiscal year 2012.

Tribal transit program means the planning, administration, acquisition, and operation and maintenance of a system associated with the public movement of people served within a community or network of communities on or near tribal lands.

Tribal Transportation Program (TTP) means a program established in Section 1119 of Moving Ahead for Progress in the 21st Century (MAP–21), Public Law 112–141 (July 6, 2012), and codified in 23 U.S.C. 201 and 202 to address transportation needs of tribes.

Tribal Transportation Facility means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in 23 U.S.C. 202(b)(1).

Tribal Transportation Facility Bridge Program means the program authorized and defined under 23 U.S.C. 202(d) and set forth in 23 CFR part 661 that uses TTP funds for the improvement of deficient bridges.

Tribe means any tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act, that is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians.

TTIP means Tribal Transportation Improvement Program. It is a multi-year list of proposed transportation projects developed by a tribe from the tribal priority list or the long-range transportation plan.

TTP formula funds means the pool of funds made available to tribes under 23 U.S.C. 202(b)(3).

TTP funds means the funds authorized under 23 U.S.C. 201 and 202.

TTP planning funds means funds referenced in 23 U.S.C. 202(c)(1).

TTP Program Management and Oversight (PM&O) funds means those funds authorized by 23U.S.C 202(a)(6)

to pay the cost of carrying out inherently Federal program management and oversight, and project-related administrative expenses activities.

TTP System means all of the facilities eligible for inclusion in the National Tribal Transportation Facility Inventory.

TTPTIP means Tribal Transportation Program Transportation Improvement Program. It is a financially constrained prioritized list of transportation projects and activities eligible for TTP funding covering a period of 4 years that is developed by BIA and FHWA based on the TTIP or tribal priority list. It is required for projects and activities to be eligible for funding under Title 23 U.S.C. and Title 49 U.S.C. Chapter 53. The Secretary of Transportation reviews and approves the TTPTIP and distributes copies to each State for inclusion in their respective STIPs without further action.

U.S.C. means the United States Code.

§ 170.6 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned control number 1076–0161. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Comments and suggestions on the burden estimate or any other aspect of the information collection should be sent to the Information Collection Clearance Officer, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Subpart B—Tribal Transportation Program Policy and Eligibility

Consultation, Collaboration, Coordination

§ 170.100 What do the terms ''consultation,'' ''collaboration,'' and ''coordination'' mean?

(a) *Consultation* means government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to:

(1) Secure meaningful tribal input and involvement in the decision-making process; and

(2) Advise the tribe of the final decision and provide an explanation.

(b) *Collaboration* means that all parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective.

(c) *Coordination* means that each party:

(1) Shares and compares in a timely manner its transportation plans, programs, projects, and schedules with the related plans, programs, projects, and schedules of the other parties; and

(2) Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services.

§ 170.101 What is the TTP consultation and coordination policy?

(a) The TTP's government-to-government consultation and coordination policy is to foster and improve communication, cooperation, and coordination among tribal, Federal, State, and local governments and other transportation organizations when undertaking the following, similar, or related activities:

(1) Identifying high-accident locations and locations for improving both vehicle and pedestrian safety;

(2) Developing State, metropolitan, regional, TTP, and tribal transportation improvement programs that impact tribal lands, communities, and members;

(3) Developing short and long-range transportation plans;

(4) Developing TTP transportation projects;

(5) Developing environmental mitigation measures necessary to protect and/or enhance Indian lands and the environment, and counteract the impacts of the projects;

(6) Developing plans or projects to carry out the Tribal Transportation Facility Bridge Program identified in 23 U.S.C. 202(d);

(7) Developing plans or projects for disaster and emergency relief response and the repair of eligible damaged TTP transportation facilities;

(8) Assisting in the development of State and tribal agreements related to the TTP;

(9) Developing and improving transit systems serving Indian lands and communities;

(10) Assisting in the submission of discretionary grant applications for State and Federal funding for TTP transportation facilities; and

(11) Developing plans and projects for the Safety funding identified in 23 U.S.C. 202(e).

(b) Tribes and State and Federal Government agencies may enter into intergovernmental Memoranda of Agreement to streamline and facilitate consultation, collaboration, and coordination.

(c) DOI and DOT operate within a government-to-government relationship with federally recognized tribes. As a critical element of this relationship, these agencies assess the impact of Federal transportation policies, plans, projects, and programs on tribal rights and interests to ensure that these rights and concerns are appropriately considered.

§ 170.103 What goals and principles guide program implementation?

When undertaking transportation activities affecting tribes, the Secretaries should, to the maximum extent permitted by law:

(a) Establish regular and meaningful consultation and collaboration with affected tribal governments, including facilitating the direct involvement of tribal governments in short- and long-range Federal transportation planning efforts;

(b) Promote the rights of tribal governments to govern their own internal affairs;

(c) Promote the rights of tribal governments to receive direct transportation services from the Federal Government or to enter into agreements to directly operate any tribally related transportation programs serving tribal members;

(d) Ensure the continuation of the trust responsibility of the United States to tribes and Indian individuals;

(e) Reduce the imposition of unfunded mandates upon tribal governments;

(f) Encourage flexibility and innovation in the implementation of the TTP;

(g) Reduce, streamline, and eliminate unnecessarily restrictive transportation policies, guidelines, or procedures;

(h) Ensure that tribal rights and interests are appropriately considered during program development;

(i) Ensure that the TTP is implemented consistent with tribal sovereignty and the government-to-government relationship; and

(j) Consult with, and solicit the participation of, tribes in the development of the annual BIA budget proposals.

§ 170.103 Is consultation with tribal governments required before obligating TTP funds for direct service activities?

Yes. Consultation with tribal governments is required before obligating TTP funds for direct service activities. Before obligating TTP funds on any project for direct service activities, the Secretary must:

(a) Consult with the affected tribe to determine tribal preferences concerning the program, project, or activity; and

(b) Provide information under § 170.600 within 30 days of the notice of availability of funds.

§ 170.104 Are funds available for consultation, collaboration, and coordination activities?

Yes. Funds are available for consultation, collaboration, and coordination activities. To fund consultation, collaboration, and coordination of TTP activities, tribes may use:

(a) The tribes' TTP allocations;

(b) Tribal Priority Allocation funds;

(c) Administration for Native Americans funds;

(d) Economic Development Administration funds;

(e) United States Department of Agriculture Rural Development funds;

(f) Community Development Block Grant funds;

(g) Indian Housing Block Grant funds;

(h) Indian Health Service Tribal Management Grant funds;

(i) General funds of the tribal government; and

(j) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

§ 170.105 When must State governments consult with tribes?

As identified in 23 U.S.C. 134 and 135, States will develop their State Transportation Improvement Program (STIP) in consultation with tribes and the Secretary in those areas under Indian tribal jurisdiction. This includes providing for a process that coordinates transportation planning efforts carried out by the State with similar efforts carried out by tribes. Regulations governing STIPs can be found at 23 CFR part 450.

§ 170.106 Should planning organizations and local governments consult with tribes when planning for transportation projects?

Yes. Planning organizations and local governments should consult with tribes when planning for transportation projects. The Department's policy is to foster and improve communication, cooperation, and coordination among metropolitan planning organizations (MPOs), regional planning organizations (RPOs), local governments, municipal governments, and tribes on transportation matters of common concern. Accordingly, planning organizations, and local governments should consult with tribal governments when planning for transportation projects.

§ 170.107 Should tribes and BIA consult with planning organizations and local governments in developing projects?

Yes. Tribes and BIA should consult with planning organizations and local governments in developing projects.

(a) All regionally significant TTP projects must be:

(1) Developed in cooperation with State and metropolitan planning organizations; and

(2) Included in a FHWA approved TTPTIP for inclusion in State and metropolitan plans.

(b) BIA and tribes are encouraged to consult with States, metropolitan and regional planning organizations, and local and municipal governments on transportation matters of common concern.

§ 170.108 How do the Secretaries prevent discrimination or adverse impacts?

The Secretaries ensure that non-discrimination and environmental justice principles are integral TTP program elements. The Secretaries consult with tribes early in the program development process to identify potential discrimination and to recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

§ 170.109 How can State and local governments prevent discrimination or adverse impacts?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials will consult and work with tribes in the development of programs to:

(1) Identify potential discrimination; and

(2) Recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

(b) Examples of adverse effects include, but are not limited to:

(1) Impeding access to tribal communities or activities;

(2) Creating excessive access to culturally or religiously sensitive areas;

(3) Negatively affecting natural resources, trust resources, tribal businesses, religious, and cultural sites;

(4) Harming indigenous plants and animals; and

(5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

§ 170.110 What if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:

(a) Take reasonable steps to resolve the problem directly with the State or local government involved; and

(b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and seek assistance in resolving the problem.

Eligible Uses of TTP Funds

§ 170.111 What activities may be carried out using TTP funds?

TTP funds will be used to pay the cost of items identified in 23 U.S.C. 202(a)(1). A more detailed list of eligible activities is available at Appendix A to this subpart. Each of the items identified in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

§ 170.112 What activities are not eligible for TTP funding?

TTP funds cannot be used for any of the following:

(a) Structures and erosion protection unrelated to transportation and roadways;

(b) General or tribal planning not involving transportation;

(c) Landscaping and irrigation systems not involving transportation programs and projects;

(d) Work or activities that are not listed on an FHWA-approved TTP Transportation Improvement Program (TTPTIP);

(e) Purchase of construction and maintenance equipment unless approved by BIA and FHWA as authorized under § 170.113; or

(f) Condemnation of land for recreational trails.

§ 170.113 How can a tribe determine whether a new use of funds is allowable?

(a) A tribe that proposes new uses of TTP funds must ask BIA or FHWA in writing whether the proposed use is eligible under Federal law.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of TTP funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street NW., MS 4513 MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the TTP or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting tribe within 45 days of

receiving the written inquiry from the tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the TTP Coordinating Committee before denying a request.

(c) BIA and FHWA will:

(1) Send copies of all eligibility determinations to the TTP Coordinating Committee and BIA Regional offices;

(2) Coordinate all responses and if the requested agency fails to issue a decision to the requesting tribe within the required time, the proposed use will be deemed to be allowable for that specific project; and

(3) Promptly make any final determination available on agency Web sites.

Use of TTP and Cultural Access Roads

§ 170.114 What restrictions apply to the use of a tribal transportation facility?

(a) All tribal transportation facilities listed in the approved National Tribal Transportation Facility Inventory must be open and available for public use as required by 23 U.S.C. 101(a)(31). However, the public authority having jurisdiction over these roads or the Secretary, in consultation with a tribe and applicable private landowners, may restrict road use or close roads temporarily when:

(1) Required for public health and safety or as provided in § 170.115.

(2) Conducting engineering and traffic analysis to determine maximum speed limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(3) Erecting, maintaining, and enforcing compliance with signs and pavement markings.

(b) Consultation is not required whenever the conditions in paragraph (a) of this section involve immediate safety or life-threatening situations.

(c) A tribal transportation facility owned by a tribe or BIA may be permanently closed only when the tribal government and the Secretary agree. Once this agreement is reached, BIA must remove the facility from the NTTFI and it will no longer generate funding and be ineligible for expenditure of any TTP funds.

§ 170.115 What is a cultural access road?

(a) A cultural access road is a public road that provides access to sites for cultural purposes as defined by tribal traditions, which may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving; and

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A tribal government may unilaterally designate a tribal road as a cultural access road. A cultural access road designation is an entirely voluntary and internal decision made by the tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a tribal government to designate a non-tribal road as a cultural access road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural access roads may be included in the National Tribal Transportation System Inventory if they meet the definition of a TTP facility.

§ 170.116 Can a tribe close a cultural access road?

(a) A tribe with jurisdiction over a cultural access road can close it. The tribe can do this:

(1) During periods when the tribe or tribal members are involved in cultural activities; and

(2) In order to protect the health and safety of the tribal members or the general public.

(b) Cultural access roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.115(c).

Seasonal Transportation Routes

§ 170.117 Can TTP funds be used on seasonal transportation routes?

Yes. A tribe may use TTP funds on seasonal transportation routes that are included in the national tribal transportation facility inventory.

(a) Standards for seasonal transportation routes are found in § 170.454. A tribe can also develop or adopt standards that are equal to or exceed these standards.

(b) To help ensure the safety of the traveling public, construction of a seasonal transportation route requires a right-of-way, easement, or use permit.

TTP Housing Access Roads

§ 170.118 What terms apply to access roads?

(a) *TTP housing access road* means a public road on the TTP System that provides access to a housing cluster.

(b) *TTP housing street* means a public road on the TTP System that provides access to adjacent homes within a housing cluster.

(c) *Housing cluster* means three or more existing or proposed housing units.

§ 170.119 Are housing access roads and housing streets eligible for TTP funding?

Yes. TTP housing access roads and housing streets on public rights-of-way are eligible for construction, reconstruction, and rehabilitation funding under the TTP. Tribes, following the transportation planning process as required in subpart D, may include housing access roads and housing street projects on the Tribal Transportation Improvement Program (TTIP).

Toll, Ferry, and Airport Facilities

§ 170.120 How can tribes use Federal highway funds for toll and ferry facilities?

(a) A tribe can use Federal-aid highway funds, including TTP funds, to study, design, construct, and operate toll highways, bridges, and tunnels, as well as ferry boats and ferry terminal facilities. The following table shows how a tribe can initiate construction of these facilities.

To initiate construction of . . .	A tribe must . . .
(1) Toll highway, bridge, or tunnel.	(i) Meet and follow the requirements in 23 U.S.C. 129; and. (ii) If TTP funds are used, enter into a self-governance.
(2) Ferry boat or ferry	Meet and follow the requirements in 23 U.S.C. 129(c).

(b) A tribe can use TTP funds to fund 100 percent of the conversion or construction of a toll facility.

(c) If a tribe obtains non-TTP Federal funding for the conversion or construction of a toll facility, the tribe may use TTP funds to satisfy any matching fund requirements.

§ 170.121 Where is information about designing and operating a toll facility available?

Information on designing and operating a toll highway, bridge or tunnel is available from the International Bridge, Tunnel and Turnpike Association. The Association publishes a variety of reports, statistics, and analyses. The Web site is located at *http://www.ibtta.org.* Information is also available from FHWA.

§ 170.122 When can a tribe use TTP funds for airport facilities?

(a) A tribe can use TTP funds for construction of airport and heliport access roads, if the access roads are open to the public.

(b) A tribe cannot use TTP funds to construct or improve runways, airports or heliports. Tribes can use TTP funds for maintaining airport runways, heliport pads and lighting under § 170.805.

Recreation, Tourism, and Trails

§ 170.123 Can a tribe use Federal funds for its recreation, tourism, and trails program?

Yes. A tribe, tribal organization, tribal consortium, or BIA may use TTP funds for recreation, tourism, and trails programs if the programs are included in the TTPTIP. Additionally, the following Federal programs may be possible sources of Federal funding for recreation, tourism, and trails projects and activities;

(a) Federal Lands Access Program (23 U.S.C. 204);

(b) Tribal High Priority Projects Program (Section 1123 of MAP–21);

(c) National Highway Performance Program (23 U.S.C. 119);

(d) Transportation Alternatives (23 U.S.C. 213);

(e) Surface Transportation Program (23 U.S.C. 133);

(f) Other funding from other Federal departments; and

(g) Other funding that Congress may authorize and appropriate.

§ 170.124 How can a tribe obtain funds?

(a) To receive funding for programs that serve recreation, tourism, and trails goals, a tribe should:

(1) Identify a program meeting the eligibility guidelines for the funds and have it ready for development; and

(2) Have a viable project ready for improvement or construction, including necessary permits.

(b) Tribes seeking to obtain funding from a State under the programs identified in § 170.123(c) through (g) should contact the State directly to determine eligibility, contracting opportunities, funding mechanisms, and project administration requirements.

(c) In order to expend any Federal transportation funds, a tribe must ensure that the eligible project/program is listed on an FHWA approved TIP or STIP.

§ 170.125 What types of activities can a recreation, tourism, and trails program include?

(a) The following are examples of activities that tribes and tribal organizations may include in a recreation, tourism, and trails program:

(1) Transportation planning for tourism and recreation travel;

(2) Adjacent public vehicle parking areas;

(3) Development of tourist information and interpretative signs;

(4) Provision for non-motorized trail activities including pedestrians and bicycles;

(5) Provision for motorized trail activities including all-terrain vehicles, motorcycles, snowmobiles, etc.;

(6) Construction improvements that enhance and promote safe travel on trails;

(7) Safety and educational activities;

(8) Maintenance and restoration of existing recreational trails;

(9) Development and rehabilitation of trailside and trailhead facilities and trail linkage for recreational trails;

(10) Purchase and lease of recreational trail construction and maintenance equipment;

(11) Safety considerations for trail intersections;

(12) Landscaping and scenic enhancement (see 23 U.S.C. 319);

(13) Bicycle Transportation and pedestrian walkways (see 23 U.S.C. 217); and

(14) Trail access roads.

(b) The items listed in paragraph (a) of this section are not the only activities that are eligible for recreation, tourism, and trails funding. The funding criteria may vary with the specific requirements of the programs.

(c) Tribes may use TTP funds for any activity that is eligible for Federal funding under any provision of title 23 U.S.C.

§ 170.126 Can roads be built in roadless and wild areas?

Under 25 CFR part 265, no roads can be built in an area designated as a roadless and wild area.

Highway Safety Functions

§ 170.127 What funds are available for a tribe's highway safety activities?

(a) Funds are made available for a tribe's highway safety activities through a TTP set-aside established in 23 U.S.C. 202(e). The funds are to be allocated based on identification and analysis of highway safety issues and opportunities on tribal lands. A call for projects will be made annually for these funds through a Notice of Funding Availability published in the **Federal Register**.

(b) Tribes may use their TTP funds made available through 23 U.S.C. 202(b) for highway safety activities as well as seek grant and program funding from appropriate State and local agencies and private grant organizations.

(c) The following programs may make funds available to tribes for safety projects and activities:

(1) FHWA Highway Safety Improvement Program (HSIP) 23 U.S.C. 148;

(2) Elimination of Hazards Relating to Railway Highway Crossings (23 U.S.C. 130, 23 CFR 924);

(3) State and Community Highway Safety Grant Program;

(4) State Traffic Safety Information System Improvement Grants Program;

(5) NHTSA—Alcohol-Impaired Driving Countermeasures Incentive Program;

(6) NHTSA—Occupant Protection Incentive Grant Program;

(7) NHTSA—Child Safety and Child Booster Seat Incentive Program; and

(8) BIA—Indian Highway Safety Program 25 CFR part 181;

(9) Funding for highway safety activities from the U.S. Department of Health and Human Services; and

(10) Other funding that Congress may authorize and appropriate.

(d) A project that uses TTP funds made available under 23 U.S.C. 202(b) or TTP set-aside funding established in 23 U.S.C. 202(e) must be identified on a FHWA-approved TTPTIP before any funds are expended.

§ 170.128 What activities are eligible for TTP safety funds?

(a) Funds made available under 23 U.S.C. 202(e) may be used for projects and activities that improve safety in one or more of the following categories:

(1) Planning activities;

(2) Enforcement and emergency management;

(3) Education; and

(4) Engineering projects.

(b) Eligible activities for each of the categories listed in paragraph (a) of this section will be included in the annual Notice of Funding Availability. Other activities proposed by tribes must be requested from BIA or FHWA under § 170.113.

(c) The BIA Indian Highway Safety Program may be another resource for safety funding.

§ 170.129 How will tribes receive safety funds?

Funds available to tribes may be included in the tribe's self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements.

§ 170.130 How can tribes obtain non-TTP funds for highway safety projects?

There are two methods to obtain National Highway Traffic Safety Administration (NHTSA) and other, non-TTP, FHWA safety funds for highway safety projects:

(a) FHWA provides safety funds to BIA under 23 U.S.C. 402. BIA annually solicits proposals from tribes for use of these funds. Proposals are processed under 25 CFR part 181. Tribes may request an ISDEAA contract or agreement, or other appropriate agreement for these projects.

(b) FHWA provides funds to the States under 23 U.S.C. 402 and 405. States annually solicit proposals from tribes and local governments. Tribes seeking to obtain funding from the States under these programs should contact the State directly to determine eligibility, contracting opportunities, funding mechanisms and project administration requirements.

Transit Facilities

§ 170.131 How do tribes identify transit needs?

Tribes identify transit needs during the tribal transportation planning process (see subpart D of this part). Transit projects using TTP funds must be included in the FHWA-approved TTPTIP.

§ 170.132 What Federal funds are available for a tribe's transit program?

Title 23 U.S.C. authorizes use of TTP funds for transit facilities as defined in this part. There are many additional sources of Federal funds for tribal transit programs, including the Federal programs listed in this section. Note that each program has its own terms and conditions of assistance. For further information on these programs and their use for transit, contact the FTA Regional Transit Assistance Program at *www.nationalrtap.org.*

(a) Department of Transportation: Formula Grants for Public Transportation on Indian Reservations under 49 U.S.C. 5311.

(b) Department of Agriculture: Community facilities loans; rural development loans; business and industrial loans; rural enterprise grants; commerce, public works and economic development grants; and economic adjustment assistance.

(c) Department of Housing and Urban Development: Community development block grants, supportive housing, tribal housing loan guarantees, resident opportunity and support services.

(d) Department of Labor: Native American employment and training, welfare-to-work grants.

(e) Department of Transportation: Welfare-to-Work, Tribal Transportation Program, transportation and community and systems preservation, Federal transit capital improvement grants, public transportation for non-urbanized areas, capital assistance for elderly and disabilities transportation, education, and Even Start.

(f) Department of Health and Human Services: Programs for Native American elders, community service block grants, job opportunities for low-income individuals, Head Start (capital or operating), administration for Native Americans programs, Medicaid, HIV Care Grants, Healthy Start, and the Indian Health Service.

§ 170.133 May a tribe or BIA use TTP funds as matching funds?

TTP funds may be used to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

§ 170.134 What transit facilities and activities are eligible for TTP funding?

Transit facilities and activities eligible for TTP funding include, but are not limited to:

(a) Acquiring, constructing, operating, supervising or inspecting new, used or refurbished equipment, buildings, facilities, buses, vans, water craft, and other vehicles for use in public transportation;

(b) Transit-related intelligent transportation systems;

(c) Rehabilitating, remanufacturing, and overhauling a transit vehicle;

(d) Preventive maintenance;

(e) Leasing transit vehicles, equipment, buildings, and facilities for use in mass transportation;

(f) Third-party contracts for otherwise eligible transit facilities and activities;

(g) Public transportation improvements that enhance economic and community development, such as bus shelters in shopping centers, parking lots, pedestrian improvements, and support facilities that incorporate other community services;

(h) Passenger shelters, bus stop signs, and similar passenger amenities;

(i) Introduction of new public transportation technology;

(j) Provision of fixed route, demand response services, and non-fixed route paratransit transportation services (excluding operating costs) to enhance access for persons with disabilities;

(k) Radio and communication equipment to support tribal transit programs;

(l) Transit; and

(m) Any additional activities authorized by 49 U.S.C. 5311.

TTP Coordinating Committee

§ 170.135 What is the TTP Coordinating Committee?

(a) Under this part, the Secretaries will establish a TTP Coordinating Committee that:

(1) Provides input and recommendations to BIA and FHWA in developing TTP regulations, policies and procedures; and

(2) Supplements government-to-government consultation by coordinating with and obtaining input from tribes, BIA, and FHWA.

(b) The Committee consists of 24 tribal regional representatives (two from each BIA Region) and two non-voting Federal representatives (FHWA and BIA).

(c) The Secretary must select the regional tribal representatives from nominees officially submitted by the region's tribes.

(1) To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small tribes.

(2) Tribal nominees must be tribal governmental officials or tribal employees with authority to act for the tribal government.

(d) For purposes of continuity, the Secretary will appoint tribal representatives from each BIA region to 3-year terms in a manner that only one-third of the tribal representatives change every year.

(e) The Secretary will provide guidance regarding replacement of representatives should the need arise.

§ 170.136 What are the TTP Coordinating Committee's responsibilities?

(a) Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(1) BIA/FHWA TTP Stewardship Plan;

(2) TTP policy and procedures;

(3) TTP eligible activities determination;

(4) TTP transit policy;

(5) TTP regulations;

(6) TTP management systems policy and procedures; and

(7) National tribal transportation needs.

(b) The Committee may establish work groups to carry out its responsibilities.

(c) The Committee also reviews and provides recommendations on TTP national concerns (including the implementation of this part) brought to its attention.

(d) Committee members are responsible for disseminating TTP Coordinating Committee information and activities to tribes within their respective BIA Regions.

§ 170.137 How does the TTP Coordinating Committee conduct business?

The Committee holds at least two meetings a year. In order to maximize participation by the tribal public, the Committee shall submit to the Secretary its proposed meeting dates and locations for each fiscal year no later than October 1st. Subject to approval by the Secretary, additional Committee meetings may be called with the consent of one-third of the Committee members, or by BIA or FHWA. The Committee conducts business at its meetings as follows:

(a) A quorum consists of representation from eight BIA Regions.

(b) The Committee will operate by consensus or majority vote, as determined by the Committee in its protocols.

(c) Any Committee member can submit an agenda item to the Chair.

(d) The Committee will work through a committee-approved annual work plan and budget.

(e) Annually, the Committee must elect from among the Committee membership a Chair, a Vice-Chair, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. These officers will also have other duties that the Committee may prescribe.

(f) The Committee must keep the Secretary and the tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year.

(g) The Committee's budget will be funded through the TTP management and oversight funds, not to exceed $150,000 annually.

Tribal Technical Assistance Centers

§ 170.138 What are Tribal Technical Assistance Centers?

Tribal Technical Assistance Centers (TTAC), which are also referred to as Tribal Technical Assistance Program Centers are authorized under 23 U.S.C. 504(b)(3). The centers assist tribal governments and other TTP participants in extending their technical capabilities by providing them greater access to transportation technology, training, and research opportunities. Complete information about the centers and the services they offer is available on at *http://ltap.org/about/ttap.php.*

Appendix to Subpart B—Items for Which TTP Funds May Be Used

TTP funds must be used to pay the cost of those items identified in 23 U.S.C. 202(a)(1), including:

(a) TTP funds can be used for the following planning and design activities:

(1) Planning and design of Tribal Transportation Facilities.

(2) Transportation planning activities, including planning for tourism and recreational travel.

(3) Development, establishment, and implementation of tribal transportation management systems such as safety, bridge, pavement, and congestion management.

(4) Tribal transportation plans and transportation improvement programs (TIPS).

(5) Coordinated technology implementation program (CTIP) projects.

(6) Traffic engineering and studies.

(7) Identification and evaluation of accident prone locations.

(8) Tribal transportation standards.

(9) Preliminary engineering studies.

(10) Interagency program/project formulation, coordination and review.

(11) Environmental studies and archeological investigations directly related to transportation programs and projects.

(12) Costs associated with obtaining permits and/or complying with tribal, Federal, State, and local environmental, archeological and natural resources regulations and standards.

(13) Development of natural habitat and wetland conservation and mitigation plans, including plans authorized under the Water Resources Development Act of 1990, 104 Stat. 4604 (Water Resources Development Act).

(14) Architectural and landscape engineering services related to transportation programs.

(15) Engineering design related to transportation programs, including permitting activities.

(16) Inspection of bridges and structures.

(17) Tribal Transportation Assistance Centers (TTACs).

(18) Safety planning, programming, studies and activities.

(19) Tribal employment rights ordinance (TERO) fees.

(20) Purchase or lease of advanced technological devices used for transportation planning and design activities such as global positioning units, portable weigh-in-motion systems, hand held data collection units, related hardware and software, etc.

(21) Planning, design and coordination for Innovative Readiness Training projects.

(22) Transportation planning and project development activities associated with border crossings on or affecting tribal lands.

(23) Public meetings and public involvement activities.

(24) Leasing or rental of equipment used in transportation planning or design programs.

(25) Transportation-related technology transfer activities and programs.

(26) Educational activities related to bicycle safety.

(27) Planning and design of mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project.

(28) Evaluation of community impacts such as land use, mobility, access, social, safety, psychological, displacement, economic, and aesthetic impacts.

(29) Acquisition of land and interests in land required for right-of-way, including control of access thereto from adjoining lands, the cost of appraisals, cost of surveys, cost of examination and abstract of title, the cost of certificate of title, advertising costs, and any fees incidental to such acquisition.

(30) Cost associated with relocation activities including financial assistance for displaced businesses or persons and other activities as authorized by law.

(31) On the job education including classroom instruction and pre-apprentice training activities related to transportation planning and design.

(32) Other eligible activities as approved by FHWA.

(33) Any additional activities identified by TTP Coordinating Committee guidance and approved by the appropriate Secretary (see § 170.136).

(34) Indirect general and administrative costs; and

(35) Other eligible activities described in this part.

(b) TTP funds can be used for the following construction and improvement activities:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for tribal transportation facilities.

(2) Construction or improvement of tribal transportation facilities necessary to accommodate other transportation modes.

(3) Construction of toll roads, highway bridges and tunnels, and toll and non-toll ferry boats and terminal facilities, and approaches thereto (except when on the Interstate System) to the extent permitted under 23 U.S.C. 129.

(4) Construction of projects for the elimination of hazards at railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

(5) Installation of protective devices at railway-highway crossings.

(6) Transit facilities, whether publicly or privately owned, that serve Indian reservations and other communities or that provide access to or are located within an Indian reservation or community (see §§ 170.131 through 170.134 for additional information).

(7) Engineered pavement overlays that add to the structural value and design life or increase the skid resistance of the pavement.

(8) Tribally-owned, post-secondary vocational school transportation facilities.

(9) Road sealing.

(10) The placement of a double bituminous surface and chip seals during the construction of an approved project (as the

non-final course) or that form the final surface of low volume roads.

(11) Seismic retrofit, replacement, rehabilitation, and painting of road bridges.

(12) Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on road bridges, and approaches thereto and other elevated structures.

(13) Installation of scour countermeasures for road bridges and other elevated structures.

(14) Special pedestrian facilities built in lieu of streets or roads, where standard street or road construction is not feasible.

(15) Standard regulatory, warning, guide, and other official traffic signs, including dual language signs, which comply with the MUTCD that are part of transportation projects. TTP funds may also be used on interpretive signs (signs intended for viewing only by pedestrians, bicyclists, and occupants of vehicles parked out of the flow of traffic) that are culturally relevant (native language, symbols, etc.) that are a part of transportation projects.

(16) Traffic barriers and bridge rails.

(17) Engineered spot safety improvements.

(18) Planning and development of rest areas, recreational trails, parking areas, sanitary facilities, water facilities, and other facilities that accommodate the traveling public.

(19) Public approach roads and interchange ramps that meet the definition of a Tribal Transportation Facility.

(20) Construction of roadway lighting and traffic signals.

(21) Adjustment or relocation of utilities directly related to roadway work, not required to be paid for by local utility companies.

(22) Conduits crossing under the roadway to accommodate utilities that are part of future development plans.

(23) Restoration of borrow and gravel pits created by projects funded from the TTP.

(24) Force account and day labor work, including materials and equipment rental, being performed in accordance with approved plans and specifications.

(25) Experimental features where there is a planned monitoring and evaluation schedule.

(26) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(27) Safely accommodating the passage of vehicular and pedestrian traffic through construction zones.

(28) Construction engineering including contract/project administration, inspection, and testing.

(29) Construction of temporary and permanent erosion control, including landscaping and seeding of cuts and embankments.

(30) Landscape and roadside development features.

(31) Marine facilities and terminals as intermodal linkages.

(32) Construction of visitor information centers, kiosks, and related items.

(33) Other appropriate public road facilities such as visitor centers as determined by the Secretary of Transportation.

(34) Facilities adjacent to roadways to separate pedestrians and bicyclists from vehicular traffic for operational safety purposes, or special trails on separate rights-of-way.

(35) Construction of pedestrian walkways and bicycle transportation facilities, such as a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(36) Facilities adjacent to roadways to separate modes of traffic for safety purposes.

(37) Acquisition of scenic easements and scenic or historic sites provided they are part of an approved project or projects.

(38) Debt service on bonds or other debt financing instruments issued to finance TTP construction and project support activities.

(39) Any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

(40) Fringe and corridor parking facilities including access roads, buildings, structures, equipment improvements, and interests in land.

(41) Adjacent public parking areas.

(42) Costs associated with obtaining permits and/or complying with tribal, Federal, state, and local environmental, archeological, and natural resources regulations and standards on TTP projects.

(43) Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads, and trail markings. (See § 170.117.)

(44) Tribal fees such as employment taxes (TERO), assessments, licensing fees, permits, and other regulatory fees.

(45) On the job education including classroom instruction and pre-apprentice training activities related to TTP construction projects such as equipment operations, surveying, construction monitoring, testing, inspection and project management.

(46) Installation of advance technological devices on TTP transportation facilities such as permanent weigh-in-motion systems, informational signs, intelligent transportation system hardware, etc.

(47) Tribal, cultural, historical, and natural resource monitoring, management and mitigation for transportation related activities.

(48) Mitigation activities required by tribal, state, or Federal regulatory agencies and 42 U.S.C. 4321, *et seq.,* the National Environmental Policy Act (NEPA).

(49) Purchasing, leasing or renting of construction equipment. All equipment purchase request submittals must be accompanied by written cost analysis and approved by FHWA.

(50) Coordination and construction materials for innovative readiness training projects such as the Department of Defense (DOD), the American Red Cross, the Federal Emergency Management Agency (FEMA), other cooperating Federal agencies, states and their political subdivisions, Tribal governments, or other appropriate non-governmental organizations.

(51) Emergency repairs on tribal transportation facilities.

(52) Public meetings and public involvement activities.

(53) Construction of roads on dams and levees.

(54) Transportation alternative activities as defined in 23 U.S.C. 101(a).

(55) Modification of public sidewalks adjacent to or within tribal transportation facilities.

(56) Highway and transit safety infrastructure improvements and hazard eliminations.

(57) Transportation control measures such as employer-based transportation management plans, including incentives, shared-ride services, employer sponsored programs to permit flexible work schedules and other activities, other than clause (xvi) listed in section 108(f)(1)(A) of the Clean Air Act, (42 U.S.C. 7408(f)(1)(A)).

(58) Necessary environmental restoration and pollution abatement.

(59) Trail development and related activities as identified in §§ 170.123 through 170.126.

(60) Development of scenic overlooks and information centers.

(61) Natural habitat and wetlands mitigation efforts related to TTP road and bridge projects, including:

(i) Participation in natural habitat and wetland mitigation banks, including banks authorized under the Water Resources Development Act, and

(ii) Contributions to tribal, statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, including efforts authorized under the Water Resources Development Act.

(62) Mitigation of damage to wildlife, habitat and ecosystems caused as a result of a transportation project.

(63) Construction of permanent fixed or moveable structures for snow or sand control.

(64) Cultural access roads (see § 170.115).

(65) Other eligible items as approved by the Federal Highway Administration (FHWA).

(66) Any additional activities proposed by a Tribe or the TTP Coordinating Committee and approved by the appropriate Secretary (see §§ 170.113 and 170.136).

(67) Other eligible activities identified in this part.

(c) TTP funds can be used for maintenance activities as defined in Subpart G of this regulation.

(d) Each of the items identified in this appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

Subpart C—Tribal Transportation Program Funding

§ 170.200 How do BIA and FHWA determine the TTP funding amount?

The annual TTP funding amount available for distribution is determined as follows:

(a) The following set-asides are applied to the tribal transportation program before the determination of final tribal shares:

(1) Tribal transportation planning (23 U.S.C. 202(c));

(2) Tribal transportation facility bridges (23 U.S.C. 202(d));

(3) Tribal safety (23 U.S.C. 202(e));

(4) Administrative expenses (23 U.S.C. 202(a)(6)); and

(5) Tribal supplemental program (23 U.S.C. 202(b)(3)(C)).

(b) After deducting the set asides identified in paragraph (a) of this section, on October 1 of each fiscal year, the Secretary will distribute the remainder authorized to be appropriated for the tribal transportation program among Indian tribes as follows:

(1) For fiscal year 2014:

(i) For each Indian tribe, 60 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(ii) The remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.

(2) For fiscal year 2015:

(i) For each Indian tribe, 40 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(ii) The remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.

(3) For fiscal year 2016 and thereafter:

(i) For each Indian tribe, 20 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(ii) The remainder using tribal shares as described in § 170.201 and tribal supplemental funding as described in § 170.202.

§ 170.201 What is the statutory distribution formula for tribal shares?

(a) Tribal shares are determined by using the national tribal transportation inventory as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (*25* U.S.C. *4101 et seq.*), in the following manner:

(1) 27 percent in the ratio that the total eligible road mileage in each tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage will be computed using only facilities included in the inventory described below:

(i) Were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

(ii) Are owned by an Indian tribal government;

(iii) Are owned by the Bureau of Indian Affairs.

(2) 39 percent in the ratio that the total population in each tribe bears to the total population of all American Indians and Alaskan Natives; and

(3) 34 percent will be initially divided equally among each BIA Region.

(b) The share of funds will be distributed to each Indian tribe within the region in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011 for a tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

§ 170.202 How do BIA and FHWA determine and distribute the tribal supplemental program funds?

(a) The total amount of funding made available for the tribal supplemental program is determined as follows:

(1) If the amount made available for the tribal transportation program is less than or equal to $275,000,000, the tribal supplemental funding amount will equal 30 percent of such amount.

(2) If the amount made available for the tribal transportation program exceeds $275,000,000, the tribal supplemental funding will equal:

(i) $82,500,000; plus

(ii) 12.5 percent of the amount made available for the tribal transportation program in excess of $275,000,000.

(b) The tribal supplemental program funds will be distributed as follows:

(1) Initially, the tribal supplemental program funding determined in paragraph (a) of this section will be designated among the BIA Regions in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within the region under § 170.201.

(2) After paragraph (b)(1) of this section is completed, the tribal supplemental program funding designated for each region will be distributed among the tribes within the region as follows:

(i) The Secretary will determine which tribes would be entitled under § 170.200 to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR part 170, subpart C (in effect as of July 5, 2012); and

(ii) The combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under § 170.200.

(c) Subject to paragraph (d) of this section, the Secretary will distribute a combined amount to each tribe that meets the criteria described in paragraph (b)(2)(i) of this section a share of funding in proportion to the share of the combined amount determined under paragraph (b)(2)(ii) of this section attributable to such Indian tribe.

(d) A tribe may not receive under paragraph (b)(2) of this section and based on its tribal share under § 170.200 a combined amount that exceeds the amount that such Indian tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR part 170, subpart C.

(e) If the amount made available for a region under paragraph (b)(1) of this section exceeds the amount distributed among Indian tribes within that region under paragraph (b)(2) of this section, The Secretary will distribute the remainder of such region's funding under paragraph (b)(1) of this section among all tribes in that region in proportion to the combined amount that each such tribe received under § 170.200 and paragraphs (b), (c), and (d) of this section.

§ 170.203 How do BIA and FHWA allocate tribal transportation planning funds?

Upon request of a tribal government and approval by the BIA Regional Office or FHWA, BIA or FHWA provides tribal transportation planning funds described in § 170.200(a)(1) pro rata to the tribe's final percentage as determined under §§ 170.200 through 170.202. The tribal transportation planning funds will be distributed to the tribes under applicable BIA and FHWA contracting procedures.

§ 170.204 What restrictions apply to TTP funds provided to tribes?

All TTP funds provided to tribes can be expended only on eligible activities identified in Appendix A to Subpart B, and included in an FHWA approved TIP per 23 U.S.C. 202(b)(4)(B).

§ 170.205 What is the timeframe for distributing TTP funds?

Not later than 30 days after the date on which funds are made available to

the Secretary under this paragraph, the funds will be distributed to, and made available for immediate use by, eligible Indian tribes, in accordance with the formula for distribution of funds under the tribal transportation program. (See 23 U.S.C. 202(b)(4)(A).)

TTP Inventory and Long-Range Transportation Plan

§ 170.225 How does a long-range transportation plan relate to the National Tribal Transportation Inventory?

A long-range transportation plan (LRTP) is developed using a uniform process that identifies the transportation needs and priorities of a tribe. The National Tribal Transportation Inventory NTTFI (see § 170.442) is derived from transportation facilities identified through an LRTP. It is also a means for identifying projects and activities for the TTP and the Tribal High Priority Projects Program (THPPP) described in Subpart I.

Formula Data Appeals

§ 170.226 How can a tribe appeal its share calculation?

(a) In calculating tribal shares, BIA and FHWA use population data (which may be appealed) and specific prior-year data (which may not be appealed). Share calculations are based upon the requirements of 23 U.S.C. 202(b)(3)(B).

(b) Any appeal of a tribe's population figure must be directed to Department of Housing and Urban Development. The population data used is the most recent data on American Indian and Alaska Native population within each Indian Tribe's American Indian/Alaska Native Reservation or Statistical Area. This data is computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

(b) Appeal processes regarding inventory submissions are found at § 170.444(c), design standards at § 170.457, and new uses of funds at § 170.113.

Flexible Financing

§ 170.227 Can tribes use flexible financing for TTP projects?

Yes. Tribes may use flexible financing in the same manner as States to finance TTP transportation projects, unless otherwise prohibited by law.

(a) Tribes may issue bonds or enter into other debt-financing instruments under 23 U.S.C. 122 with the expectation of payment of TTP funds to satisfy the instruments.

(b) Under 23 U.S.C. 603, the Secretary of Transportation may enter into an agreement for secured loans or lines of credit for TTP projects meeting the requirements contained in 23 U.S.C. 602. Tribes or BIA may service Federal credit instruments. The secured loans or lines of credit must be paid from tolls, user fees, payments owing to the obligor under a public-private partnership or other dedicated revenue sources.

(c) Tribes may use TTP funds as collateral for loans or bonds to finance TTP projects. Upon the request of a tribe, a BIA region or FHWA will provide necessary documentation to banks and other financial institutions.

§ 170.228 Can a tribe use TTP funds to leverage other funds or to pay back loans?

(a) A tribe can use TTP funds to leverage other funds.

(b) A tribe can use TTP funds to pay back loans or other finance instruments that were used for a project that:

(1) The tribe paid for in advance of the current year using non-TTP funds;

(2) Was included in FHWA-approved TTPTIP; and

(3) Was included in the NTTFI at the time of construction.

§ 170.229 Can a tribe apply for loans or credit from a State infrastructure bank?

Yes. A tribe can apply for loans or credit from a State infrastructure bank. Upon the request of a tribe, BIA region or FHWA will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for a TTP project.

§ 170.230 How long must a project financed through flexible financing remain on a TTPTIP?

Tribes must identify each TTP project financed through flexible financing along with the repayment amount on their annual TTPTIP until the flexible financing instrument has been satisfied.

Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities

Transportation Planning

§ 170.400 What is the purpose of transportation planning?

The purpose of transportation planning is to address current and future transportation, land use, economic development, traffic demand, public safety, health, and social needs.

§ 170.401 What are BIA's and FHWA's roles in transportation planning?

Except as provided in § 170.402, the functions and activities that BIA and/or FHWA must perform for the TTP are:

(a) Preparing, reviewing, and approving the TTPTIP;

(b) Oversight of the NTTFI;

(c) Performing quality assurance and validation of NTTFI data updates as needed;

(d) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant TTP projects;

(e) Providing technical assistance to tribal governments;

(f) Developing TTP budgets;

(g) Facilitating public involvement;

(h) Participating in transportation planning and other transportation-related meetings;

(i) Performing quality assurance and validation related to performing traffic studies;

(j) Performing preliminary project planning or project identification studies;

(k) Conducting special transportation studies;

(l) Developing short and long-range transportation plans;

(m) Mapping;

(n) Developing and maintaining management systems;

(o) Performing transportation planning for operational and maintenance facilities; and

(p) Researching rights-of-way documents for project planning.

§ 170.402 What is the tribal role in transportation planning?

(a) All tribes must prepare a tribal TIP (TTIP) or tribal priority list.

(b) Tribes operating with a Program Agreement or BIA self-determination contract, TTP Agreement, or Self-Governance agreement may assume any of the following planning functions:

(1) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant TTP projects;

(2) Preparing NTTFI data updates;

(3) Facilitating public involvement;

(4) Performing traffic studies;

(5) Developing short- and long-range transportation plans;

(6) Mapping;

(7) Developing and maintaining tribal management systems;

(8) Participating in transportation planning and other transportation related meetings;

(9) Performing transportation planning for operational and maintenance facilities;

(10) Developing TTP budgets including transportation planning cost estimates;

(11) Conducting special transportation studies, as appropriate;

(12) Researching rights-of-way documents for project planning; and

(13) Performing preliminary project planning or project identification studies.

§ 170.403 What TTP funds can be used for transportation planning?

Funds as defined in 23 U.S.C. 202(c) are allocated to an Indian tribal government to carry out transportation planning. Tribes may also identify transportation planning as a priority use for their TTP tribal share formula funds. In both cases, the fund source and use must be clearly identified on a FHWA approved TTPTIP.

§ 170.404 Can tribes use transportation planning funds for other activities?

Yes. After completion of a tribe's annual planning activities, unexpended planning funds made available under 23 U.S.C. 202 (c) may be used on eligible projects or activities provided that they are identified on a FHWA approved TTPTIP.

§ 170.405 How must tribes use planning funds?

TTP Program funds as defined in 23 U.S.C. 202(c) are available to a tribal government to support tribal transportation planning and associated activities, including:

(a) Attending transportation planning meetings;

(b) Pursuing other sources of funds; and

(c) Developing the tribal priority list or any of the transportation planning functions and activities listed in § 170.402.

§§ 170.406—170.409 [Reserved]

§ 170.410 What is the purpose of long-range transportation planning?

(a) The purpose of long-range transportation planning is to clearly demonstrate a tribe's transportation needs and to develop strategies to meet these needs. These strategies should address future land use, economic development, traffic demand, public safety, and health and social needs. The planning process should result in a long-range transportation plan (LRTP).

(b) The time horizon for a LRTP should be 20 years to match State transportation planning horizons.

§ 170.411 What should a long-range transportation plan include?

A long-range transportation plan should include:

(a) An evaluation of a full range of transportation modes and connections between modes such as highway, rail, air, and water, to meet transportation needs;

(b) Trip generation studies, including determination of traffic generators due to land use;

(c) Social and economic development planning to identify transportation improvements or needs to accommodate existing and proposed land use in a safe and economical fashion;

(d) Measures that address health and safety concerns relating to transportation improvements;

(e) A review of the existing and proposed transportation system to identify the relationships between transportation and the environment;

(f) Cultural preservation planning to identify important issues and develop a transportation plan that is sensitive to tribal cultural preservation;

(g) Scenic byway and tourism plans;

(h) Measures that address energy conservation considerations;

(i) A prioritized list of short- and long-term transportation needs; and

(j) An analysis of funding alternatives to implement plan recommendations.

§ 170.412 How is the tribal TTP long-range transportation plan developed and approved?

(a) The tribal TTP long-range transportation plan is developed by either:

(1) A tribe working through a self-determination contract, self-governance agreement, Program Agreement; and other appropriate agreement; or

(2) BIA or FHWA upon request of, and in consultation with, a tribe. The tribe and BIA or FHWA need to agree on the methodology and elements included in development of the TTP long-range transportation plan along with time frames before work begins. The development of a long-range transportation plan on behalf of a tribe will be funded from the tribe's share of the TTP program funds.

(b) During the development of the TTP long-range transportation plan, the tribe and BIA or FHWA will jointly conduct a midpoint review.

(c) The public reviews a draft TTP long-range transportation plan as required by § 170.413. The plan is further refined to address any issues identified during the public review process. The tribe then approves the TTP long-range transportation plan.

§ 170.413 What is the public role in developing the long-range transportation plan?

BIA, FHWA, or the tribe must solicit public involvement. If there are no tribal policies regarding public involvement, a tribe must use the procedures in this section. Public involvement begins at the same time long-range transportation planning begins and covers the range of users, from stakeholders and private citizens to major public and private entities. Public involvement must include either meetings or notices, or both.

(a) For public meetings, BIA, FHWA or a tribe must:

(1) Advertise each public meeting in local public newspapers at least 15 days before the meeting date. In the absence of local public newspapers, BIA, FHWA, or the tribe may post notices under local acceptable practices;

(2) Provide at the meeting copies of the draft long-range transportation plan;

(3) Provide information on funding and the planning process; and

(4) Provide the public the opportunity to comment, either orally or in writing.

(b) For public notices, BIA, FHWA, or a tribe must:

(1) Publish a notice in the local and tribal newspapers when the draft long-range transportation plan is complete. In the absence of local public newspapers, BIA, FHWA, or the tribe may post notices under local acceptable practices; and

(2) State in the notice that the long-range transportation plan is available for review, where a copy can be obtained, whom to contact for questions, where comments may be submitted, and the deadline for submitting comments (normally 30 days).

§ 170.414 How is the tribal long-range transportation plan used and updated?

The tribal government uses its TTP long-range transportation plan to develop transportation projects as documented in a tribal priority list or TTIP and to identify and justify the tribe's updates to the NTTFI. To be consistent with State, MPO and RPO planning practices, the TTP long-range transportation plan must be reviewed annually and updated at least every 5 years.

§ 170.415 What are pre-project planning and project identification studies?

(a) Pre-project planning and project identification studies are part of overall transportation planning and includes the activities conducted before final project approval on the TTP Transportation Improvement Program (TTPTIP). These processes provide the information necessary to financially constrain and program a project on the four-year TTPTIP but are not the final determination that projects will be designed and built. These activities include:

(1) Preliminary project cost estimates;

(2) Certification of public involvement;

(3) Consultation and coordination with States and/or MPO's for regionally significant projects;

(4) Preliminary needs assessments; and

(5) Preliminary environmental and archeological reviews.

(b) BIA and/or FHWA, upon request of the tribe, will work cooperatively with tribal, State, regional, and metropolitan transportation planning organizations concerning the leveraging of funds from non-TTP Program sources and identification of other funding sources to expedite the planning, design, and construction of projects on the TTPTIP.

§ 170.420 What is the tribal priority list?

The tribal priority list is a list of all transportation projects that the tribe wants funded. The list:

(a) Is not financially constrained; and

(b) Is provided to BIA or FHWA by official tribal action, unless the tribal government submits a Tribal Transportation Improvement Program (TTIP).

Transportation Improvement Programs

§ 170.421 What is the Tribal Transportation Improvement Program (TTIP)?

The TTIP:

(a) Is developed from the Tribe's tribal priority list or long-range transportation plan and must be consistent with the tribal LRTP;

(b) Is financially constrained;

(c) Must contain all TTP-funded projects and eligible activities programmed in the next 4 years and identify the implementation year of each project or activity. Although 23 U.S.C. 134(j)(1)(D) indicates that a TIP must be updated every four years, Tribes are encouraged to update the TIP annually to best represent the plans of the tribe;

(d) May include other Federal, State, county, and municipal, transportation projects initiated by or developed in cooperation with the tribal government;

(e) Must include public involvement;

(f) Is reviewed and updated as necessary by the tribal government;

(g) Can be changed only by the tribal government; and

(h) After approval by the tribal government, must be forwarded to BIA or FHWA by resolution or by tribally authorized government action.

§ 170.422 What is the TTP Transportation Improvement Program?

(a) The TTP Transportation Improvement Program (TTPTIP):

(1) Is financially constrained;

(2) Includes eligible projects and activities selected by tribal governments from TTIPs or other tribal actions;

(3) Is organized by year, State, and tribe; and

(4) May include projects and activities predominately funded with other funding sources. In these cases all fund sources are to be identified on the TTPTIP.

(b) When approved by FHWA, the TTPTIP authorizes the eligibility of projects or activities for expenditure of TTP funds. However, all other requirements associated with that project or activity must be satisfied before expenditure actually occurs.

§ 170.423 How are projects placed on the TTPTIP?

(a) BIA or FHWA coordinates with the tribe to select projects from the TTIP or tribal priority list for inclusion on the 4-year TTPTIP as follows:

(1) Tribe, or tribe with assistance from BIA or FHWA, submits project and activity information as documented through pre-project planning or project identification studies within the financial constraints identified above), designating estimated dollar amounts for each project and activity.

(2) Tribe submits a certification of public involvement back to BIA or FHWA along with a tribal resolution or tribal authorized government action requesting approval.

(3) BIA/FHWA enters submitted data into the federal system developing the tribe's proposed TTPTIP.

(4) Proposed TTPTIP goes through BIA/FHWA approval process. Before approving a project on a non-BIA or non-tribal road that is eligible for funds apportioned in a State under 23 U.S.C. 104, the Secretary will determine that the obligation of the TTP funds is in the best interest of the program and is supplementary to and not in lieu of the obligation of a fair and equitable share of the funds apportioned to the State under 23 U.S.C. 104.

(5) A copy of the approved final TTPTIP is returned to Tribe.

(b) A tribe that does not generate enough annual funding under the TTP Program funding formula to complete a project may either:

(1) Enter a consortium of tribes and delegate authority to the consortium to develop the TTIP and tribal control schedule;

(2) Enter into agreement with other tribes to permit completion of the project; or

(3) Apply for TTPHPP funding under subpart I.

(c) Tribes may seek flexible financing alternatives as described in subpart C.

§ 170.424 How does the public participate in developing the TTPTIP?

Public involvement is required in the development of the TTPTIP.

(a) The tribe must publish a notice in local and/or tribal newspapers when the draft tribal or TTPTIP is complete. In the absence of local public newspapers, the tribe or BIA may post notices under local acceptable practices. The notice must indicate where a copy can be obtained, contact person for questions, where comments may be submitted, and the deadline for submitting comments. A copy of the notice will be made available to BIA or FHWA upon request.

(b) The tribe may hold public meetings at which the public may comment orally or in writing.

(c) The tribe, the State transportation department, or MPO may conduct public involvement activities.

§ 170.425 How do BIA and FHWA conduct the annual update to the TTPTIP?

(a) The TTPTIP annual update allows:

(1) Changes to project schedules and amounts for projects and activities; and

(2) Adding transportation projects and activities planned for the next 4 years.

(b) During the first quarter of the fiscal year, tribes are notified of the annual update and provided with the estimated funding amounts for the next fiscal year, copies of the previous year TTPTIP, and instructions for submitting required data.

(c) The tribe reviews any new transportation planning information, priority lists, and TTIP, using the procedures in § 170.423, and forwards the documentation to BIA Regional Office or FHWA.

(d) BIA or FHWA review all submitted information with the tribes, and add agreed-upon updates, including all previously approved amendments (see § 170.427), to the TTPTIP so that the Secretaries can approve the new updated TTPTIP before the start of the next fiscal year.

§ 170.426 How is the TTPTIP approved?

The approval process for the TTPTIP is:

(a) The BIA Regional Office and FHWA work together to review and concur on the TTPTIPs and then forward the documentation to the Secretaries for review and approval;

(b) When approved, copies of the approved TTPTIP are made available to FHWA, BIA Regional Offices, and tribal governments.

(c) FHWA provides copies of the approved TTPTIP to the FHWA division office for transmittal to the State transportation department for inclusion in the State Transportation Improvement Program (STIP) without further action.

§ 170.427 How can a tribe amend an approved TTPTIP?

(a) The current-year TTPTIP may be amended to reflect new proposed additional projects and activities or a significant change in available fiscal

year TTP funding. All tribal requests to BIA or FHWA for TTPTIP amendments must be accompanied by an amended TTIP and a tribal resolution or tribal authorized government action requesting the amendment.

(b) BIA's regional office or FHWA will review all submitted information with the tribe and provide a written response (approving, denying, or requesting additional information) within 45 days. If the proposed TTPTIP amendment contains a project not listed on the current approved TTPTIP, BIA must submit the proposed amendment to FHWA for final approval.

(c) An amendment to a previously approved TTPTIP must use the same public involvement process that was used to develop the original TTPTIP.

§ 170.428 How is the State Transportation Improvement Program related to the TTPTIP?

FHWA will annually provide each State's transportation department with the most current FHWA approved TTPTIP for the Tribes within that State. This will ensure that approved TTPTIP updates and amendments are included with the STIP.

Public Hearings

§ 170.435 When is a public hearing required?

The tribe, or BIA or FHWA after consultation with the appropriate tribe and other involved agencies, determines whether or not a public hearing is needed for a TTPTIP, a long-range transportation plan, or a project. A public hearing must be held if a project:

(a) Is a new route or facility;

(b) Would significantly change the layout or function of connecting or related roads or streets;

(c) Would cause a substantial adverse effect on adjacent property; or

(d) Is controversial or expected to be controversial in nature.

§ 170.436 How are public hearings for TTP planning and projects funded?

Public hearings for a Tribe's TTIP or long-range transportation plan are funded using the tribe's funds as described in § 170.403.

§ 170.437 If there is no hearing, how must BIA, FHWA, or a tribe inform the public?

(a) When no public hearing for a TTP project is scheduled, the BIA, FHWA, or a Tribe must give adequate notice to the public before project activities are scheduled to begin. The notice should include:

(1) Project location;

(2) Type of improvement planned;

(3) Dates and schedule for work;

(4) Name and address where more information is available; and

(5) Provisions for requesting a hearing.

(b) If the work is not to be performed by the tribe, BIA will send a copy of the notice to the affected tribe.

§ 170.438 How must BIA, FHWA, or a tribe inform the public of when a hearing is held?

(a) When BIA, FHWA, or a tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice with information about the project, how to attend the hearing, and where copies of documents can be obtained or viewed.

(b) BIA or the tribe must publish the notice by:

(1) Posting the notice and publishing it in a newspaper of general circulation at least 30 days before the public hearing; and,

(2) Sending a courtesy copy of the notice to each affected tribe and BIA Regional Office.

(c) A second notice for a hearing is optional.

§ 170.439 How is a public hearing conducted?

(a) *Presiding official.* BIA or FHWA appoints a tribal or Federal official to preside over the public hearing. The presiding official must encourage a free and open discussion of the issues.

(b) *Record of hearing.* The presiding official is responsible for compiling the official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments made or provided at the hearing, or within 5 working days of the hearing, will be made a part of the record.

(c) *Hearing process.* (1) The presiding official explains the purpose of the hearing and provides an agenda;

(2) The presiding official solicits public comments from the audience on the merits of TTP projects and activities; and

(3) The presiding official informs the hearing audience of the appropriate procedures for a proposed TTP project or activity that may include, but are not limited to:

(i) Project development activities;

(ii) Rights-of-way acquisition;

(iii) Environmental and archeological clearance;

(iv) Relocation of utilities and relocation services;

(v) Authorized payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601 *et seq.,* as amended;

(vi) Draft transportation plan; and

(vii) The scope of the project and its effect on traffic during and after construction.

(d) *Availability of information.* Appropriate maps, plats, project plans, and specifications will be available at the hearing for public review. Appropriate officials must be present to answer questions.

(e) *Opportunity for comment.* Comments are received as follows:

(1) Oral statements at the hearing;

(2) Written statements submitted at the hearing; and

(3) Written statements sent to the address noted in the hearing notice within 5 working days following the public hearing.

§ 170.440 How can the public learn the results of a public hearing?

Within 20 working days after the public hearing, the presiding official will issue and post at the hearing site a statement that:

(a) Summarizes the results of the hearing;

(b) Explains any needed further action;

(c) Explains how the public may request a copy; and

(d) Outlines appeal procedures.

§ 170.441 Can a decision resulting from a hearing be appealed?

Yes. A decision resulting from the public hearing may be appealed under 25 CFR part 2.

TTP Facility Inventory

§ 170.442 What is the National Tribal Transportation Facility Inventory?

(a) The National Tribal Transportation Facility Inventory (NTTFI), is defined under § 170.5 of this part.

(b) BIA, FHWA, or tribes can also use the NTTFI to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing TTP facilities, and develop management systems.

(c) The Secretaries may include additional transportation facilities in the NTTFI if the additional facilities are included in a uniform and consistent manner nationally.

(d) As required by 23 U.S.C. 144, all bridges in the NTTFI will be inspected and recorded in the national bridge inventory administered by the Secretary of Transportation.

§ 170.443 What is required to successfully include a proposed transportation facility in the NTTFI?

A proposed transportation facility is any transportation facility, including a highway bridge, that will serve public transportation needs, is eligible for

construction under the TTP, and does not currently exist. It must meet the eligibility requirements of the TTP and be open to the public when constructed. In order to have a proposed facility placed on the NTTFI, a tribe must submit all of the following to the BIADOT/FHWA Quality Assurance Team for consideration:

(a) A tribal resolution or other official action identifying support for the facility and its placement on the NTTFI.

(b) A copy of the tribe's long-range transportation plan (LRTP) containing:

(1) A description of the current land use and identification of land ownership within the proposed road's corridor (including what public easements may be required);

(2) A description of need and outcomes for the facility including a description of the project's termini; and

(3) The sources of funding to be used for construction.

(c) If the landowner is a public authority, documentation that the proposed road has been identified in their LRTP, Statewide Transportation Improvement Program approved by FHWA, or other published transportation planning documents. If the owner will be the tribe, the tribe must submit documentation showing an agreement regarding the right-of-way or a clear written statement of willingness to provide a right-of-way from each necessary landowner along the route.

(d) A certification that a public involvement process was held for the proposed road.

(e) Documentation that identifies the anticipated environmental impacts of the project as well as engineering and construction challenges and the funding sources that will be used during the planning, design, construction, and maintenance of the proposed facility.

(f) Documentation identifying the entity responsible for maintenance of the facility after construction is completed.

§ 170.444 How is the NTTFI updated?

(a) Submitting data into the NTTFI for a new facility is carried out on an annual basis as follows:

(1) BIA Regional Offices provide each tribe within its region with a copy of the tribe's own NTTFI data during the first fiscal quarter of each year.

(2) Tribes review the data and either enter the changes/updates into the database or submit changes/updates back to the BIA Regional Office by March 15. The submissions must include, at a minimum, all required minimum attachments (see § 170.446) and authorizing resolutions or similar official authorizations.

(3) The BIA Regional Office reviews each tribe's submission. If any errors or omissions are identified, the BIA Regional Office will return the submittals along with a request for corrections to the tribe no later than May 15. If no errors or omissions are found, the BIA Regional Office validates the data and forwards it to BIADOT for review and approval.

(4) The tribe must correct any errors or omissions in the data entries or return the corrected submittals back to the BIA Regional Office by June 15.

(5) Each BIA Regional Office must validate its regional data by July 15.

(6) BIADOT approves the current inventory year submissions from BIA Regional Offices by September 30 or returns the submissions to the BIA Regional Office if additional work is required.

(b) Updating the data on a facility currently listed in the NTTFI is carried out as follows:

(1) At any time, a tribe may submit a request to the BIA Region asking for the NTTFI data of an existing facility to be updated. The request must include the tribe's updated data and background information on how and why the data was obtained. At the request of a tribe, FHWA may assist BIA and the tribe in updating the NTTFI data as required under this part.

(2) The BIA Region must review the submitted data and respond to the tribe within 30 days of its receipt.

(i) If approved, the BIA Region validates the data and forwards it to BIA DOT for review and approval.

(ii) If not approved, the BIA Region returns the submittals to the tribe along with a detailed written explanation and supporting documentation of the reasons for the disapproval. The tribe must correct the data entries and return the corrected submittals back to the BIA Region.

(3) BIADOT approves the current inventory year submissions from BIA Regional Offices or returns the submittals to the BIA Regional Office if additional work is required.

(c) A Tribe may appeal the rejection of submitted data on a new or existing facility included in the NTTFI by filing a written notice of appeal to the Director, Bureau of Indian Affairs, with a copy to the BIA Regional Director.

(d) To be included in the annual NTTFI update used for administrative and reporting purposes for any given fiscal year, submittals for new facilities and updates for existing facilities must be officially accepted by BIA and FHWA by September 30th of that year.

§ 170.445 What is a strip map?

A strip map is a graphic representation of a section of road or other transportation facility being added to or modified in the NTTFI.

(a) Each strip map submitted with an NTTFI change must:

(1) Clearly identify the facility's location with respect to State, county, tribal, and congressional boundaries;

(2) Define the overall dimensions of the facility, including latitude and longitude;

(3) Include a north arrow, scale, designation of road sections, traffic counter locations, and other nearby transportation facilities; and

(4) Include a table that provides the facility's data information needed for the NTTFI.

(b) For additional information, refer to the TTP Coding Guide.

§ 170.446 What minimum attachments are required for an NTTFI submission?

The minimum attachments required for a facility to be added into the NTTFI include the following.

(a) A long-range transportation plan. Provide the plan's cover sheet, signature page, and page or pages that contain the description of route.

(b) A tribal resolution or official authorization that refers to all route numbers, names, locations, lengths, construction needs, and ownerships.

(c) A Strip Map. Defines or illustrates the facility's location with respect to State, County, Tribal, and congressional boundaries. See § 170.445.

(d) ADT Backup Documentation. This applies only when a request to change or update the ADT for a section in the official inventory. The request will contain raw traffic data (backup data), method and calculations for adjustment of raw data, map showing traffic counter locations or location of traffic counter can be provided within the strip map, and derived ADT values. If the road is proposed, the ADT impractical to acquire, or a current ADT does not exist, then BIADOT will assign a default values within the NTTFI database.

(e) If possible, a typical or representative section photo or bridge profile photo.

(f) Incidental cost verification. Provide an estimate, analysis and justification to verify the need of additional incidental items required to improve the road to an adequate standard. The analysis and justification must be specific to the route or facility being submitted.

(g) Acknowledgement of Public Authority responsibility. This document can be a letter or similar notification by the public authority (other than the tribe

or BIA) of acknowledgement of responsibility for maintenance of the Indian Reservation Roads facility. This document will identify the route or facility by region, agency, reservation, route and section. It will identify ownership and the entity that will be responsible for the maintenance of the route after construction, and that the route will be open to the public.

(h) For proposed roads, see 170.443 for additional required attachments.

Environmental and Archeological Requirements

§ 170.450 What archeological and environmental requirements must the TTP meet?

All BIA, FHWA, and tribal work for the TTP must comply with cultural resource and environmental requirements under applicable Federal laws and regulations. A list of applicable laws and regulations is available in the official Tribal Transportation Program Guide on either the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/guide/*.

§ 170.451 Can TTP funds be used for archeological and environmental compliance?

Yes. For approved TTP projects, TTP funds can be used for environmental and archeological work consistent with § 170.450 and applicable tribal laws for:

(a) Road and bridge rights-of-way;

(b) Borrow pits and aggregate pits and water sources associated with TTP activities staging areas;

(c) Limited mitigation outside of the construction limits as necessary to address the direct impacts of the construction activity as determined in the environmental analysis and after consultation with all affected tribes and appropriate Secretaries; and

(d) Construction easements.

§ 170.452 When can TTP funds be used for archeological and environmental activities?

TTP funds can be used on a project's archeological and environmental activities only after the TTP facility is included in the Tribe's LRTP and the NTTFI, and the project identified on an FHWA-approved TTPTIP.

Design

§ 170.454 What design standards are used in the TTP?

(a) Depending on the nature of the project, tribes must use appropriate design standards approved by BIA and FHWA. A list of applicable design standards are available in the official Tribal Transportation Program guide on either the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/guide/*. In addition, tribes may develop their own design standards that meet or exceed those required by BIA and FHWA.

(b) If a tribe proposes the use of a design standard that is not listed in the Tribal Transportation Program Guide, the proposed standard must be approved by FHWA.

§ 170.455 What other factors must influence project design?

The appropriate design standards must be applied to each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of TTP projects must take into consideration:

(a) The existing and planned future use of the facility in a manner that is conducive to safety, durability, and economy of maintenance;

(b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost effective manner; and

(c) Access and accommodation for other modes of transportation.

§ 170.456 When can a tribe request an exception from the design standards?

(a) A tribe can request an exception from the required design standards from FHWA or BIA. The engineer of record must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(b) FHWA or BIA can approve a project design that does not conform to the minimum criteria only after giving due consideration to all project conditions, such as:

(1) Maximum service and safety benefits for the dollar invested;

(2) Compatibility with adjacent features; and

(3) Probable time before reconstruction of the project due to changed conditions or transportation demands.

(c) FHWA or BIA has 30 days from receiving the request to approve or decline the exception.

§ 170.457 Can a tribe appeal a denial?

Yes. If BIA denies a design exception request made by a tribe, the decision may be appealed to FHWA. Tribes may appeal the denial of a design exception to: FHWA Office of Federal Lands Highway, 1200 New Jersey Ave. SE., HFL–1, Washington, DC 20590. If FHWA denies a design exception, the tribe may appeal the decision Office of the FHWA Administrator, 1200 New Jersey Ave. SE., HOA–1, Washington, DC 20590.

Review and Approval of Plans, Specifications and Estimates

§ 170.460 What must a project package include?

The tribe must submit the following project documentation to BIA or FHWA before the start of construction:

(a) Plans, specifications, and estimates;

(b) A tribal resolution or other authorized document supporting the project;

(c) Certification of the required right-of-way, easement, or public taking documentation clearances;

(d) Required environmental, archeological, and cultural clearances; and

(e) Identification of design exceptions if used in the plans.

§ 170.461 May a tribe approve plans, specifications, and estimates?

An Indian tribal government may approve plans, specifications and estimates and commence road and bridge construction with funds made available from the tribal transportation program through a contract, agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), or Program Agreement if the Indian tribal government:

(a) Provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

(b) Obtains advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards;

(c) Provides a copy of the certification under paragraph (a) of this section to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary—Indian Affairs, DOI, as appropriate; and

(d) Provides a copy of all project documentation identified in § 170.460 to BIA or FHWA before the start of construction.

§ 170.463 What if a design deficiency is identified?

If the Secretaries identify a design deficiency that may jeopardize public

health and safety if the facility is completed, they must:

(a) Immediately notify the tribe of the design deficiency and request that the tribe promptly resolve the deficiency under the standards in § 170.454; and

(b) For a BIA-prepared PS&E package, promptly resolve the deficiency under the standards in § 170.454 and notify the tribe of the required design changes.

Construction and Construction Monitoring

§ 170.470 Which construction standards must tribes use?

(a) Tribes must either:

(1) Use the approved standards referred to in § 170.454; or

(2) Request approval for any other road and highway bridge construction standards that are consistent with or exceed the standards referred to in § 170.454.

(b) For designing and building eligible intermodal projects funded by the TTP Program, tribes must use either:

(1) Nationally recognized standards for comparable projects; or

(2) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

§ 170.471 How are projects administered?

(a) When a tribe carries out a TTP project, BIA or FHWA will monitor project performance under the requirements of 25 CFR 900.130 and 900.131, 25 CFR 1000.243 and 1000.249, program agreements, or other appropriate agreements. If BIA or FHWA discovers a problem during an on-site monitoring visit, BIA or FHWA must promptly notify the tribe and, if asked, provide technical assistance.

(b) BIA or the tribal government, as provided for under the contract or agreement, is responsible for day-to-day project inspections except for BIA monitoring under paragraph (a) of this section.

(c) BIA must process substantial changes in the scope of a construction project in coordination with the affected tribe.

(d) The tribe, other contractors, and BIA may perform quality control.

(e) When a tribe carries out TTP programs, functions, services and activities under a Program Agreement or another appropriate agreement with BIA, FHWA and BIA will monitor performance under the executed Program Agreement and this part.

(f) Only the licensed professional engineer of record may change a TTP project's plans, specifications, and estimates (PS&E) during construction.

(1) The original approving agency must review each substantial change. The approving agency is the Federal, tribal, State, or local entity with PS&E approval authority over the project.

(2) The approving agency must consult with the affected tribe and the entity having maintenance responsibility.

(3) A change that exceeds the limits of available funding may be made only with the approving agency's consent.

§ 170.472 What construction records must tribes and BIA keep?

The following table shows which TTP construction records BIA and tribes must keep and the requirements for access.

Record keeper	Records that must be kept	Access requirements
(a) Tribe	All records required by ISDEAA and 25 CFR 900.130–131 or 25 CFR 1000.243 and 1000.249, as appropriate.	BIA and FHWA are allowed access to tribal TTP construction and approved project specifications as required under 25 CFR 900.130, 900.131, 25 CFR 1000.243 and 1000.249, or the Program Agreement as appropriate.
(b) BIA	Completed daily reports of construction activities appropriate to the type of construction it is performing.	Upon reasonable advance request by a tribe, BIA must provide reasonable access to records.

§ 170.473 When is a project complete?

A project is considered substantially complete when all work is completed and accepted (except for minor tasks yet to be completed (punch list)) and the project is open to traffic. The project is completed only after all the requirements of this section are met.

(a) At the end of a construction project, the public authority, agency, or organization responsible for the project must make a final inspection. The inspection determines whether the project has been completed in reasonable conformity with the PS&E.

(1) Appropriate officials from the tribe, BIA, responsible public authority, and FHWA should participate in the inspection, as well as contractors and maintenance personnel.

(2) All project information must be made available during final inspection and used to develop the TTP construction project closeout report. Some examples of project information are: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, as-built drawings, etc.

(b) After the final inspection, the facility owner makes final acceptance of the project. At this point, the tribe or BIA must complete a project closeout and final accounting of all TTP construction project expenditures under § 170.474.

(c) If 25 CFR part 169 applies to the project, all documents required by part 169 including, but not limited to, documentation attesting that the project was constructed entirely within the approved right-of-way must be completed.

§ 170.474 Who conducts the project closeout?

The following table shows who must conduct the TTP construction project closeout and develop the report.

If the project was completed by . . .	then . . .	and the closeout report must . . .
(a) BIA	The region engineer or designee is responsible for closing out the project and preparing the report.	(1) Summarize the construction project records to ensure compliance requirements have been met; (2) Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and modifications; (3) Be completed within 120 calendar days of the date of acceptance of the TTP construction project; and (4) Be provided to the affected tribes and the Secretaries.

If the project was completed by . . .	then . . .	and the closeout report must . . .
(b) A tribe	Agreements negotiated under ISDEAA, FHWA, or other appropriate agreements specify who is responsible for closeout and preparing the report.	(1) Meet the requirements of ISDEAA; (2) Comply with 25 CFR 900.130(d) and 131(b)(10) and 25 CFR 1000.249, as applicable; (3) Be completed within 120 calendar days of the date of acceptance of the project; and (4) Be provided to all parties specified in the agreements negotiated under ISDEAA.

Management Systems

§ 170.502 Are nationwide management systems required for the TTP?

(a) The Secretaries will, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems for the Federal and tribal facilities included in the NTTFI.

(b) A tribe may develop its own tribal management system based on the nationwide management system requirements in 23 CFR part 973. The tribe may use either TTP formula funds or transportation planning funds defined in 23 U.S.C. 202(c) for this purpose. The tribal system must be consistent with Federal management systems.

Bridge Program

§ 170.510 What funds are available to address bridge activities?

Funds are made available in 23 U.S.C. 202(d) to maintain a nationwide priority program for improving deficient bridges eligible for the tribal transportation program.

§ 170.511 What activities are eligible for Tribal Transportation Facility Bridge funds?

(a) The funds made available under 23 U.S.C. 202(d) must be used to:

(1) Carry out any planning, design, engineering, preconstruction, construction, and inspection of a bridge project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(2) Implement any countermeasure for deficient tribal transportation facility bridges, including multiple-pipe culverts.

(b) Further information regarding the use and availability of these funds can be found at 23 CFR part 661.

§ 170.512 How will Tribal Transportation Facility Bridge funds be made available to the tribes?

Funds made available to tribes under 23 U.S.C. 202(d) may be included in the tribe's self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements.

§ 170.513 When and how are bridge inspections performed?

(a) All bridges identified on the NTTFI must be inspected under 23 U.S.C. 144.

(b) Employees performing inspections as required by § 170.513(a) must:

(1) Notify affected tribes and State and local governments that an inspection will occur;

(2) Offer tribal and State and local governments the opportunity to accompany the inspectors; and

(3) Otherwise coordinate with tribal and State and local governments.

(c) The person responsible for the bridge inspection team must meet the qualifications for bridge inspectors as defined in 23 U.S.C. 144.

§ 170.514 Who reviews bridge inspection reports?

The person responsible for the bridge inspection team must send a copy of the inspection report to BIADOT. BIADOT:

(a) Reviews the report for quality assurance and works with FHWA to ensure the requirements of 23 U.S.C. 144 are carried out; and

(b) Furnishes a copy of the report to the BIA Regional Office, which will forward the copy to the affected tribe.

Subpart E—Service Delivery for Tribal Transportation Program

Funding Process

§ 170.600 What must BIA include in the notice of funds availability?

(a) Upon receiving the total fiscal year of TTP funding from FHWA:

(1) BIA will send a notice of funds availability to each BIA Regional Office and FHWA that includes the total funding available to each tribe within each region; and

(2) BIA and FHWA will forward the information to the tribes along with an offer of technical assistance.

(b) BIA and FHWA will distribute funds to eligible tribes upon execution of all required agreements or contracts between BIA/FHWA and the tribe. This distribution must occur:

(1) Within 30 days after funds are made available to the Secretary under this paragraph; and

(2) Upon execution of all required agreements or contracts between BIA/FHWA and the tribe.

(c) Funds made available under this section will be expended on projects identified in a transportation improvement program approved by the Secretary. A listing of all FHWA-approved TTP projects (TTPTIP) is available on the BIA Transportation and FHWA Web sites.

§ 170.602 If a tribe incurs unforeseen construction costs, can it get additional funds?

The TTP is a tribal shares program based upon a statutory funding formula. Therefore, no additional TTP funding beyond each tribe's share is available for unforeseen construction costs. However, if a tribe is operating under a self-determination contract, it may request additional funds for that project under 25 CFR 900.130(e).

Miscellaneous Provisions

§ 170.605 May BIA or FHWA use force-account methods in the TTP?

When requested by a tribe, BIA or FHWA may use force-account methods in carrying out the eligible work of the TTP. Applicable Federal acquisition laws and regulations apply to BIA and FHWA when carrying out force-account activities on behalf of a tribe.

§ 170.606 How do legislation and procurement requirements affect the TTP?

Other legislation and procurement requirements apply to the TTP as shown in the following table:

Legislation, regulation or other requirement	Applies to tribes under self-determination contracts	Applies to tribes under self-governance agreements	Applies to tribes under BIA or FHWA program agreements	Applies to activities performed by the Secretary
Buy Indian Act	No	No	No	Yes.
Buy American Act	No	No	No	Yes.
Federal Acquisition Regulation (FAR)	No(1)	No	No	Yes.
Federal Tort Claims Act	Yes	Yes	Yes	Yes.
Davis-Bacon Act	Yes(2)	Yes(2)	Yes(2)	Yes.

(a) Unless agreed to by the tribe or tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR 900.115.
(b) Does not apply when tribe performs work with its own employees.

§ 170.607 Can a tribe use its allocation of TTP funds for contract support costs?

Yes. Contract support costs are an eligible item out of a tribe's TTP allocation and need to be included in a tribe's project construction budget.

§ 170.608 Can a tribe pay contract support costs from DOI or BIA appropriations?

No. Contract support costs for TTP construction projects cannot be paid out of DOI or BIA appropriations.

§ 170.609 Can a tribe receive additional TTP funds for start-up activities?

No. Additional TTP funding for start-up activities is not available.

Contracts and Agreements

§ 170.610 Which TTP functions may a tribe assume?

A tribe may assume all TTP functions and activities that are otherwise contractible and non-inherently Federal under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements. Administrative support functions are an eligible use of TTP funding.

§ 170.611 What special provisions apply to ISDEAA contracts and agreements?

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year TTP self-determination contract and self-governance agreement with a tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of the contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under Title I and Title IV of ISDEAA, tribes and multi-tribal organizations are eligible to assume TTPs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to Title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see Title IV, 25 U.S.C. 450b(l) and 458b(b)(2).

(c) *Advance payments.* The Secretary and the tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract under 25 CFR 900.132.

(d) *Design and construction contracts.* The Secretary can enter into a design/construct TTP self-determination contract that includes both the design and construction of one or more TTP projects. The Secretary may make advance payments to a tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semiannual installments as indicated in the agreement.

§ 170.612 Can non-contractible functions and activities be included in contracts or agreements?

(a) All non-contractible TTP ''program'' and ''project'' functions are funded by the Administrative expenses identified in 23 U.S.C. 202(a)(6). These funds are only for use by BIA and FHWA transportation personnel performing program management and oversight, and project-related administration activities.

(b) Program functions cannot be included in self-determination contracts, self-governance agreements, program agreements, or other agreements. (23 U.S.C. 202(b)(6)(B) and 23 U.S.C. 202(b)(7)(B)). Appendix A to this subpart contains a list of program functions that cannot be contracted.

§ 170.614 Can a tribe receive funds before BIA publishes the final notice of funding availability?

A tribe can receive funds before BIA publishes the final notice of funding availability required by § 170.600(a) when partial year funding is made available to the TTP through continuing resolutions or other Congressional actions.

§ 170.615 Can a tribe receive advance payments for non-construction activities under the TTP?

Yes. A tribe must receive advance payments for non-construction activities under 25 U.S.C. 450*l* for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a tribe and authorized by law.

§ 170.616 How are payments made to tribes if additional funds are available?

After an Agreement between BIA or FHWA and the tribe is executed, any additional funds will be made available to tribes under the terms of the executed Agreement.

§ 170.617 May a tribe include a contingency in its proposal budget?

(a) A tribe with a self-determination contract may include a contingency amount in its proposed budget under 25 CFR 900.127(e)(8).

(b) A tribe with a self-governance agreement may include a project-specific line item for contingencies if the tribe does not include its full TTP funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within the tribal share made available or within the negotiated ISDEAA contract or agreement.

§ 170.618 Can a tribe keep savings resulting from project administration?

All funds made available to a tribe through the 23 U.S.C 202(b) are considered ''tribal'' and are available to the tribe until expended. However, they must be expended on projects and activities referenced on an FHWA approved TTPTIP.

§ 170.619 Do tribal preference and Indian preference apply to TTP funding?

Tribal preference and Indian preference apply to TTP funding as shown in the following table:

If . . .	Then . . .
(a) A contract serves a single tribe	Section 7(c) under Title 1 of ISDEAA allows tribal employment or contract preference laws, including tribe local preference laws to govern.
(b) A contract serves more than one tribe	Section 7(b) under Title 1 of ISDEAA applies.
(c) A self-governance agreement exists under Title IV of ISDEAA.	25 CFR 1000.406 applies.
(d) A Program Agreement	The language of the Program Agreement applies.

§ 170.620 How do ISDEAA's Indian preference provisions apply?

This section applies when the Secretary or a tribe enters into a cooperative, reimbursable, or other agreement with a State or local government for a TTP construction project. The tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in the agreement.

§ 170.621 What if a tribe doesn't perform work under a contract or agreement?

If a tribe fails to substantially perform work under a contract or agreement:

(a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a) and (b) and ISDEAA, part 900 subpart L (appeals);

(b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000, subpart K; or

(c) For FHWA or BIA TTP Agreements, the Secretaries will use the procedures identified in the Agreements.

§ 170.622 What TTP program, functions, services, and activities are subject to the self-governance construction regulations?

All TTP design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR part 1000, subpart K, including applicable exceptions.

§ 170.623 How are TTP projects and activities included in a self- governance agreement?

To include a TTP project or activity in a self-governance agreement, the following information is required:

(a) All work must be included in the FHWA-approved TTPTIP; and

(b) All other information required under 25 CFR part 1000, subpart K.

§ 170.624 Is technical assistance available?

Yes. Technical assistance is available from BIA, the Office of Self-Governance, and FHWA for tribes with questions about contracting the TTP or TTP projects.

§ 170.625 What regulations apply to waivers?

The following regulations apply to waivers:

(a) For self-determination contracts, 25 CFR 900.140 through 900.148;

(b) For self-governance agreements, 25 CFR 1000.220 through 1000.232; and

(c) For direct service, 25 CFR 1.2.

§ 170.626 How does a tribe request a waiver of a Department of Transportation regulation?

A tribe can request a waiver of a Department of Transportation regulation as shown in the following table:

If the tribe's contract or agreement is with . . .	and . . .	then the tribe must . . .
(a) The Secretary	the contract is a self-determination contract	follow the procedures in ISDEAA, Title I, and 25 CFR 900.140 through 900.148.
(b) The Secretary	the agreement is a tribal self-governance agreement	follow the procedures in 25 CFR 1000.220 through 1000.232.
(c) The Secretary of Transportation.		make the request to the Secretary of Transportation at: 1200 New Jersey Ave. SE., HFL–1, Washington, DC 20590.

Appendix to Subpart E—List of Program Functions That Cannot Be Subcontracted

Per § 170.612, program functions cannot be included in self-determination contracts, self-governance agreements, program agreements, or other agreements. Program functions include all of the following:

(a) TTP project-related pre-contracting activities:

(1) Notifying tribes of available funding including the right of first refusal; and

(2) Providing technical assistance.

(b) TTP project-related contracting activities:

(1) Providing technical assistance;

(2) Reviewing all scopes of work under 25 CFR 900.122;

(3) Evaluating proposals and making declination decisions, if warranted;

(4) Performing declination activities;

(5) Negotiating and entering into contracts or agreements with State, tribal, and local governments and other Federal agencies;

(6) Processing progress payments or contract payments;

(7) Approving contract modifications;

(8) Processing claims and disputes with tribal governments; and

(9) Closing out contracts or agreements.

(c) Planning activities:

(1) Reviewing and approving TTP transportation improvement programs developed by tribes or other contractors;

(2) Reviewing and approving TTP long-range transportation plans developed by tribes or other contractors; and

(d) Environmental and historical preservation activities:

(1) Reviewing and approving all items required for environmental compliance; and

(2) Reviewing and approving all items required for archaeological compliance.

(e) Processing rights-of-way:

(1) Reviewing rights-of-way applications and certifications;

(2) Approving rights-of-way documents;

(3) Processing grants and acquisition of rights-of-way requests for tribal trust and allotted lands under 25 CFR part 169;

(4) Responding to information requests;

(5) Reviewing and approving documents attesting that a project was constructed entirely within a right-of-way granted by BIA; and

(6) Performing custodial functions related to storing rights-of-way documents.

(f) Conducting project development and design under 25 CFR 900.131:

(1) Participating in the plan-in-hand reviews on behalf of BIA as facility owner;

(2) Reviewing and/or approving plans, specifications, and cost estimates (PS&E's) for health and safety assurance on behalf of BIA as facility owner;

(3) Reviewing PS&E's to assure compliance with NEPA as well as all other applicable Federal laws; and

(4) Reviewing PS&E's to assure compliance with or exceeding Federal standards for TTP design and construction.

(g) Construction:
(1) Making application for clean air/clean water permits as facility owner;
(2) Ensuring that all required State/tribal/Federal permits are obtained
(3) Performing quality assurance activities;
(4) Conducting value engineering activities as facility owner;
(5) Negotiating with contractors on behalf of Federal Government;
(6) Approving contract modifications/change orders;
(7) Conducting periodic site visits;
(8) Performing all Federal Government required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;
(9) Conducting activities to assure compliance with safety plans as a jurisdictional responsibility hazardous materials, traffic control, OSHA, etc.;
(10) Participating in final inspection and acceptance of project documents as built drawings on behalf of BIA as facility owner; and
(11) Reviewing project closeout activities and reports.
(h) Other activities:
(1) Performing other non-contractible required TTP project activities contained in this part, ISDEAA and part 1000; and
(2) Other Title 23 non-project-related management activities.
(i) BIADOT program management:
(1) Developing budget on needs for the TTP;
(2) Developing legislative proposals;
(3) Coordinating legislative activities;
(4) Developing and issuing regulations;
(5) Developing and issuing TTP planning, design, and construction standards;
(6) Developing/revising interagency agreements;
(7) Developing and approving TTP stewardship agreements in conjunction with FHWA;
(8) Developing annual TTP obligation and TTP accomplishments reports;
(9) Developing reports on TTP project expenditures and performance measures for the Government Performance and Results Act (GPRA);
(10) Responding to/maintaining data for congressional inquiries;
(11) Developing and maintaining funding formula and its database;
(12) Allocating TTP and other transportation funding;
(13) Providing technical assistance to tribe/tribal organizations/agencies/regions;
(14) Providing national program leadership for other Federal transportation related programs including: Transportation Alternatives Program, Tribal Transportation Assistance Program, Recreational Travel and Tourism, Transit Programs, ERFO Program, and Presidential initiatives;
(15) Participating in and supporting tribal transportation association meetings;
(16) Coordinating with and monitoring Indian Local Technical Assistance Program centers;
(17) Planning, coordinating, and conducting BIA/tribal training;
(18) Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the TTP;
(19) Participating in special transportation related workgroups, special projects, task forces and meetings as requested by tribes;
(20) Participating in national, regional, and local transportation organizations;
(21) Participating in and supporting FHWA Coordinated Technology Implementation program;
(22) Participating in national and regional TTP meetings;
(23) Consulting with tribes on non-project related TTP issues;
(24) Participating in TTP, process, and product reviews;
(25) Developing and approving national indefinite quantity service contracts;
(26) Assisting and supporting the TTP Coordinating Committee;
(27) Processing TTP Bridge program projects and other discretionary funding applications or proposals from tribes;
(28) Coordinating with FHWA;
(29) Performing stewardship of the TTP;
(30) Performing oversight of the TTP and its funded activities;
(31) Performing any other non-contractible TTP activity included in this part; and
(32) Determining eligibility of new uses of TTP funds.
(j) BIADOT Planning:
(1) Maintaining the official TTP inventory;
(2) Reviewing long-range transportation plans;
(3) Reviewing and approving TTP transportation improvement programs;
(4) Maintaining nationwide inventory of TTP strip and atlas maps;
(5) Coordinating with tribal/State/regional/local governments;
(6) Developing and issuing procedures for management systems;
(7) Distributing approved TTP transportation improvement programs to BIA regions;
(8) Coordinating with other Federal agencies as applicable;
(9) Coordinating and processing the funding and repair of damaged Indian Reservation Roads with FHWA;
(10) Calculating and distributing TTP transportation planning funds to BIA regions;
(11) Reprogramming unused TTP transportation planning funds at the end of the fiscal year;
(12) Monitoring the nationwide obligation of TTP transportation planning funds;
(13) Providing technical assistance and training to BIA regions and tribes;
(14) Approving Atlas maps;
(15) Reviewing TTP inventory information for quality assurance; and
(16) Advising BIA regions and tribes of transportation funding opportunities.
(k) BIADOT engineering:
(1) Participating in the development of design/construction standards with FHWA;
(2) Developing and approving design/construction/maintenance standards;
(3) Conducting TTP/product reviews; and
(4) Developing and issuing technical criteria for management systems.
(l) BIADOT responsibilities for bridges:
(1) Maintaining BIA National Bridge Inventory information/database;
(2) Conducting quality assurance of the bridge inspection program;
(3) Reviewing and processing TTP Bridge program applications;
(4) Participating in second level review of TTP bridge PS–E's; and
(5) Developing criteria for bridge management systems.
(m) BIADOT responsibilities to perform other non-contractible required TTP activities contained in this part.
(n) BIA regional offices program management:
(1) Designating TTP System roads;
(2) Notifying tribes of available funding;
(3) Developing State TTP transportation improvement programs;
(4) Providing FHWA-approved TTP transportation improvement programs to tribes;
(5) Providing technical assistance to tribes/tribal organizations/agencies;
(6) Funding common services as provided as part of the region/agency/BIA Division of Transportation TTP costs;
(7) Processing and investigating non-project related tort claims;
(8) Preparing budgets for BIA regional and agency TTP activities;
(9) Developing/revising interagency agreements;
(10) Developing control schedules/transportation improvement programs;
(11) Developing regional TTP stewardship agreements;
(12) Developing quarterly/annual TTP obligation and program accomplishments reports;
(13) Developing reports on TTP project expenditures and performance measures for Government Performance and Results Act (GPRA);
(14) Responding to/maintaining data for congressional inquiries;
(15) Participating in Indian transportation association meetings;
(16) Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;
(17) Participating in BIA/tribal training development highway safety, work zone safety, etc.;
(18) Participating in special workgroups, task forces, and meetings as requested by tribes and BIA region/agency personnel;
(19) Participating in national, regional, or local transportation organizations meetings and workshops;
(20) Reviewing Coordinated Technology Implementation Program project proposals;
(21) Consulting with tribal governments on non-project related program issues;
(22) Funding costs for common services as provided as part of BIA TTP region/agency/contracting support costs;
(23) Reviewing TTP Atlas maps;
(24) Processing Freedom of Information Act (FOIA) requests;
(25) Monitoring the obligation and expenditure of all TTP funds allocated to BIA region;
(26) Performing activities related to the application for ERFO funds, administration, and oversight of the funds; and
(27) Participating in TTP, process, and product reviews.

(o) BIA regional offices' planning:
(1) Coordinating with tribal/State/regional/local government;
(2) Coordinating and processing the funding and repair of damaged Tribal Transportation Facility Roads with tribes;
(3) Reviewing and approving TTP Inventory data;
(4) Maintaining, reviewing, and approving the management systems databases;
(5) Reviewing and approving TTP State transportation improvement programs; and
(6) Performing Federal responsibilities identified in the TTP Transportation Planning Procedures and Guidelines manual.
(p) BIA regional offices' engineering:
(1) Approving tribal standards for the TTP use;
(2) Developing and implementing new engineering techniques in the TTP; and
(3) Providing technical assistance.
(q) BIA regional offices' responsibilities for bridges:
(1) Reviewing and processing TTP bridge program applications;
(2) Reviewing and processing TTP bridge inspection reports and information; and
(3) Ensuring the safe use of roads and bridges.
(r) BIA regional offices' other responsibilities for performing other non-contractible required TTP activities contained in this part.

Subpart F—Program Oversight and Accountability

§ 170.700 What is the TTP Stewardship Plan/National Business Plan?

The TTP stewardship plan/national business plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the TTP and the process used for fulfilling those roles and responsibilities.

§ 170.701 May a direct service tribe and BIA Region sign a Memorandum of Understanding?

Yes. A direct service tribe and BIA Region My sign a Memorandum of Understanding (MOU). A TTP tribal/BIA region MOU is a document that a direct service tribe and BIA may enter into to help define the roles, responsibilities and consultation process between the regional BIA office and the Indian tribal government. It describes how the TTP will be carried out by BIA on the tribe's behalf.

§ 170.702 What activities may the Secretaries review and monitor?

The Secretaries review and monitor the performance of all TTP activities.

§ 170.703 What program reviews do the Secretaries conduct?

(a) BIADOT and FHWA conduct formal program reviews of BIA Regional Offices or tribes to examine program procedures and identify improvements. For a BIA Regional Office review, the regional tribes will be notified of these formal program reviews. Tribes may send representatives to these meetings at their own expense.
(b) The review will provide recommendations to improve the program, processes and controls of management, planning, design, construction, financial and administration activities.
(c) After the review, the review team must:
(1) Make a brief oral report of findings and recommendations to the tribal leadership or BIA Regional Director; and
(2) Within 60 days, provide a written report of its findings and recommendations to the tribe, BIA, all participants, and affected tribal governments and organizations.

§ 170.704 What happens when the review process identifies areas for improvement?

When the review process identifies areas for improvement:
(a) The tribe or regional office must develop a corrective action plan within 60 days;
(b) BIADOT and FHWA review and approve the plan;
(c) FHWA may provide technical assistance during the development and implementation of the plan; and
(d) The reviewed tribe or BIA regional office implements the plan and reports either annually or biennially to BIADOT and FHWA on implementation.

Subpart G—Maintenance

§ 170.800 What funds are available for maintenance activities?

(a) Under 23 U.S.C. 202(a)(8), a tribe can use TTP funding for maintenance, within the following limits, whichever is greater:
(1) 25 percent of its TTP funds; or
(2) $500,000.
(b) These funds can only be used to maintain the public facilities included in the NTTFI.
(c) Road sealing activities are not subject to this limitation.
(d) BIA retains primary responsibility, including annual funding request responsibility, for BIA road maintenance programs on Indian reservations.
(e) The Secretary of the Interior shall ensure that funding made available under the TTP for maintenance of tribal transportation facilities for each fiscal year is supplementary to, and not in lieu of, any obligation of funds by the BIA for road maintenance programs on Indian reservations.

§ 170.801 Can maintenance funds be used to improve TTP transportation facilities?

No. The funds identified for maintenance in § 170.800 cannot be used to improve roads or other TTP transportation facilities to a higher road classification, standard or capacity.

§ 170.802 Can a tribe perform road maintenance?

Yes. A tribe may enter into self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements to perform tribal transportation facility maintenance.

§ 170.803 To what standards must a TTP transportation facility be maintained?

Subject to availability of funding, TTP transportation facilities must be maintained under either:

(a) A standard accepted by BIA or FHWA (as identified in the official Tribal Transportation Program guide on either the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/guide/,* or

(b) Another tribal, Federal, State, or local government maintenance standard negotiated in an ISDEAA road maintenance self- determination contract or self-governance agreement.

§ 170.804 What if maintenance funding is inadequate?

If BIA determines that a TTP transportation facility is not being maintained under TTP standards due to insufficient funding, it will:

(a) Notify the facility owner, and if the facility is a BIA system road, continue to request annual maintenance funding for that facility; and

(b) Report these findings to the Secretary of Transportation under 23 U.S.C. 201(a). BIA will provide a draft copy of the report to the affected tribe for comment before forwarding it to Secretary of Transportation.

§ 170.805 What maintenance activities are eligible for TTP funding?

TTP Maintenance funding support a wide variety of activities necessary to maintain facilities identified in the NTTFI.A list of eligible activities is available in the official Tribal Transportation Program guide on either the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/guide/.*

Subpart H—Miscellaneous Provisions

Reporting Requirements and Indian Preference

§ 170.910 What information on the TTP or projects must BIA or FHWA provide?

At the written request of a tribe, BIA or FHWA must provide available information on the TTP or projects to a tribe within a reasonable time.

§ 170.911 Are Indians entitled to employment and training preferences?

(a) Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP.

(b) Under 25 U.S.C. 450e(b), 23 U.S.C. 140(d), 25 U.S.C. 47, and 23 U.S.C. 202(a)(3), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the TTP.

§ 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?

(a) Tribal, State, and local governments may provide an Indian employment preference for Indians living on or near a reservation on projects and contracts that meet the definition of a tribal transportation facility. (See 23 U.S.C. 101(a)(12) and 140(d), and 23 CFR 635.117(d).)

(b) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Indian lands, Alaska Native villages, pueblos, and Indian communities.

(c) Tribes and tribal employment rights offices should work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians on eligible federally funded transportation projects. Tribal, State, and local representatives should confer to establish Indian employment goals for these projects.

§ 170.913 Do tribal-specific employment rights and contract preference laws apply?

Yes. When a tribe or consortium administers a TTP or project intended to benefit that tribe or a tribe within the consortium, the benefitting tribe's employment rights and contracting preference laws apply. (See § 170.619 and 25 U.S.C. 450e(c).)

§ 170.914 What is the difference between tribal preference and Indian preference?

Indian preference is a hiring preference for Indians in general. Tribal preference is a preference adopted by a tribal government that may or may not include a preference for Indians in general, Indians of a particular tribe, Indians in a particular region, or any combination thereof.

§ 170.915 May tribal employment taxes or fees be included in a TTP project budget?

Yes. The cost of tribal employment taxes or fees may be included in the budget for a TTP project.

§ 170.916 May tribes impose taxes or fees on those performing TTP services?

Yes. Tribes, as sovereign nations, may impose taxes and fees for TTP activities. When a tribe administers TTPs or projects under ISDEAA, its tribal employment and contracting preference laws, including taxes and fees, apply.

§ 170.917 Can tribes receive direct payment of tribal employment taxes or fees?

This section applies to non-tribally administered TTP projects. Tribes can request that BIA pay tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

§ 170.918 What applies to the Secretaries collection of data under the TTP?

Under 23 U.S.C. 201(c)(6), the Secretaries will collect and report data necessary to implement the Tribal Transportation Program under the ISDEAA, including:

(a) Inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

(b) Bridge inspection and inventory information on any Federal bridge open to the public.

Tribal Transportation Departments

§ 170.930 What is a tribal transportation department?

A tribal transportation department is a department, commission, board, or official of any tribal government charged by its laws with the responsibility for highway construction. Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own tribal laws. Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from TTACs, BIA regional road engineers, FHWA, or AASHTO to establish a tribal transportation department.

§ 170.931 Can tribes use TTP funds to pay tribal transportation department operating costs?

Yes. Tribes can use TTP funds to pay the cost of planning, administration, and performance of approved TTP activities (see § 170.115). Tribes can also use BIA road maintenance funds to pay the cost of planning, administration, and performance of maintenance activities under this part.

§ 170.932 Are there other funding sources for tribal transportation departments?

There are many sources of funds that may help support a tribal transportation department. The following are some examples of additional funding sources:

(a) Tribal general funds;

(b) Tribal Priority Allocation;

(c) Tribal permits and license fees;

(d) Tribal fuel tax;

(e) Federal, State, private, and local transportation grants assistance;

(f) Tribal Employment Rights Ordinance fees (TERO); and

(g) Capacity building grants from Administration for Native Americans and other organizations.

§ 170.933 Can tribes regulate oversize or overweight vehicles?

Yes. Tribal governments can regulate travel on roads under their jurisdiction and establish a permitting process to regulate the travel of oversize or overweight vehicles, under applicable Federal law. BIA may, with the consent of the affected tribe, establish a permitting process to regulate the travel of oversize or overweight vehicles on BIA-system roads.

Resolving Disputes

§ 170.934 Are alternative dispute resolution procedures available?

(a) Federal agencies should use mediation, conciliation, arbitration, and other techniques to resolve disputes brought by TTP beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies should resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

(b) Except as required in 25 CFR part 900 and part 1000, tribes operating under a self-determination contract or self-governance agreement are entitled to use dispute resolution techniques prescribed in:

(1) The ADR Act, 5 U.S.C. 571–583;

(2) The Contract Disputes Act, 41 U.S.C. 601–613; and

(3) The Indian Self-Determination and Education Assistance Act and the implementing regulations (including for

non-construction the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)).

(4) Tribes operating under a Program Agreement with FHWA are entitled to use dispute resolution techniques prescribed in 25 CFR 170.934 and Article II, Section 4 of the Agreement.

§ 170.935 How does a direct service tribe begin the alternative dispute resolution process?

(a) To begin the ADR process, a direct service tribe must write to the BIA Regional Director, or the Chief of BIA Division of Transportation. The letter must:

(1) Ask to begin one of the alternative dispute resolution (ADR) procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583 (ADR Act); and

(2) Explain the factual and legal basis for the dispute.

(b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.

Other Miscellaneous Provisions

§ 170.941 May tribes become involved in transportation research?

Yes. Tribes may:

(a) Participate in Transportation Research Board meetings, committees, and workshops sponsored by the National Science Foundation;

(b) Participate in and coordinate the development of tribal and TTP transportation research needs;

(c) Submit transportation research proposals to States, FHWA, AASHTO, and FTA;

(d) Prepare and include transportation research proposals in their TTPTIPS;

(e) Access Transportation Research Information System Network (TRISNET) database; and

(f) Participate in transportation research activities under Intergovernmental Personnel Act agreements.

§ 170.942 Can a tribe use Federal funds for transportation services for quality-of-life programs?

(a) A tribe can use TTP funds:

(1) To coordinate transportation-related activities to help provide access to jobs and make education, training, childcare, healthcare, and other services more accessible to tribal members; and

(2) As the matching share for other Federal, State, and local mobility programs.

(b) To the extent authorized by law additional grants and program funds are available for the purposes in paragraph (a)(1) of this section from other programs administered by the Departments of Transportation, Health and Human Services, and Labor.

(c) Tribes should also apply for Federal and State public transportation and personal mobility program grants and funds.

§ 170.943 What is the Tribal High Priority Projects Program?

The Tribal High Priority Projects Program is authorized under Section 1123 of MAP21 and is not part of the Tribal Transportation Program. Details about the program are available on either the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/.*

Dated: December 11, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

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Part VI

The President

Proclamation 9222—Wright Brothers Day, 2014

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Title 3—

The President

Proclamation 9222 of December 16, 2014

Wright Brothers Day, 2014

By the President of the United States of America

A Proclamation

The United States has always been a land of exploration and innovation. Determined to build a Nation where all things were possible, our country's Founders crossed a vast ocean and launched an improbable experiment in democracy. Early pioneers pushed west across sweeping plains. Dreamers toiled with hearts and hands to build cities, lay railroads, and power an automobile revolution. And on December 17, 1903, two brothers from Dayton, Ohio, would write their own chapter in America's long history of discovery and achievement.

After years of painstaking research and careful engineering, Orville and Wilbur Wright accomplished what was once unthinkable: the world's first powered flight. Above the sand dunes of Kitty Hawk, North Carolina, they revolutionized modern transportation and extended the reach of humanity. Their inspiring feat opened the door to more than a century of progress and helped spark a new era of economic growth and prosperity. Today, we celebrate those 12 seconds of flight that changed the course of human events, and the determination and perseverance that made that moment possible.

America has always succeeded because as a Nation, we refuse to stand still. As heirs to this proud legacy of risk takers and dreamers who imagined the world as it could be, we must constantly work to empower the next generation of inventors and entrepreneurs. That is why my Administration is investing in programs that encourage science, technology, engineering, and math education, especially for traditionally underrepresented groups. And we are fighting to ensure that innovators and startups have the resources and opportunities they need to build the future they seek.

Our Nation brought the world everything from the light bulb to the Internet, and today—in laboratories and classrooms across America—our scientists and students carry forward this tradition as they work to develop new sources of energy and code the computer programs of tomorrow. Less than seven decades after Orville and Wilbur's flying machine lifted into the air, American ingenuity brought us to Tranquility Base—and as the lunar module touched down on the surface of the Moon, it carried with it pieces of the brothers' historic airplane. Today, the Wright brothers' spirit lives on in the aspirations of a resolute people—to cure disease, walk on distant planets, and solve the biggest challenges of our time.

On Wright Brothers Day, we lift up the scientists, entrepreneurs, inventors, builders, and doers of today, and all those who reach for the future. Let us recommit to harnessing the passion and creativity of every person who works hard in America and leading the world through another century of discovery.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 17, 2014, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–29992
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