plications because they were producing source plasma intended for noninjectable use only shall file an establishment and product license application by May 11, 1976.

Plasmaphereses establishments that have pending or approved license applications for Source Plasma (Human) intended for injectable products shall file appropriate amendments by May 11, 1976.

Until such time as final action has been taken regarding approval or denial of a seemingly valid license application or amendment, establishments may continue to ship Source Plasma (Human): *Provided,* That these additional standards for Source Plasma (Human) are being adhered to in all respects.

(Sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262))

Dated: March 4, 1976.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc. 76-6899 Filed 3-11-76;8:45 am]

federal register

FRIDAY, MARCH 12, 1976

PART III:

DEPARTMENT OF LABOR

Office of the Secretary

■

SPECIAL TARGET GROUPS, YOUTH PROGRAMS AND OTHER SPECIAL PROGRAMS

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart D—Special Target Groups and Youth Programs and Other Special Programs

On Tuesday, August 12, 1975, the Department of Labor published in the FEDERAL REGISTER (40 FR 33920) a notice of proposed rulemaking with a proposed amendment to Part 97. The proposed amendment would add a new Subpart D, containing regulations to govern programs and activities for special manpower target groups and youth programs and other special programs authorized by sections 301 and 304, Title IIIA of the Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; and Pub. L. 93-567, 88 Stat. 1845).

All comments submitted with respect to the new proposed Subpart D were given due consideration. Several comments were acted upon and the proposal has been changed accordingly. In addition, some editorial and clarifying changes have been made. All substantive changes are discussed below.

1. In § 97.303, *Definitions*, the definition of "local government" is changed to make clear that institutions of higher education, hospitals, and school districts are excluded from the meaning of the term only for the purposes of the grant administration provisions contained in § 97.341 through § 97.355. It should be noted that public institutions of higher education, hospitals, and school districts are eligible for funding under subpart D pursuant to § 97.308, *Eligibility for funds*, wherein the term "agency" of a State or local government does include public institutions of higher education, public hospitals, and school districts.

2. In paragraph (d) of § 97.308, *Eligibility for funds*, public nonprofit organizations are identified as being eligible for funds under Subpart D.

3. In paragraph (g) of § 97.308, *Eligibility for funds*, Indian and native American organizations which are eligible for funds under Subpart B of Part 97, are identified as being eligible for funds under Subpart D.

4. The guidelines relating to program specifications included in the Secretary's solicitations for funding proposals or applications which were contained in § 97.-310, *Specifications*, have been placed in paragraph (g) of § 97.309. In addition, language has been added to these guidelines to enable the Secretary to require a sponsor cost contribution as a condition for proposal or application approval.

5. Section 97.310 has been renamed *Submitting a proposal or application*. In this section guidelines relating to the submission of proposals or applications, both solicited and unsolicited, have been added to Subpart D.

6. In § 97.311, *Proposal or application format and content*, paragraph (c)(14) is added which requires that proposals and applications contain the assurances and certifications which are required of program sponsors by statute and regulation.

7. In paragraph (d) § 97.313, *Rejection of a proposal or application*, a deletion of words is made which has the effect of releasing the Secretary from any regulatory obligation under this Subpart to respond to an unsolicited proposal or application. However, the Secretary intends, as a matter of practice and as the availability of staff permits, to respond to all unsolicited proposals or applications, except those submitted by private, profitmaking organizations.

8. In § 97.318, *Basic responsibilities of program sponsors*, paragraph (f) is added which makes program sponsors responsible for consulting appropriate labor organizations and obtaining their concurrence in the design and operation of any training or employment program to be implemented where a collective bargaining agreement exists with the participating employer.

9. In § 97.320, *Eligibility for participation*, paragraph (c) is changed, at the recommendation of the U.S. Department of Justice, to read as follows: "Citizenship may not be used as a criterion to prevent persons from participating in a program. However, program participation shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or are otherwise legally available for work in the United States."

10. In paragraph (e) of § 97.320, *Eligibility for participation*, training for technological change is added as a program activity for which the Secretary may establish especially suitable participation eligibility guidelines.

11. A new § 97.334, entitled *Maintenance of effort*, is included to reflect the program requirements stated in section 703(11) of the Act. The former § 97.334, *Limitations on Federal funds*, is redesignated § 97.335; and the former § 97.335, *Subagreements*, is redesignated § 97.336.

12. In § 97.347, *Matching share*, which is applicable to grants with units of State or local governments, language is added to indicate the conditions under which the guidelines for evaluating the grantee's contribution are to be employed.

13. In paragraph (b) of § 97.366, *Matching share*, which is applicable to grants or contracts with public and private institutions of higher education, public and private hospitals, and other public and private nonprofit organizations, language is added to indicate the conditions under which the guidelines for evaluating the recipient's contribution are to be employed.

14. Some comments requested that the clearinghouse procedures of Office of Management and Budget (OMB) Circular A-95 be added to these regulations. The Department is not doing so because revised OMB Circular A-95 does not cover programs under sections 301 and 304 of the Comprehensive Employment and Training Act; see 41 FR 2052, January 13, 1976.

Accordingly, 29 CFR is amended, effective April 12, 1976, as follows:

1. 29 CFR 94.3 *Consolidated table of contents for Parts 94-99* is amended by adding the table of contents for the new Subpart D of Part 97 after the table of contents for Subpart C of Part 97 as follows:

§ 94.3 Consolidated table of contents for Parts 94-99.

* * * * *

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

* * * * *

SUBPART D—SPECIAL TARGET GROUPS AND YOUTH PROGRAMS AND OTHER SPECIAL PROGRAMS

* * * * *

2. 29 CFR Part 97 is amended by adding a new Subpart D to read as follows:

* * * * *

Subpart D—Special Target Groups and Youth Programs and Other Special Programs

GENERAL

AUTHORITY: Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203, sec. 602(a), 87 Stat. 839) unless otherwise noted.

Subpart D—Special Target Groups and Youth Programs and Other Special Programs

GENERAL

§ 97.301 Scope.

(a) Pursuant to section 301 of the Act, the Secretary will use funds available under Title III of the Act to provide additional manpower services as authorized under Title I and Title II of the Act to segments of the population that are in particular need of such services including youth, offenders, persons of limited English-speaking ability, older workers, and other persons who the Secretary determines have particular disadvantages in the labor market. The Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

(b) Pursuant to section 304 of the Act, the Secretary may use funds available under Title III of the Act to provide financial assistance in urban and rural areas, including areas having large concentrations or proportions of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas, for comprehensive work and training programs and necessary supportive and followup services.

(c) In combination, sections 301 and 304 of the Act enable the Secretary to respond directly through the implementation and financial support of manpower programs and services, to manpower problems of special significance as these problems become apparent from time to time. The Secretary intends to exercise authority under these two sections in a flexible manner, flexibility being necessary to meet shifting manpower needs and priorities both swiftly and decisively. The use of this authority will not be limited to permanently fixed and narrow purposes.

§ 97.302 Purpose.

(a) The purpose of this Subpart D is to prescribe the Department of Labor's rules and regulations that govern:

(1) Identifying on a continuing basis the manpower problems of special significance which might be resolved, in whole or in part, through programs and services required under section 301 and authorized under section 304 of the Act, or both;

(2) Allocating resources available under Title III of the Act to alleviate specific problems identified;

(3) Awarding Federal financial assistance necessary to carry out individual programs under section 301 or section 304 of the Act; and

(4) Administering and operating individual programs under section 301 or section 304 of the Act.

(b) This Subpart D contains the regulatory material necessary for the implementation and operation of programs under sections 301 and 304 of the Act, including specific references to rules and requirements which are set forth in other parts of Title 29 and which are applicable to programs under this subpart.

(c) When the regulations set forth in this subpart conflict with other regulations promulgated under the Act in 29 CFR Parts 94 through 99, the regulations contained in this subpart shall prevail and apply to programs under this subpart.

§ 97.303 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title. Additional terms applicable only to this subpart or having special significance in this subpart are defined as follows:

"Affirmative action effort" shall mean a program effort intended to provide or foster new employment opportunities for members of groups which have, for reasons of past custom, historical practice, or otherwise, been discouraged from entering certain occupational fields.

"Job search and relocation assistance" shall mean assisting an individual by locating a job opportunity that meets the individual's specific needs and by providing assistance, including financial support, to relocate the individual and the family near the new job site.

"Limited English-speaking ability" shall mean an inability to speak the English language which impairs a person's ability to seek or obtain employment.

"Local government" shall mean a local unit of government including specifically a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, and other regional or interstate government entity; for the purposes of § 97.341 through § 97.355, "local government" shall also mean any agency or intrumentality of a local government exclusive of institutions of higher education, hospitals, and school districts.

"Program," except where the context indicates otherwise, shall mean a program, project or service funded and carried out under this subpart.

"Skill improvement training" shall mean training given to an individual to make that individual more employable or to increase the possibilities of retention in his chosen field.

"State" shall mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States; for the purposes of § 97.341 through § 97.355, "State" shall also mean any agency or instrumentality of a State exclusive of institutions of higher education and hospitals.

"Training for technological change" shall mean training given to an individual who faces unemployment or underemployment caused by newly emergent technology in an occupational field.

"Upgrading training" shall mean training given to an individual who needs such training to advance above an entry-level or dead-end employment position.

Allocation of Available Resources

§ 97.304 General.

The Secretary will allocate funds made available to carry out the purposes of sections 301 and 304 of the Act to resolve, in whole or in part, specific and identifiable manpower problems of special significance. These problems may be identified and funds allocated on bases which include, but are not limited to:

(a) Severe employment and training problems and needs which are identified as being common to members of specific segments of the population such as those indicated in § 97.301(a);

(b) Severe employment and training problems and needs which are identified as being special to certain geographical areas of the country, such as areas having a large concentration or proportion of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas;

(c) The need, if any, to continue funding of programs of demonstrated effectiveness;

(d) Severe manpower and training problems and needs identified as existing within critical industries or occupational fields;

(e) Emergency or disaster; and

(f) Any other basis which is appropriate to national manpower priorities and emphases as they evolve from time to time.

§ 97.305 Allocation planning.

The Secretary will develop an allocation plan for the sum of money made available each fiscal year to carry out the purposes of sections 301 and 304 of the Act. The allocation plan will be designed to:

(a) Identify each specific manpower problem of special significance for which resources will be allocated;

(b) Indicate the approximate level of resources to be allocated for each problem identified;

(c) Indicate, in brief, the types of programs to be implemented with resources allocated for each problem identified;

(d) Indicate, to the extent possible, the geographical areas to be served by planned activities;

(e) Indicate the effects or benefits anticipated from the programs or services to be implemented; and

(f) Provide any background or explanatory material which might be necessary for a full understanding of the priorities and methods reflected in the plan.

§ 97.306 Public notification.

(a) The Secretary will notify the public of the plan for allocating the sum of money made available each fiscal year to carry out the purposes of sections 301 and 304 of the Act. This notification will be accomplished by publication in the FEDERAL REGISTER. The published plan will contain all elements specified in § 97.305 and will, if possible, be published prior to the fiscal year covered by the plan.

(b) The plan will not limit the Secretary in allocating funds in a manner or for specific purposes other than those set forth in the plan. The purposes of this notification process do not include committing the Secretary to any fixed plan or order of priorities. The sole purposes to be served in this notification process are:

(1) To inform the public with respect to current planning of Department of Labor manpower activities;

(2) To inform prime sponsors of manpower problems judged to be of special significance and impact on the well-being of the country; and

(3) To provide prime sponsors and other agencies responsible for conducting manpower or related programs with general information useful for planning their own operations.

(c) The Secretary may, at any time, revise the plan or implement operational deviations from the plan. The Secretary will, however, notify the public as soon as is practicable of any material revision to the plan or any major operational deviations from the plan. This notification will be published in the Federal Register and will include any background or explanatory material necessary for a full understanding of the action taken or to be taken.

Award of Federal Funds

§ 97.307 General.

(a) The Secretary may make such grants, contracts, or other agreements which provide for the award of Federal funds as may be necessary to carry out the purposes of sections 301 and 304 of the Act.

(b) Any grant, contract, or other agreement under this subpart which involves the award of Federal funds will be developed and executed in accordance with the provisions set forth in § 97.308 through § 97.315.

§ 97.308 Eligibility for funds.

The Secretary may award funds available under this subpart to carry out the purposes of sections 301 and 304 of the Act to the following types of organizations:

(a) States and agencies of a State;

(b) Units of general local government and their agencies;

(c) Consortia which have been approved by the Department as prime sponsors under Title I of the Act which are made up of:

(1) Units of general local government; or

(2) A State and a unit or units of general local government;

(d) Public and private nonprofit organizations other than political parties;

(e) Private, profitmaking organizations;

(f) Other Federal establishments and agencies; and

(g) Indian tribes of Federal or State reservations and other Indian and Native American organizations eligible for funds under Subpart B of this part.

§ 97.309 Soliciting applications for Federal funds.

(a) The Secretary may solicit or request eligible organizations to submit a proposal or application for funds.

(b) Except under conditions described in paragraph (c) of this section, the Secretary may limit solicitation to organizations which have special or unique capabilities to operate a program.

(c) When soliciting proposals from private, profitmaking organizations, the Secretary will issue a formal Request for Proposal.

(d) A solicitation or request to submit a proposal or application for funds is not an assurance or commitment that a proposal or application will be approved or accepted for funding.

(e) The Secretary may solicit or request a proposal or application for funds at any time.

(f) Funds allocated to carry out the purposes of section 304 of the Act are allocated for specific geographical areas. In awarding funds to carry out the purposes of section 304 of the Act, the Secretary will give primary consideration to awarding funds to prime sponsors which are responsible for the jurisdiction or jurisdictions in which Federal assistance is to be provided. In this respect, the Secretary will not solicit or request proposals or applications for these funds from other eligible organizations until consultation with the appropriate prime sponsors, if any, discloses that award of funds to an eligible organizations other than the prime sponsor would enhance program effectiveness.

(g) In soliciting proposals or applications for funds the Secretary may specify detailed program requirements to which the proposal or application must assure adherence as a condition for approval or acceptance. These specifications may include, but are not limited to:

(1) The type of manpower program to be conducted;

(2) The target group to be served;

(3) The geographic area in which the program is to be carried out;

(4) Minimum quantifiable performance goals;

(5) The results and benefits expected; and

(6) The approximate costs, including any sponsor contribution the Secretary may require.

§ 97.310 Submitting a proposal or application.

(a) When the Department solicits proposals or applications for a specific type of program under this subpart, the solicitation will contain instructions for eligible organizations with regard to submission of the proposal or application, including time frames; the need, if any, to provide a preliminary notification of intent to apply for funds, and the receiving office or offices.

(b) Before preparing and submitting an unsolicited proposal or application, eligible organizations are strongly encouraged to contact the Department for information concerning the availability of funds and the specific procedures involved in the preparation and submission of a proposal or application. In this regard, interested parties should contact:

Director, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, Room 6000, Patrick Henry Building, 601 D St., N.W., Washington, D.C. 20213.
Attention: ONP.

(c) The State and area-wide planning and development clearinghouse notification and review procedures set forth in Office of Management and Budget (OMB) Circular A-95 do not apply to programs under this subpart.

§ 97.311 Proposal or application format and content.

(a) Where the applicant is a State government or a local government, the application shall follow the format prescribed in Federal Management Circular (FMC) 74-7, Attachment M.

(b) Where the applicant or proposer is an organization other than a State government or a local government, the application or proposal shall be prepared in a format prescribed by the Department.

(c) As a condition for approval or acceptance, a proposal or application for funds must indicate or contain the following:

(1) The performance period of the program;

(2) A program budget for the Department's share and, if applicable, the program sponsor's share which accounts for administrative costs, participant allowances, participant wages, participant fringe benefits, training costs, and participant services costs;

(3) The need for the program and its objectives, including a precise indication of the target group or groups to be served;

(4) The results or benefits to be derived from the program, including the benefits which will accrue to program participants;

(5) A description of the separate functions of the program and the methods and procedures to be used in performing these functions, including, as appropriate:

(i) Recruitment and selection of participants;

(ii) Assessment of participants;

(iii) Orientation;

(iv) Counseling;

(v) Classroom training or education;

(vi) Payment of training and other allowances;

(vii) On-the-job training;

(viii) Subsidized community service or public service employment;

(ix) Work experience;

(x) Job development;

(xi) Job placement and followup;

(xii) Supportive services to participants such as health care and medical services, child care, residential support, assistance in securing bonds, and family planning assistance; and

(xiii) Other manpower activities such as the removal of artificial barriers to employment, job restructuring, revision or establishment of merit systems, and the development and implementation of affirmative action plans.

(6) Quantified performance goals;

(7) The steps to be taken by the program sponsor to evaluate program performance in comparison with program goals;

(8) Procedures for establishing cooperative relationships, liaison and working linkages with other manpower and manpower related agencies;

(9) Program activities to carry out under contract, subcontract, or subgrant with justification therefor;

(10) The specific geographic location or locations of program activity including, in cases of multistate programs, a state-by-state breakout as to funds budgeted and numbers of participants planned;

(11) The program staff structure, including brief position descriptions for professional staff and program administrators;

(12) The arrangements or agreements made with any labor organization which is necessarily connected with the program;

(13) When the applicant or proposer is an organization other than a State or local government, a description of the general structure of the organization and a certified statement by a Certified Public Accountant attesting to the adequacy of the applicant's or proposer's financial management system; and

(14) The completed forms, provided by the Department, which contain assurances and certifications required of program sponsors by statute and regulation.

§ 97.312 Review.

(a) The Secretary will review and consider for approval or acceptance each proposal or application for funds which is submitted in response to a specific solicitation or request made by the Secretary.

(b) The Secretary may review and consider for approval or acceptance an unsolicited proposal or application for funds submitted by an eligible organization other than a private, profitmaking organization.

(c) The Secretary will not consider or approve any unsolicited proposal or application submitted by a private, profitmaking organization.

(d) When reviewing and considering a proposal or application, the Secretary will determine whether:

(1) It meets the requirements of the Act, the regulations promulgated under the Act, and other applicable law;

(2) It is complete;

(3) It contributes to the implementation of the allocation plan described in § 97.305;

(4) The planned expenditures for program activity and services are substantiated and reasonable;

(5) The performance goals set forth are reasonable in view of past program experience in the same or similar activ-

ity and conform with documentation provided by the proposer or applicant;

(6) Operational methods are adequate;

(7) Administrative costs are reasonable and properly justified;

(8) The applicant or proposer evidences adequate internal administrative controls, accounting procedures, personnel standards and other capabilities that assure effective use of government funds; and

(9) Sufficient funds are available under the Act to fund the program in whole or in part.

§ 97.313 Rejection of a proposal or application.

(a) When the review of a proposal or application reveals that it is not approvable, the Secretary will notify the proposer or applicant in writing that the proposal or application is rejected. This notification shall include the reason or reasons for rejection.

(b) The rejection of a proposal or application is a final act.

(c) A rejection will not prejudice the review and consideration of any future proposal or application submitted by an eligible organization.

(d) The notification described in paragraph (a) of this section is not required with respect to any unsolicited proposal or application.

§ 97.314 Negotiation.

(a) When the review of a proposal or application reveals that it is generally adequate for favorable consideration, the Secretary may negotiate with the eligible organization to arrive at an agreement which is advantageous to the Department. The subjects of negotiation may include, but are not limited to:

(1) Separate program functions or components;

(2) Subgrantees, contractors, or subcontractors;

(3) Funding level and budget line items;

(4) Program objectives; and

(5) Performance standards.

(b) The Secretary may reject any separate program function or component described in the proposal or application when he determines it will not serve the purposes of the Act.

(c) The Secretary may, if negotiation does not result in a mutually acceptable conclusion, reject the subject proposal or application. In this event, written notification shall be provided to the eligible organization in accordance with § 97.313.

§ 97.315 Award.

(a) The Secretary may, if a proposal or application assures an agreement which is advantageous, approve the proposal or application and award funds without negotiation.

(b) The Secretary may also approve a proposal or application as revised during negotiation.

(c) Award of funds will be accomplished through the execution of a legally binding agreement in document form. The document, which will be prepared by the Department, will contain:

(1) The proposal or application as approved by the Secretary; and

(2) Department of Labor requirements for program administration.

(d) When the program sponsor is a unit of State or local government, the Secretary will use a grant agreement to implement the program and award funds.

(e) When the program sponsor is a nonprofit organization, public or private, other than unit of State or local government, the Secretary will use a grant agreement or a contract, whichever is appropriate, to implement the program and award funds. Determination as to the most appropriate of these two legal instruments shall be based, in each case, upon the following general criteria:

(1) The contract is the appropriate instrument when the Department has a need to exercise considerable direction and control over the program.

(2) The grant is the appropriate instrument when the Department does not need to exercise considerable direction and control over the program.

(f) When the program sponsor is a unit of the Federal Government other than the Department of Labor, the Secretary will use an interagency agreement, which will be in document form, to implement the program and award Federal funds.

(g) When the program sponsor is a private, profitmaking organization, the Secretary will use a contract to implement the program and award Federal funds.

PROGRAM OPERATION

§ 97.317 General.

Program operation requirements for activities carried out under sections 301 and 304 of the Act are set forth in § 97.317 through § 97.332. The utilization of funds under this subpart is conditioned upon adherence to the Act, the regulations promulgated under the Act, and other applicable law.

§ 97.318 Basic responsibilities of program sponsors.

Each organization which enters an agreement with the Department and is awarded funds by the Department under this subpart shall be responsible for:

(a) Following and enforcing the requirements of the Act, the regulations in this subpart, and all other applicable laws;

(b) Implementing and carrying out the program in accordance with the terms and provisions of the program agreement;

(c) Conducting program activities that are, to the maximum extent feasible, consistent with each participant's fullest capabilities and which will lead to employment opportunities enabling each participant to become economically self-sufficient and which will contribute to the occupational development or upward mobility of each participant;

(d) Advising each participant of his rights and responsibilities prior to entering the program;

(e) Making every reasonable effort to achieve program goals; and

(f) Consulting appropriate labor organizations and obtaining their concurrence in the design and operation of any training program to be implemented where a collective bargaining agreement exists with a participating employer.

§ 97.319 Cooperative relationships.

(a) Each organization conducting a program under this subpart shall, to the maximum extent feasible:

(1) Establish cooperative relationships or linkages with other manpower and manpower related agencies in the area within its jurisdiction and, in particular, with agencies operating programs through the Department including but not limited to SESA's and prime sponsors under title I of the Act; and

(2) Notify the appropriate apprenticeship agency of training activities in apprenticeable occupations.

(b) Each organization conducting a program under this subpart in which recipients of Aid to Families with Dependent Children (AFDC) participate shall coordinate services with the local sponsor, if any, of the Work Incentive Program (WIN). Coordination is necessary because provision of manpower services to recipients of AFDC who have been required to register for the WIN program may be affected by the provisions of title IV of the Social Security Act and the WIN regulations in Part 56 of this title.

§ 97.320 Eligibility for participation.

(a) Except as permitted under paragraph (e) of this section, participation in programs under this subpart shall be limited to persons who are economically disadvantaged, unemployed or underemployed. However, any agreement entered by the Secretary under this subpart may specify the target group or groups to benefit from or be served by the program.

(b) Participants in public service employment programs under this subpart must meet the eligibility qualifications stated in § 96.47 of this title.

(c) Citizenship may not be used as a criterion to prevent persons from participating in a program. However, program participation shall be limited to nationals of the United States and aliens who have been accorded the privilege of residing in the United States as lawful permanent residents or are otherwise legally available for work in the United States.

(d) Program sponsors shall give special consideration to disabled veterans and veterans of the Vietnam-era who meet the eligibility requirements in paragraph (a) of this section.

(e) The provisions of paragraph (a) of this section notwithstanding, the Secretary may establish especially suitable and appropriate eligibility guidelines for persons participating in and benefitting from affirmative action efforts, job search and relocation assistance, skill improvement training, training for technological change, and upgrading training as these types of services are authorized by § 97.321(b). Where special eligibility guidelines are in effect, they shall be stated in the program agreement.

§ 97.321 Permissible activities.

(a) A program under section 301 of the Act may include any type of manpower activity which is authorized under Title I or Title II of the Act and the regulations applicable thereto as set forth in Part 95 and Part 96 of this title.

(b) A program under section 301 of the Act may, in addition to the activities authorized by paragraph (a) of this section, include the following types of activities:

(1) Affirmative action;

(2) Job search and relocation assistance;

(3) Skill improvement training;

(4) Training for technological change; and

(5) Upgrading training.

(c) Under section 304 of the Act, comprehensive work and training programs, and necessary supportive and followup services may be carried out, including the following:

(1) Programs to provide part-time employment, on-the-job training, and useful work experience for students from low-income families who are in the 9th through 12th grades of school or are equivalent in age to students in these grades and who need the earnings to resume or maintain attendance in school;

(2) Programs to provide unemployed, underemployed, or low-income persons, aged 16 and over, with useful work and training, including sufficient basic education and institutional or on-the-job training, designed to assist them to develop their maximum occupational potential and to obtain regular competitive employment;

(3) Jobs, including those in recreation and related programs for economically disadvantaged youth during the summer months;

(4) Special programs which involve work activities directed to the needs of those chronically unemployed poor who have poor employment prospects and are unable, because of age, lack of employment opportunity, or otherwise, to secure appropriate employment or training assistance under other programs, and which, in addition to other services provided, will enable such persons to participate in projects for the betterment, physical improvement, or beautification of the community or area served by the program;

(5) Special programs which provide unemployed or low-income persons with jobs leading to career opportunities, including new types of careers, in programs designed to improve the physical, social, economic, or cultural condition of the community or area served;

(6) Special services, when required, for middle-aged and older persons, including recruitment, placement, and counseling for such persons who are unemployed as a result of the closing of a plant or factory or a permanent large-scale reduction in the work force of a locality, and the provision of grants to prime sponsors to assist the prime sponsors in securing part-time or temporary employment for middle-aged and older persons; and

(7) Other manpower programs conducted by community-based organizations.

§ 97.322 Services to persons of limited English-speaking ability.

Each program sponsor conducting a program with significant participation by persons of limited English-speaking ability shall establish operating procedures to ensure:

(a) That, when teaching of skills for occupations not requiring high proficiency in English is authorized, instruction is given in the primary language of the participant;

(b) That instruction in the English language is made available to participants with limited English-speaking ability; and

(c) That the primary language of the participants is used in the delivery of other authorized services including, but not limited to:

(1) Dissemination of information;

(2) Job placement services;

(3) Counseling;

(4) Training; and

(5) Employment supervision.

§ 97.323 Services to offenders.

(a) Programs under section 301 of the Act which are intended to serve offenders shall be designed to enable participants to secure and obtain meaningful employment. Program functions or components may include, but are not limited to:

(1) Basic education;

(2) Drug addiction or dependency rehabilitation;

(3) Use of training equipment comparable to that currently used on the job for which training is provided;

(4) Making arrangements for training, job placement, or related services with:

(i) Employers;

(ii) Labor organizations; and

(iii) Parole, probationary, and judicial authorities; and

(5) Any other service which contributes to the employability of offenders.

(b) The Secretary may, however, limit the program functions or components to specific services or types of services within individual programs for offenders under this subpart.

§ 97.324 Training for lower wage industries and relocation of industries.

The regulations contained in § 95.36 of this title apply to programs under this subpart.

§ 97.325 Non-Federal status of participants.

Participants in programs under this subpart are not Federal employees for any purpose and are not subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 97.326 Training allowances.

(a) *General.* (1) For each program under this subpart that includes activities in which allowances may be authorized for payment to participants, the Secretary, subject to the requirements and limitations of this section, will determine:

(i) Whether basic allowances are payable and the extent to which they shall be waived or adjusted upward;

(ii) Whether incentive allowances to public assistance recipients are payable;

(iii) Whether incentive allowances to institutionalized persons are payable and the amounts which are payable;

(iv) Whether allowances for exceptional expenses incurred by program participants are payable and the rates or schedules which will govern payments; and

(v) The delivery agent or agents authorized to operate the allowance payment system.

(2) When a program under this subpart includes activities in which allowances may be authorized for payment to participants, the Secretary's determinations with respect to these allowance payments will be stated in the program agreement. Program sponsors may pay allowances only as authorized by the program agreement.

(b) *Basic allowances.* (1) Basic allowances under this subpart may be paid only to individuals who participate in a course of training or education for which no wages are payable. Basic allowances may not, however, be paid to any individual who is receiving public assistance or whose needs or income are taken into account in determining public assistance payments to others or be paid to institutionalized persons.

(2) Basic allowances may be paid only to reimburse participants for the hours they spend (or are excused for good cause therefrom) in a course of training or education for which no wages are payable. Reimburseable hours may include those spent by participants in supportive activities, such as orientation and counseling, carried out in conjunction with the course of training or education in which the individual is enrolled.

(3) When no waiver or other adjustment is in effect, the basic allowance for one week shall be computed by applying whichever is higher of (i) the minimum hourly wage prescribed by State or local law in the jurisdiction in which the training or education is conducted or (ii) the minimum hourly wage prescribed under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, to to the number of hours which are reimbursable for that week.

(4) The basic allowance paid to a participant for one week shall be increased by $5 for each dependent over two, up to a maximum of four additional dependents. The maximum increase for dependents is $20 for six or more dependents.

(5) Any sum of money received by a participant as an unemployment compensation benefit in a week shall be sub-

tracted from the participant's basic allowance payment for that week. For the purposes of this paragraph, unemployment compensation benefits do not include separation payments provided under a collective bargaining agreement; and the basic allowance payment to which an individual is entitled may not be diminished because of a separation payment provided under a collective bargaining agreement.

(6) The basic allowance may be adjusted upward to the degree that the local costs of living exceed the national norm.

(7) Periodic increases to the basic allowance paid to participants in a program under this subpart may be authorized to provide an additional incentive for continued participation in the course of training or education.

(8) For any program under this subpart, or any component thereof, that includes activities in which basic allowances may be authorized for payment to participants, the Secretary may waive the payment of all or part of the basic allowances. However, any such waiver:

(i) May be made only to increase the number of individuals who may be served or to otherwise promote the purposes of this subpart;

(ii) Must be applied to all participants in a program, or component thereof, who would otherwise be entitled, except as provided by paragraph (b) (8) (iii) of this section.

(iii) May apply to participants on an individual basis only when:

(A) Approved by the Department of Labor Contract/Grant Officer in writing;

(B) Agreed to freely, in writing, by the individual who is affected; and

(C) Funds allocated for basic allowances under the program agreement have been depleted;

(iv) May apply to basic allowance increments for dependents only when basic allowances have been waived in whole;

(v) May not be made solely because a participant is a veteran and receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended; and

(vi) Must be made known, in writing, to all participants affected.

(c) *Incentive allowances for public assistance recipients.* (1) When an individual who is receiving public assistance or whose needs or income are taken into account in determining public assistance payments to others participates in a program under this subpart, or a component thereof, in which basic allowances have been authorized, the individual shall be paid an incentive allowance in lieu of the basic allowance. Under programs, or components thereof, where the payment of basic allowances has been waived in whole for participants who would otherwise be entitled, no incentive allowances may be paid.

(2) Incentive allowances shall be paid to entitled participants at the rate of $30 per week.

(3) Incentive allowances to entitled participants shall be reduced pro rata under part-time courses of training or education for which no wages are payable and shall be reduced pro rata for absences without good cause.

(4) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs.

(d) *Incentive allowances for institutionalized persons.* (1) Incentive allowances may be paid to institutionalized persons, including prison inmates, who participate in a program under this subpart.

(2) The determination as to whether such allowances will be paid, and the amounts thereof, will be made by the Secretary in consultation with officials of the institutions. In the case of prison inmates, all or part of such payments, as determined by the Secretary and the head of the institution, may be held in reserve and delivered upon the participants' release from the institution.

(3) Incentive allowances for institutionalized persons may not be paid at a rate which exceeds the minimum wage prescribed by Section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended, as applied to the number of hours spent (or excused for good cause therefrom) by the participant in training, education, or related program activities carried out under this subpart.

(e) *Exceptional expenses allowances.* Allowances may be paid to participants in a program under this subpart for the exceptional expenses they incur in connection with program activities. Reasonable allowances may be provided for expenses including, but not limited to:

(1) Meal expenses;

(2) Transportation expenses; and

(3) Lodging expenses.

(f) *Time limitation.* Allowances may not be paid under any course of training or education having a duration in excess of 104 weeks.

(g) *Repayments.* Each delivery agent responsible for operating an allowance payment system under this subpart shall, to the extent possible, require participants to repay the amount of any allowance overpayments received. Any overpayment not returned may be set off against any future allowance or other benefits under the Act to which the participant may become entitled. Where the overpayment was made in the absence of fault on the part of the participant, repayment shall be waived where recovery would be against equity and good conscience or would otherwise defeat the purposes of the program.

(h) *Allowance payment systems.* Each allowance payment system established or used in conjunction with a program under this subpart shall include:

(1) A procedure to obtain information concerning receipt of unemployment compensation by participants entitled to basic allowances;

(2) A procedure to encourage each participant entitled to basic allowances to apply for unemployment compensation benefits to which the participant is also entitled if he or she is not already receiving them;

(3) Determination of entitlement and computation of amount to be paid;

(4) Issuance and distribution of payments;

(5) Maintenance of payment records and preparation of required reports;

(6) Maintenance of a system to detect and collect overpayments; and

(7) Close working arrangements with other agencies to obtain necessary information to minimize unauthorized payments, including arrangements with:

(i) The State employment security agency for verification of unemployment compensation benefits;

(ii) Local welfare agencies for verification of public assistance payments; and

(iii) Training facilities for submittal of payment requests and time and attendance certifications.

§ 97.327 Wages, minimum duration of training and reasonable expectation of employment.

The regulations contained in § 95.35 of this title apply to programs under this subpart.

§ 97.328 General benefits and working conditions for program participants.

The regulations contained in § 98.24 of this title apply to programs under this subpart.

§ 97.329 Adverse actions.

Each program sponsor shall establish procedures for resolving any issue arising between it and a participant or an applicant for participation. Such procedures shall include an opportunity for an informal conference and a prompt determination of the issue. Such procedures shall also include a notice setting forth the grounds for any adverse action proposed to be taken against a participant and giving the participant an opportunity to respond. If an issue cannot be resolved, the participant or applicant for participation may request a review of the issue by the Contract or Grant Officer who shall act on behalf of the Secretary.

§ 97.330 Labor standards.

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are federally assisted under this subpart shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 27a–5).

§ 97.331 Nondiscrimination and equal employment opportunities.

The regulations contained in § 98.21 of this title apply to programs under this subpart.

§ 97.332 Nepotism.

The regulations contained in § 98.22 of this title apply to programs under this subpart.

§ 97.333 Special limitations on participant activities.

The regulations contained in § 98.23 of this title apply to programs under this subpart.

§ 97.334 Maintenance of effort.

Program sponsors shall use Federal funds provided under this subpart to supplement, rather than supplant, the level of funds that would otherwise be made available from non-Federal sources for the purpose of planning and administering programs and activities within the scope of this subpart.

§ 97.335 Limitations on Federal funds.

Federal funds provided under this subpart may be expended only for purposes permitted by the applicable Federal cost principles.

(a) The cost principles in Subpart 1-15.7 of Title 41 of the Code of Federal Regulations apply to program sponsors which are units of State or local government.

(b) The cost principles in Subpart 1-15.3 of Title 41 of the Code of Federal Regulations apply to program sponsors which are institutions of higher education.

(c) The cost principles in Subpart 1-15.2 of Title 41 of the Code of Federal Regulations apply to all types of program sponsor organizations not covered by paragraphs (a) and (b) of this section.

§ 97.336 Subagreements.

(a) Program sponsors under this subpart may contract, subcontract, or subgrant for portions of the required program activity only if specifically authorized to do so by the program agreement.

(b) Where contracting, subcontracting, or subgranting is authorized, the regulations contained in § 98.27 of this title apply, except that no contract, subcontract, or subgrant may be entered which has a performance period extending beyond the termination date of the basic program agreement.

ADMINISTRATIVE REQUIREMENTS FOR PROJECT GRANTS TO STATE AND LOCAL GOVERNMENTS

§ 97.341 General.

The Department's administrative requirements, standards, and procedures for grants awarded under this subpart to State and local governments are stated in § 97.341 through § 97.355. These requirements, standards, and procedures reflect those authorized and required by Federal Management Circular (FMC) 74-7; and they explicate the material contained in FMC 74-7 as it applies to State and local governments which are awarded grants under this subpart. Each State and local government which is awarded a grant under this subpart must conform to these administrative requirements, standards, and procedures. Hereinafter, State and local governments which are awarded a grant under this subpart are referred to as "grantees."

§ 97.342 Cash depositories.

(a) Any moneys advanced to a grantee are "public moneys" (owned by the Federal Government) and must be deposited in a bank with FDIC insurance coverage; and the balances exceeding FDIC coverage must be collaterally secure, as provided for in 12 U.S.C. 265.

(b) Except as provided by paragraph (a) of this section, there are no Department of Labor requirements for the physical segregation of cash depositories for grant funds which are provided to the grantee, nor are there any other requirements or eligibility standards for cash depositories in which Federal grant funds are deposited by the grantee.

(c) A separate bank account may be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved.

(d) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 97.343 Bonding and insurance.

Each grantee shall apply its normal bonding and insurance requirements, including fidelity bonds, to protect the interest of the Federal Government.

§ 97.344 Records maintenance.

(a) Each grantee shall retain for a period of at least three years all financial records, supporting documents, statistical records, and all other records pertinent to the program. The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report, except that:

(1) The records shall be retained beyond the three-year period for as long as any audit findings remain unresolved;

(2) Records for nonexpendable property acquired with grant funds shall be retained for three years after its final disposition; and

(3) When grant records are transferred to or maintained by the Department, the three-year retention requirement does not apply to the grantee with respect to these records.

(b) Grantees may substitute microfilm copies in lieu of original records only with the written permission of the Grant Officer.

(c) When the Department determines that certain grant records have long-term or historical retention value, the grantee shall, upon the Department's request, deliver the records to the Department. The grantee may request an arrangement to retain the records when they are continuously needed for joint use.

(d) The Secretary of Labor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee and its subgrantees and contractors which are pertinent to the grant program for the purpose of making audit, examination, excerpts and transcripts.

(e)(1) The names of all participants supported under the Act are considered public information.

(2) Other information regarding applicants, program participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies, counselors, or any other source, shall be made available to the public by the grantee to the same degree it makes such information available about its own employees in the governmental jurisdiction. Without the permission of the applicant or participant, such information which is not normally made available to the public on the grantee's own employees in the governmental jurisdiction shall be divulged only as necessary for purposes related to the performance or evaluation of the grant under this subpart to persons having responsibilities under the grant, including those furnishing services to the program under subgrant or contract, and to governmental authorities to the extent necessary for the proper administration of law.

(3) The names of all individuals employed in staff positions under the Act are considered public information. A grantee shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information is made available on its regular employees. A grantee shall make other information available to the public on individuals employed in staff positions by the administrative unit of a consortium who are not also employed by a member jurisdiction in accordance with the policy of the member jurisdiction which has the least restrictive policy.

(f) Grantees shall maintain records on each program participant, including:

(1) Personal indentifying information and characteristics;

(2) Residence;

(3) The work history of the participant;

(4) Program activities and supportive services in which the individual participated; and

(5) Status of the participant upon termination from the program.

§ 97.345 Single State agency not required.

No single State agency or multimember board or commission need be established or designated to administer or supervise the administration of grant programs under this subpart.

§ 97.346 Program income.

(a) In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the Federal Government will not hold any grantee which is a State or an agency or instrumentality of a State accountable for interest earned on grant funds pending their disbursement for program purposes.

(b) Grantees which are units of local government shall return to the Federal Government all interest earned on advances of grant funds (42 *Comp.* Gen. 289).

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the *MA Property Handbook* which implements Attachment N of FMC 74-7.

(d) Royalties received from copyrights and patents during the grant period shall be retained by the grantee and be added to the funds already committed to the program. After termination or completion of the grant, the Federal share of royalties, which is any amount in excess of $200 received annually, shall be returned to the Department.

(e) All other gross income earned by grant-supported activities during the grant period shall be retained by the grantee and shall be added to funds committed to the program and be used to further program objectives.

When the grantee freely contributes to the costs of the program or when the Secretary requires the grantee to share the costs of the program, the criteria and procedures for evaluating and determining the allowability of cash and in-kind contributions made by grantees are those set forth in Attachment F of FMC 74-7.

§ 97.348 Standards for grantee financial management systems.

(a) Each grantee shall operate a financial management system which provides for:

(1) Accurate, current, and complete disclosure of the financial results of the grant program in accordance with the Federal reporting requirements;

(2) Records which identify the source and application of funds for grant-supported activities, including records containing information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(3) Effective control over and accountability for all funds, property and other assets to safeguard these assets and to ensure that they are used only for authorized purposes;

(4) The comparison of actual costs with amounts budgeted for the grant;

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee when funds are advanced by the Federal Government;

(6) Drawdowns from the U.S. Treasury through the commercial bank as close as possible to the time of disbursements when advances are made by the letter-of-credit method;

(7) Procedures for determining the allowability and allocability of costs in accordance with the provisions of FMC 74-4; and

(8) Accounting records which are supported by source documentation.

(b) Each grantee shall audit or have audited the grant financial records to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations and administrative requirements. The grantee shall schedule these audits with reasonable frequency, usually annually, but not less frequently than once every two years. The grantee shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) Because the Department requires financial reporting on an accrual basis, the grantee shall, when its own accounting system is not kept on that basis, develop the required reporting information through analysis of documentation on hand or on the basis of best estimates.

(d) Each grantee shall require subgrantees or contractors (i.e., recipients of subgrants or contracts which are passed through by the grantee) to adopt all the standards set forth in this section, except the standard applicable to letter-of-credit drawdowns as described in paragraph (a) (6) of this section.

§ 97.349 Financial reporting requirements.

(a) Each grantee shall periodically submit a Financial Status Report which, on an accrual basis, indicates total costs incurred by cost category including indirect costs, if any. This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire grant period shall also be required. Grantees must certify to the accuracy and completeness of the costs reported.

(b) Each grantee shall periodically submit a Report of Federal Cash Transactions. Grantees which receive annual grants totalling $1 million or more shall submit this report monthly; and all other grantees shall submit it quarterly.

(c) Specific instructions and procedures for preparing and submitting the Financial Status Report and the Report of Federal Cash Transactions are contained in the *Forms Preparation Handbook*. These written procedures and instructions implement Attachment H of FMC 74-7. The Department will furnish a copy of the Handbook to each grantee.

§ 97.350 Monitoring and reporting program performance.

(a) Each grantee shall continually monitor the performance of grant supported activities to assure that program goals are being met and that the requirements of the Act and the regulations in this subpart are being met.

(b) Each grantee shall periodically submit a Program Status Summary (including any special supplement the Department may require). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Grant Officer no later than 30 days after the end of the quarterly reporting period. If the grant period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire grant period shall also be required. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*. Instructions for supplemental reports will be provided by the Department. The Program Status Summary provides the following types of information together with a comparison of the same items as they appear in the grant document:

(1) The total number of enrollments with granted funds during the grant period;

(2) The total number of participants placed in unsubsidized employment upon termination from the program and the number entering school, other training or military service;

(3) The level of enrollment associated with each program activity;

(4) The number of individuals within the target group or groups being served by the program; and

(5) A brief narrative account of significant program accomplishments and problem areas.

(c) Each grantee shall submit a Quarterly Summary of Participant Characteristics with the Program Status Summary. This report will include characteristics data aggregated for all participants as set forth in the report form and will include all participants terminating or placed during the reporting period. For participants who entered employment during the report period, the report will also aggregate the average wage before enrollment and upon termination from the program. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*.

(d) Each grantee shall, without regard to normal reporting periods, advise the Grant Officer of the following types of conditions as soon as they become known:

(1) Problems, delays, or adverse conditions which may materially affect the ability to attain program goals with an indication of what corrective action has been or will be taken and an indication of the Federal assistance, if any, which may be helpful in resolving the situation; and

(2) favorable developments or events which will materially assist the program in meeting or exceeding its intended purposes and goals.

(e) If a performance review conducted by the grantee discloses the need for grant budget revision, the grantee shall submit a request for revision to the Grant Officer.

(f) The Department will make onsite visits as frequently as is practicable to review program accomplishments and management control systems and to provide technical assistance. Grantees shall cooperate fully with the Department in the performance of these visits.

§ 97.351 Payment procedures.

(a) Consistent with the requirements, criteria and standards stated in Attachment J of FMC 74-7, grant payments will be made through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check.

(b) Specific instructions and procedures for preparing forms associated with grant payments are contained in the *Forms Preparation Handbook.*

(c) The Department may withhold payments for proper charges if the grantee has failed to comply with program objectives, grant award conditions, or Federal reporting requirements or if the grantee is indebted to the United States and collection of the debt will not impair the accomplishment of the objectives of any grant program sponsored by the United States. When it determines to withhold payments, the Department will inform the grantee with reasonable notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness of the United States is liquidated.

§ 97.352 Budget revision procedures.

(a) The grant budget is the approved financial plan for the Federal share and, if applicable, the nonfederal share to carry out the purposes of the grant as set forth in the grant agreement document. Grantees shall promptly request prior written approvals from the Grant Officer for budget revision whenever:

(1) The revision results from a net increase or decrease from the anticipated enrollment level of 15 percent or more, or from other significant changes in the scope of the grant program;

(2) The revision indicates a need for additional Federal funding;

(3) The Federal share of the grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or 5 percent of the total grant budget, whichever is greater;

(4) The Federal share of the grant budget is $100,000 or less and the cumulative amount of transfers among direct cost object categories exceeds or is expected to exceed 5 percent of the total grant budget;

(5) The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

(6) The revision pertains to the addition of cost items requiring approval in accordance with the provisions of FMC 74-4; or

(7) The grantee plans to transfer Federal funds allotted for training allowances or other direct payments to participants to other categories of expense.

(b) Before deviating from the grant budget in any manner described in paragraph (a) of this section, the grantee must obtain the prior written approval of the Grant Officer. All other deviations from the grant budget may be undertaken by the grantee without the approval of the Grant Officer. These deviations include the use of additional grantee funds to further the purposes of the program and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) Each grantee shall promptly notify the Grant Officer when the amount of Federal funds authorized is expected to exceed actual needs by more than $5,000 or 5 percent of the Federal grant, whichever is greater.

(d) When requesting approval for budget revisions grantees must use the budget forms which are used in the grant agreement document. However, grantees may request by letter the cost item approvals required by FMC 74-4.

(e) Under normal circumstances, the Department will notify the grantee of budget revision approvals or disapprovals within 30 days of receipt of the request. If the revision request is still under consideration at the end of 30 days, the Department will inform the grantee in writing as to when the Department's decision will be forthcoming.

§ 97.353 Grant closeout procedures.

(a) Subsequent to the completion date of the grant, i.e., the date stated in the grant agreement document or any amendment thereto upon which Federal assistance under the grant ends, the grant must be closed out. Grant closeout is the process by which the Department determines that all required administrative actions and all required grant work have been completed by the grantee and the Department. The Department will provide each grantee with the necessary forms (with instructions) associated with the closeout of the grant. The basic procedures for closeout are described in this paragraph.

(1) If grant payments are made on a letter of credit, the Department will notify the grantee that the letter of credit is to be cancelled and that, following cancellation, any further payments under the grant will be made by Treasury check upon submission and approval of the required payment requests.

(2) Upon receipt and approval of the necessary requests, the Department will make prompt payment to the grantee for allowable reimbursable costs under the grant being closed out.

(3) Upon the Department's request the grantee shall immediately refund any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury check. Items to be included with the refund check are detailed in the *Forms Preparation Handbook.*

(4) Within 90 days after the completion date, the grantee shall submit the following financial and inventory reports which are described in the *Forms Preparation Handbook:*

(i) A final Financial Status Report;

(ii) A final Report of Federal Cash Transactions;

(iii) The Grantee's Assignment of Refunds, Rebates, and Credits;

(iv) Bank Statement—Special Bank/Financial Account;

(v) Cancellation/Adjustment of Fidelity Bond;

(vi) A list of possible claimants for unclaimed checks cancelled or payment stopped;

(vii) Grant Closeout Tax Certification;

(viii) Government Property Inventory; and

(ix) Inventory Certificate.

(5) Within 90 days after the completion date, the grantee shall submit the Grantee's Release form as described in the *Forms Preparation Handbook.*

(6) Within 30 days after the completion date, the grantee shall submit a final Program Status Summary (with supplement if appropriate) and Quarterly Summary of Participant Characteristics.

(7) After receipt of the documents and final reports described in paragraphs (a)(4) through (a)(6) of this section, the Department will make settlement for any upward or downward adjustment to the Federal share of costs.

(8) In the event a final audit has not been performed prior to closeout of the grant, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) Suspension of a grant is an action by the Secretary which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision by the Secretary to terminate the grant. In the event that the Secretary determines that a grantee has failed to comply with stipulations, standards, or conditions of the grant agreement, the Secretary may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph (c)(1) of this section. The Secretary may allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of FMC 74-4.

(c) The termination of a grant is the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the completion date.

(1) The Secretary may terminate any grant in whole, or in part, at any time before the date of completion, whenever, it is determined that the grantee has failed to comply with the conditions of the grant. The Secretary will promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the Department under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) A grant may be terminated in whole or in part when both the grantee and the Secretary agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial

terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

§ 97.354 Property management standards.

Standards for the management, control, and disposition of grant-acquired property are contained in the *MA Property Handbook*. Grantees must adhere to the standards set forth in the handbook. A copy of the handbook, which implements Attachment N of FMC 74-7, will be furnished by the Department to each grantee.

§ 97.355 Procurement standards.

The standards to be used by grantees for the procurement of supplies, equipment, and other services with Federal grant funds are those stated in Attachment O of FMC 74-7.

ADMINISTRATIVE STANDARDS FOR PROGRAM AGREEMENTS WITH PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION, PUBLIC AND PRIVATE HOSPITALS, AND OTHER PUBLIC AND PRIVATE NONPROFIT ORGANIZATIONS

§ 97.361 General.

The Department's administrative requirements, standards, and procedures for program agreements awarded under this subpart to public and private institutions of higher education, public and private hospitals, and other public and private nonprofit organizations, including Indian Tribes are stated in § 97.361 through § 97.375. These requirements, standards, and procedures reflect those described by the General Services Administration in their notice of proposed rulemaking for 34 CFR 258 which was published Monday, February 10, 1975, in the FEDERAL REGISTER (40 FR 6304-6312). The requirements, standards, and procedures stated in § 97.361 through § 97.375 will be amended as any subsequent effective regulations in 34 CFR 258 might indicate. Each public or private institution of higher education, public or private hospital, or other public or private nonprofit organization, including any Indian Tribe, which is awarded a program agreement under the Act must conform to these requirements, standards and procedures. Hereinafter, these types of organizations will be referred to as "recipients."

§ 97.362 Cash depositories.

(a) A separate bank account shall be used when letter-of-credit agreements entered into by the recipient, the Federal Government and the bank involved provide that drawdowns will be made when the recipient's checks are presented to the bank for payment.

(b) Any Federal funds which are advanced to a recipient are subject to the control and regulation of the United States and its officers, agents or employees (public moneys as defined in Treasury Circular No. 1976). Funds advanced must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage; and the balance exceeding FDIC coverage must be collaterally secured. In order to ensure that security is obtained, a special bank account with a lien in favor of the Federal Government is required when funds are advanced to a recipient.

(c) Except as provided by paragraphs (a) and (b) of this section, there are no Department of Labor requirements for the physical segregation of cash depositories for Federal program funds which are provided to the recipient, nor are there any other requirements or eligibility standards for cash depositories in which Federal program funds are deposited by the recipient.

(d) Consistent with the national goal of expanding opportunities for minority business enterprises, recipients are encouraged to use minority banks (a bank at least 50 percent owned by minority group members).

§ 97.363 Bonding and insurance.

(a) When advance payments are made to the recipient, the recipient shall obtain fidelity bond coverage which meets the specifications described in paragraphs (a)(1) through (a)(6) of this section.

(1) Fidelity bond coverage shall be in the form of a blanket position bond with an approved corporate surety covering any and all officers and employees of the recipient organization who are involved in the activities of the program.

(2) The amount of the bond shall be $25,000 or the amount of the advance payment, whichever is less.

(3) If possible, both the recipient and the Secretary of Labor shall be named as the insureds. If this is not possible, the recipient shall be named as the insured.

(4) The period of coverage shall be at least one year, with a discovery period of no less than one year after the cancellation or other termination of the bond.

(5) The bond shall stipulate that the Department of Labor Contract/Grant Officer be given 35 days advance notice by the surety prior to making any material change in, or cancellation of, the bond. The advance notice shall be provided by certified mail.

(6) If the bond covers advance payments under funding agreements with more than one agency, the bond shall contain a recovery provision for each Federal agency involved.

(b) Recipients shall obtain and maintain in force during the lifetime of the program agreement "third person" liability insurance of the types and in the amounts described in this paragraph.

(1) The recipient shall obtain and maintain Worker's Compensation insurance for his staff in the amounts required by State law.

(2) The recipient shall obtain and maintain Occupational Diseases Insurance as required by applicable law. In an area where all occupational diseases are not compensable under applicable law, insurance for occupational diseases shall be secured under the employer liability section of the recipient's insurance policy. Minimum coverage per incident is $100,000.

(3) The recipient shall obtain and maintain Employer Liability insurance to cover any liability imposed upon the recipient, by law, for damages on account of personal injuries, including death resulting therefrom, sustained by the recipient's employees by reason of accident. Minimum coverage per incident is $100,000.

(4) The recipient shall obtain and maintain General Liability Insurance (Bodily Injury) to provide coverage against claims arising from bodily injury or death to third parties occurring on the recipient's business premises or through the recipient's operations, except those arising from motor vehicles away from the premises, those covered by Worker's Compensation Law, and other exclusions stated in the policy. The minimum coverage for bodily injury is $100,000 per person and $300,000 per accident.

(5) The recipient shall obtain and maintain Automobile Liability insurance. The required coverage is $100,000 per person and $300,000 per accident for bodily injury and $25,000 per accident for property damage. The types and amounts stated for vehicle insurance must apply to any vehicle operated or used in connection wth project activities. In the event a privately-owned vehicle is used, the Federal Government's share of insurance premiums, including any additional coverage required to conform with the requirements of this paragraph, shall be prorated in accordance with the vehicle's actual use while conducting activities under the program.

§ 97.364 Records maintenance.

(a) Each recipient shall retain for a period of at least three years all financial records, supporting documents, statistical records, and all other records pertinent to the program. For types of program agreements other than contracts the retention period starts from the date of the submission of the final expenditure report or, for agreements which are renewed annually, from the date of the submission of the annual expenditure report. For contracts, the retention period starts from the date of final payment.

For all types of program agreements, however:

(1) The records shall be retained beyond the three-year period for as long as any audit findings remain unresolved;

(2) Records for nonexpendable property acquired with Federal program funds shall be retained for three years after its final disposition; and

(3) When program records are transferred to or maintained by the Depart-

ment, the three-year retention requirement does not apply to the recipient with respect to these records.

(b) Recipients may substitute microfilm copies in lieu of original records only with the written permission of the Contract/Grant Officer.

(c) When the Department determines that certain project records have long-term or historical retention value, the recipient shall, upon the Department's request, deliver the records to the Department. However, the recipient may request an arrangement to retain the records when they are continuously needed for joint use.

(d) The Secretary of Labor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient and its subgrantees, contractors, and subcontractors which are pertinent to the program for the purpose of making audit, examination, excerpts and transcripts.

(e) (1) The names of all participants supported under the Act are considered public information.

(2) Other information regarding applicants, program participants, or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies, counselors, or any other source, shall be made available to the public by the recipient to the same degree it makes such information available about its own employees. Without the permission of the applicant or participant, such information which is not normally made available to the public on the recipient's own employees shall be divulged only as necessary for purposes related to the performance or evaluation of the program agreement to persons having responsibilities under the agreement, including those furnishing services to the program under subgrant, contract, or subcontract, and to governmental authorities to the extent necessary for the proper administration of law.

(3) The names of all individuals employed in staff positions under the Act are considered public information. A recipient shall make other information available to the public pertaining to individuals employed in staff positions under the Act in the same manner and to the same extent as such information is made available on its regular employees.

(f) Recipients shall maintain records on each program participant, including:

(1) Personal identifying information and characteristics;

(2) Residence;

(3) The work history of the participant;

(4) Program activities and supportive services in which the individual participated; and

(5) Status of the participant upon termination from the program.

§ 97.365 Program income.

(a) In accordance with Section 203 of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577), the Federal Government will not hold any recipient which is an instrumentality of a State accountable for interest earned on Federal program funds pending their disbursement for program purposes.

(b) Recipients which are not instrumentalities of a State shall remit to the Federal Government all interest earned on advances of Federal program funds.

(c) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the *Property Handbook for MA Contractors*.

(d) Royalties received as a result of copyrights or patents will be retained by the recipient unless the terms of the program agreement provide otherwise.

(e) All other gross income earned by program activities during the program agreement period shall be retained by the recipient and shall be added to funds committed to the program and be used to further program objectives.

§ 97.366 Matching share.

(a) Definitions of terms for the purposes of this section are provided in this paragraph.

(1) "Program costs" means all allowable costs incurred by a recipient (as set forth in the applicable Federal cost principles) and the value of in-kind contributions made by third parties in accomplishing the objectives of the program agreement during the program period.

(2) "Matching share" means that portion of the program costs not borne by the Federal Government.

(3) "Cash contributions" means the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal parties.

(4) "In-kind contributions" means the value of noncash contributions provided by the recipient and nonfederal third parties. Property purchased with Federal funds may not be considered as any part of the recipient's in-kind contribution. In-kind contributions may be in the form of real property and nonexpendable personal property, and the value of goods and services directly benefitting the program.

(b) When the recipient freely contributes to the costs of the program or when the Secretary requires the recipient to share the costs of the program, the matching share may consist of items described in this paragraph.

(1) The matching share may include charges incurred by the recipient as program costs. It is acknowledged that not all charges require cash outlays by the recipient during the program period, such as depreciation and use charges for buildings and equipment.

(2) The matching share may include program costs financed with cash contributed or donated to the recipient by public agencies and institutions, and private organizations and individuals.

(3) The matching share may include program costs represented by services and real and personal property, or use thereof, donated by public agencies and institutions, and private organizations and individuals.

(c) All contributions, both cash and in-kind, will be accepted as part of the recipient's matching share when the contributions meet all the following criteria:

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

(2) Are not included as contributions to any other federally assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of program objectives;

(4) Are types of charges which would be allowable under the applicable cost principles;

(5) Are not paid by the Federal Government directly or indirectly under another agreement; and

(6) Conform to the other requirements and standards stated in this section.

(d) Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

(e) Specific procedures for recipients in establishing the value of in-kind contributions from non-Federal third parties are described in this paragraph.

(1) Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer service may be counted toward the matching share if the service is an integral and necessary part of the approved program. Rates for volunteers must be consistent with those paid for similar work in the recipient's organization. In instances when the required skills are not found in the recipient's organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (excluding fringe benefits and overhead costs) provided that these services are in the same skill for which the employee is normally paid.

(2) Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Values assessed to expendable personal property included in the matching share must be reasonable and must not exceed the market value of the property at the time of the donation.

(3) (i) Depreciation or use charges may be made for the contributed use of equipment, buildings, or land which directly supports project activities. The full value of equipment or other capital assets and fair rental charges for land may be included only if permitted and approved by the Department in writing.

(ii) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:

(A) The value of donated land and buildings may not exceed its fair market value at the time of donation as established by an independent appraiser (e.g., certified real property appraiser or Government Services Administration (GSA) representative);

(B) The value of donated nonexpendable personal property may not exceed the fair market value of equipment and property of the same age and condition at the time of donation;

(C) The value of donated space may not exceed the fair rental value of comparable space as established by an independent appraiser of comparable space and facilities in a privately owned building in the same locality; and

(D) The value of loaned equipment may not exceed its fair rental value.

(f) Volunteer services contributed from non-Federal third parties must, to the extent feasible, be supported by the same methods used by the recipient for its employees. Also, the basis used for determining the value of personal services, material, equipment and land contributed from non-Federal third parties must be documented.

§ 97.367 Standards for recipient financial management systems.

(a) Each recipient shall operate a financial management system which provides for:

(1) Accurate, current, and complete disclosure of the financial results of the program in accordance with the Federal reporting requirements;

(2) Records which identify the source and application of funds for federally supported program activities, including records containing information pertaining to Federal program awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(3) Effective control over and accountability for all funds, property and other assets to safeguard these assets and to ensure that they are used only for authorized purposes;

(4) The comparison of actual costs with amounts budgeted for the program;

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient when funds are advanced by the Federal Government;

(6) Drawdowns from the U.S. Treasury through the commercial bank as close as possible to the time of disbursements when advances are made by the letter-of-credit method;

(7) Procedures for determining the allowability and allocability of costs in accordance with the applicable Federal cost principles and the terms of the agreement; and

(8) Accounting records which are supported by source documentation.

(b) Each recipient shall conduct or arrange for examinations in the form of audits or internal audits of its financial transactions. These examinations may be performed only by individuals who are sufficiently independent of those who authorize the expenditure of Federal funds to produce unbiased opinions, conclusions or judgments. These examinations shall be made to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the program agreement. Examinations should be conducted on an organizationwide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the project agreement. The tests must include an appropriate sampling from the program agreement. Examinations must be conducted with reasonable frequency, but not less frequently than once every two years. The recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) Because the Department requires financial reporting on an accrual basis, the recipient shall, when its own accounting system is not kept on that basis, develop the required reporting information through analysis of documentation on hand or on the basis of best estimates.

(d) Recipients shall require their subgrantees, contractors, and subcontractors to adopt the standards stated in this section, except those for letter-of-credit drawdowns as described in paragraph (a)(6) of this section.

§ 97.368 Financial reporting requirements.

(a) Each recipient shall periodically submit a Financial Status Report which, on an accrual basis, indicates total costs incurred by cost category including indirect costs, if any. This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the program period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire program period shall also be required. Recipients must certify to the accuracy and completeness of the costs reported.

(b) Each recipient shall periodically submit a Report of Federal Cash Transactions. Recipients which receive advances totalling $1 million or more per year shall submit this report monthly; and all other recipients shall submit it quarterly.

(c) Specific instructions and procedures for preparing and submitting the Financial Status Report and the Report of Federal Cash Transactions are contained in the *Forms Preparation Handbook*. The Department will furnish a copy of the handbook to each recipient.

§ 97.369 Monitoring and reporting program performance.

(a) Each recipient shall continually monitor the performance of program activities to assure that program goals are being met and that the requirements of the Act and the regulations in this subpart are being met.

(b) Each recipient shall periodically submit a Program Status Summary (including any special supplement the Department may require). This report shall be prepared to coincide with the ending dates for Federal fiscal year quarters and shall be submitted to the Contract/Grant Officer no later than 30 days after the end of the quarterly reporting period. If the program period ends at a date other than the last day of a Federal fiscal year quarter, a final report covering the entire program period shall also be required. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*. Instructions for supplemental reports will be provided by the Department. The Program Status Summary provides the following types of information together with a comparison of the same items as they appear in the grant document:

(1) The total number of enrollments with program funds during the program period;

(2) The total number of participants placed in unsubsidized employment upon termination from the program and the number entering school, other training or military service;

(3) The level of enrollment associated with each program activity;

(4) The number of individuals within the target group or groups being served by the program; and

(5) A brief narrative account of significant program accomplishments and problem areas.

(c) Each recipient shall submit a Quarterly Summary of Participant Characteristics with the Program Status Summary. This report will include characteristics data aggregated for all participants as set forth in the report form and will include all participants terminating or placed during the reporting period. For participants who entered employment during the report period, the report will also aggregate the average wage before enrollment and upon termination from the program. Specific instructions for the preparation of this report are contained in the *Forms Preparation Handbook*.

(d) Each recipient shall, without regard to normal reporting periods, advise the Contract/Grant Officer of the following types of conditions as soon as they become known:

(1) Problems, delays, or adverse conditions which may materially affect the ability to attain program goals with an indication of what corrective action has been or will be taken and an indication of the Federal assistance, if any, which may be helpful in resolving the situation; and

(2) Favorable developments or events which will materially assist the program in meeting or exceeding its intended purposes and goals.

(e) If a performance review conducted by the grantee discloses the need for program budget revision, the recipient shall submit a request for revision to the Contract/Grant Officer.

(f) The Department will make onsite visits as frequently as is practicable to review program accomplishments and management control systems and to provide technical assistance. Recipients shall cooperate fully with the Department in the performance of these visits.

§ 97.370 Payment procedures.

(a) Consistent with all applicable Federal requirements, payments to recipients will be made through letter-of-credit, advance by Treasury check, or reimbursement by Treasury check. The Department will provide specific instructions and procedures to each recipient.

(b) The Department may withhold payments for proper charges if the recipient has failed to comply with program objectives, award conditions, or Federal reporting requirements or if the recipient is indebted to the United States and the collection of the debt will not impair the accomplishment of the objectives of any project or program sponsored by the United States. When it determines to withhold payments, the Department will inform the recipient with reasonable notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the United States is liquidated.

§ 97.371 Budget revision procedures.

(a) The program budget is the approved financial plan for the Federal share and, if applicable, the non-Federal shares as set forth in the program agreement document. Recipients shall promptly request the prior written approval of the Contract/Grant Officer for budget revision whenever:

(1) The revision results from a net increase or decrease from the anticipated enrollment level of 15 percent or more, or from other significant changes in the scope of the program;

(2) The revision indicates a need for additional Federal funding;

(3) The Federal share of the budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed 5 percent of the total budget;

(4) The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa;

(5) The revision pertains to expenditures which require approval in accordance with FMC 73-8 (34 CFR Part 254) (Cost Principles for Educational Institutions); or

(6) The recipient plans to transfer Federal funds allotted for training allowances or other direct payments to participants to other categories of expense.

(b) Before deviating from the budget in any manner described in paragraph (a) of this section, the recipient must obtain the prior written approval of the Contract/Grant Officer. All other deviations from the budget may be undertaken by the recipient without the approval of the Contract/Grant Officer. These deviations include the use of additional recipient funds to further the purposes of the program.

(c) Each recipient shall promptly notify the Contract/Grant Officer when the amount of Federal funds authorized is expected to exceed actual needs by more than $5,000 or 5 percent of the Federal award, whichever is greater.

(d) When requesting approval for budget revisions, recipients must use the budget forms which are used in the program agreement document.

(e) Under normal circumstances, the Department will notify the recipient of budget revision approvals or disapprovals within 30 days of receipt of the request. If the revision request is still under consideration at the end of 30 days, the Department will inform the recipient in writing as to when the Department's decision will be forthcoming.

§ 97.372 Closeout procedures.

Subsequent to the completion date of the agreement, i.e., the date stated in the agreement document or any amendment thereto upon which Federal assistance under the agreement ends, the agreement must be closed out. Closeout is the process by which the Department determines that all required administrative actions and all required program work have been completed by the receipient and the Department. The Department will provide each recipient with the necessary forms (with instructions) associated with the closeout of the agreement. The basic procedures for closeout are described in this section.

(a) If payments are made on a letter of credit, the Department will notify the recipient that the letter of credit is to be cancelled and that, following cancellation, any further payments under the agreement will be made by Treasury check upon submission and approval of the required payment requests.

(b) Upon receipt and approval of the necessary requests, the Department will make prompt payment to the recipient for allowable reimbursable costs under the agreement being closed out.

(c) Upon the Department's request, the recipient shall immediately refund any unencumbered balance of cash drawn down from the letter of credit or advanced by Treasury check. Items to be included with the refund check are detailed in the *Forms Preparation Handbook*.

(d) Within 90 days after the completion date, the recipient shall submit the following financial and inventory reports:

(1) A final Financial Status Report;

(2) A final Report of Federal Cash Transactions;

(3) The Assignment of Refunds, Rebates, and Credits;

(4) Bank Statement-Special Bank/Financial Account;

(5) Cancellation/Adjustment of Fidelity Bond;

(6) A list of possible claimants for unclaimed checks cancelled or payment stopped;

(7) Closeout Tax Certification;

(8) Government Property Inventory; and

(9) Inventory Certificate.

(e) Within 90 days after the completion date, the recipient shall submit the required Release form.

(f) Within 30 days after the completion date, the recipient shall submit a final Program Status Summary (with supplement if appropriate) and Quarterly Summary of Participant Characteristics.

(g) After receipt of the documents and final reports described in paragraphs (a) through (f) of this section, the Department will make settlement for any upward or downward adjustment to the Federal share of costs.

(h) In the event a final audit has not been performed prior to closeout of the agreement, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 97.373 Suspension and termination procedures.

(a) Suspension of an agreement is an action by the Secretary which temporarily suspends Federal assistance under the agreement pending corrective action by the recipient or pending a decision by the Secretary to terminate the agreement. In the event that the Secretary determines that a recipient has failed to comply with stipulations, standards, or conditions of the agreement, the Secretary may, on reasonable notice to the recipient, suspend the agreement, and withhold further payments, or prohibit the recipient from incurring additional obligations of Federal funds, pending corrective action by the recipient or a decision to terminate in accordance with paragraph (b)(1) of this section. The Secretary may allow all necessary and proper costs which the recipient could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable cost principles.

(b) The termination of an agreement is the cancellation of Federal assistance, in whole or in part, under an agreement at any time prior to the completion date.

(1) The Secretary may terminate any agreement in whole, or in part, at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The Secretary will promptly notify the recipient in sons for the termination, together with the effective date. Payments made to recipients or recoveries by the Department under agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) An agreement may be terminated in whole or in part when both the recipient and the Secretary agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

(3) If the agreement is in the form of a contract, the Contracting Officer may cancel the agreement (i.e., contract) in whole or in part whenever the Contracting Officer determines that termination would be in the best interest of the Government.

§ 97.374 Property management standards.

Standards for the management, control, and disposition of property acquired under the agreement are contained in the *Property Handbook for MA Contractors*. Recipients shall adhere to the standards set forth in the handbook. A copy of the handbook will be furnished by the Department to each recipient.

§ 97.375 Procurement standards.

(a) Recipients shall procure supplies, equipment and other services with Federal program funds in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. Recipients shall rely on the private sector to provide goods and services to the extent feasible. The term "procurement" refers to the acquisition of supplies, equipment and other services from outside sources which are to be used by the recipient in carrying out its organizational mission and responsibilities under the program.

(b) The recipient shall maintain a code or standard of conduct which shall govern the performance of its officers, employees and agents in the award and administration of procurement contracts using Federal program funds. The recipient's officers, employees and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from actual or potential contractors. The recipient's code or standard of conduct shall provide for disciplinary actions against persons who violate the code or standard.

(c) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may eliminate competition or otherwise restrain trade. Procurement awards shall be made to the bidder/offeror with the lowest bid/offer, provided the bidder/offeror is responsible and its bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations for procurements must describe clearly the requirements which the bidder/offeror must meet in order for the bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

(d) Recipients shall establish procurement procedures which, as a minimum, are based on the requirements described in paragraph (d)(8) of this section.

(1) Proposed procurement actions shall include a procedure to assure the avoidance of purchasing unnecessary or duplicative items. When appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for supplies and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the name brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts must be made by recipients to utilize small businesses and minority-owned businesses as sources of supplies and services. These efforts should focus on allowing these types of sources the maximum feasible opportunity to compete for procurement awards under the program agreement.

(4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursement contracts, purchase orders, and incentive contracts, shall be determined by the recipient to be appropriate for the particular procurement and for promoting the best interests of the program. The "cost plus a percentage of cost" method of contracting may not be used.

(5) Procurement contracts may be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(6) No proposed sole source procurement contracts in which the aggregate expenditure is expected to exceed $5,000 may be awarded without prior written approval from the Contract/Grant Officer.

(7) Procurement records and files for purchases in excess of $10,000 shall include:

(i) Basis for contractor selection;

(ii) Justification for lack of competition when competitive bids or offers are not obtained and the written authority of the Contract/Grant Officer for the noncompetitive procurement as is required by paragraph (d)(7) of this section; and

(iii) Basis for award cost or price.

(8) A system for procurement contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract and to ensure adequate and timely followup of all purchases.

(e) In addition to provisions which provide for a sound and complete agreement, the recipient shall include in procurement agreements the provisions described and required by paragraphs (e)(1) through (e)(5) of this section. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of $10,000 shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 must contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, these contract provisions must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Contracts or agreements, the principal purpose of which is to create, develop, or improve products processes, or methods; or for exploration into fields which directly concern public welfare, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the Department's regulations and recipient's regulations. The contractor must be advised as to the source of additional information regarding these matters.

(4) All negotiated procurement contracts in excess of $2,500 shall include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the activities of the program.

(5) Procurement agreements and subproject agreements in excess of $100,000 shall contain a provision which requires the awardee to agree to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act of 1970. Violations must be reported to the Department and the Regional Office of the Environmental Protection Agency.

(f) The standards contained in this section in no way relieve the recipient of contractual responsibilities arising under its contracts or subagreements. The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of the program agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the appropriate local, State, or Federal authority.

Private Profitmaking Organizations—Contract Administration

§ 97.381 Administration.

(a) The Secretary will require private, profitmaking organizations which are awarded contracts under this subpart to submit program progress reports. Specific reporting requirements will be stated in the contracts.

(b) The Secretary will require private, profitmaking organizations which are awarded contracts under this subpart to maintain records on individual participants. Specific record keeping requirements will be stated in the contracts.

(c) In all aspects of program administration other than those covered by paragraphs (a) and (b) of this section, the regulations contained in 41 CFR, Chapter 1, shall apply.

INTERAGENCY AGREEMENTS

§ 97.386 Administration.

(a) The secretary will require other Federal establishments which receive and utilize funds under this subpart to submit financial reports and standard program progress reports. However, the Secretary will not require these reports to be submitted more frequently than quarterly.

(b) The Secretary will require other Federal establishments which receive and utilize funds under this subpart to maintain the standard records on individual participants and participant activities.

(c) In all aspects of program administration other than those described in paragraphs (a) and (b) of this section, Federal establishments which receive and utilize funds under this subpart may use their normal administrative procedures.

ASSESSMENT AND EVALUATION

§ 97.391 General.

Procedures which will be observed by the Department in assessing and evaluating the results and effectiveness of programs under this subpart are described in § 97.391 through § 97.393 of this part. The Department will assess program sponsors to determine whether they are carrying out the purposes and provisions of the Act in accordance with their program agreements. The Secretary will also evaluate the overall effort under this subpart to aid in the overall administration of the Act.

§ 97.392 Responsibilities of the Secretary.

(a) As used in this section, the term "assessment" means the Federal review of the performance of individual program sponsors; and the term "evaluation" means the Federal study of the overall results and general effectiveness of activities under this subpart.

(b) The Secretary has the responsibility to determine whether program sponsors are operating in accord with their respective program agreements in carrying out the purposes and provisions of the Act and are demonstrating maximum efforts to achieve the stated goals and objectives of their programs.

(c) (1) Assessment will be conducted through the review of required periodic reports and, as necessary, will be supplemented with special reports from program sponsors, the examination of records maintained by program sponsors, selective on-site reviews, including the investigation of allegations or complaints, or other examination as may be deemed necessary and appropriate by the Secretary.

(2) Assessment may also be conducted for purposes of offering technical assistance and recommendations for corrective actions to program sponsors as considered necessary.

(d) The Secretary has the responsibility to provide for the continuing evaluation of all activities conducted under the Act. These studies will include examination of:

(1) Cost in relation to effectiveness;

(2) Impact on communities and participants;

(3) Implications for related programs;

(4) The effectiveness with which the needs of the target groups are being met;

(5) Adequacy of mechanisms for administration;

(6) Opinions of participants about the strengths and weaknesses of programs; and

(7) The extent to which artificial barriers restricting employment and advancement opportunities in organizations receiving funds under this subpart have been removed.

(e) The Secretary will compile, on a State, regional, and national basis, information obtained from periodic reports or special reports, surveys or samples required from program sponsors, including information related to:

(1) Participant characteristics;

(2) Duration in training and employment situations; and

(3) Costs.

(f) Evaluations carried out in accordance with paragraph (d) of this section may be conducted directly by the Department or through contract, grant or other arrangements.

§ 97.393 Limitation.

The Secretary may not, in arranging for the evaluation of projects under this subpart, utilize for such evaluation any non-governmental individual, institution or organization which is associated with any program as a consultant, technical advisor or in any similar capacity.

CONSULTATION WITH THE SECRETARY OF HEALTH, EDUCATION AND WELFARE

§ 97.396 General.

The Secretary will consult with the Secretary of Health, Education and Welfare with respect to arrangements for services of a health, education, or welfare character in programs under this subpart. This consultation will focus on the relationship of such services under this subpart with those being delivered under laws administered by the Secretary of Health, Education and Welfare.

§ 97.397 Youth programs.

Prior to awarding funds directly to any local or State education agency to implement a youth program as authorized by section 304(a)(1) of the Act, the Secretary will consult with the Secretary of Health, Education and Welfare to obtain his comments and guidance on the planned program.

Signed at Washington, D.C. this 8th day of March, 1976.

WILLIAM H. KOLBERG,
Assistant Secretary for Employment and Training.

[FR Doc.76-7026 Filed 3-11-76;8:45 am]

federal register

FRIDAY, MARCH 12, 1976

PART IV:

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

OFFSHORE OIL AND GAS LEASE SALE FOR NORTHERN GULF OF ALASKA TO BE HELD IN ANCHORAGE, ALASKA ON APRIL 13, 1976

UNITED STATES
DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Outer Continental Shelf Off
Alaska

Oil and Gas Lease Sale No. 39
April 13, 1976

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343) and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, either in person or by mail, for the oil and gas lease sale on tracts described in paragraph 12 herein, and located in the Outer Continental Shelf adjacent to the State of Alaska. Bids sent by mail should be addressed to P.O. Box 1159, Anchorage, Alaska 99510, and will be received until 9:30 A.M., a.s.t., April 13, 1976. Bids delivered in person to the Manager will be received at his office at 800 A Street, Anchorage, Alaska, until 4:00 p.m., a.s.t., April 12, 1976; or at the Grand Ballroom, Westward Hotel, 500 West 3rd Avenue, Anchorage, Alaska 99501, between the hours of 8:00 a.m., a.s.t., and 9:30 a.m., a.s.t., April 13, 1976. Bids received by the Manager later than the times and dates specified above will be returned to the bidders

unopened. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., a.s.t., April 13, 1976. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. Particular attention is directed to 43 CFR 3302.3 (1975) as amended in the Federal Register, Vol. 41, No. 17, page 3737, dated January 26, 1976, and entitled Qualified Joint Bidders. The list of restricted joint bidders which applies to this sale was published in the Federal Register, Vol. 40, No. 211, page 50735, dated October 31, 1975.

3. Rent, Royalty and Bonus. Bids submitted on all tracts to be offered at this sale must be on a cash bonus bid basis with a fixed royalty of 16 2/3 percent. Leases which may be issued will provide for a yearly rental or minimum royalty of $7.41 per hectare 1/ or fraction thereof.

4. Method of Bidding. A separate bid in a sealed envelope must be submitted for each tract. The envelope should be labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10:00 a.m., a.s.t., April 13, 1976." A suggested bid form appears in paragraph 15. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, certified check, or money order, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Companies submitting joint bids must express on the

1/ One hectare equals 2.471 acres.

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bid form the proportionate interest of each company participating in that joint bidding in a percent to a maximum of five decimal places, as well as submit a sworn statement that the bid is not disqualified under 43 CFR 3302.3-4(c). The form for the statement appears in pargraph 16. Bidders are advised of other documents that may be required under 43 CFR 3302.4. Bidders are warned against violation of Section 1860 in Title 18 U.S.C., prohibiting unlawful combination or intimidation of bidders.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., a.s.t., April 13, 1976, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375, on the Compliance Report Certification Form, Form 1140-8 (November 1973) and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

6. Bid Opening. Bids will be opened on April 13, 1976, beginning at 10:00 a.m., a.s.t., in the Grand Ballroom, Westward Hotel, at the address stated in paragraph 2. The opening of bids is for the sole purpose of publicly announcing and recording bids received; no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight April 13, 1976, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payments. Any cash, checks, drafts or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bids on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to the issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(1) The bidder has complied with all requirements of this notice and applicable regulations;

(2) His bid is the highest valid cash bonus bid; and

(3) The amount of the bid is at least $61.78 per hectare and has been determined to be adequate by the United States.

10. Successful Bidders. Each person who has submitted a bid that is accepted by the United States will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements set forth in 43 CFR 3304.1 within the time frame provided in 43 CFR 3302.5.

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11. Protraction Diagrams. The tracts offered at this lease sale, described in paragraph 12, may be located on the following Outer Continental Shelf Official Protraction Diagrams which may be purchased for $2.00 each from the Manager, Alaska Outer Continental Shelf Office at the address stated in paragrah 2:

(1) NO 7-1 Icy Bay

(2) NO 6-2 Middleton Island

12. Tract Descriptions.

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OCS OFFICIAL PROTRACTION DIAGRAM, NO 7-1,ICY BAY
(Approved October 31, 1974)

Tract No.	Block	Description	Hectares	Acreage
39- 1	3	1/	1788.75	4420.00
39- 2	4	1/	1885.88	4660.00
39- 3	5	1/	2019.43	4990.00
39- 4	6	1/	1958.72	4840.00
39- 5	7	1/	1011.74	2500.00
39- 6	9	1/	101.17	250.00
39- 7	23	All	2304.00	5693.18
39- 8	24	All	2304.00	5693.18
39- 9	25	All	2304.00	5693.18
39-10	26	All	2304.00	5693.18
39-11	27	All	2304.00	5693.18
39-12	28	All	2304.00	5693.18
39-13	29	1/	2270.34	5610.00
39-14	30	1/	1776.61	4390.00
39-15	31	1/	1007.69	2490.00
39-16	(32	1/		
	(33	1/	617.16	1525.00
39-17	59	All	2304.00	5693.18
39-18	60	All	2304.00	5693.18
39-19	61	All	2304.00	5693.18
39-20	62	All	2304.00	5693.18
39-21	63	All	2304.00	5693.18
39-22	64	All	2304.00	5693.18
39-23	65	All	2304.00	5693.18
39-24	66	All	2304.00	5693.18
39-25	67	All	2304.00	5693.18
39-26	68	All	2304.00	5693.18
39-27	69	All	2304.00	5693.18
39-28	70	All	2304.00	5693.18
39-29	71	All	2304.00	5693.18
39-30	72	All	2304.00	5693.18
39-31	73	All	2304.00	5693.18
39-32	74	All	2304.00	5693.18
39-33	75	All	2304.00	5693.18
39-34	76	All	2304.00	5693.18
39-35	77	1/	2237.96	5530.00
39-36	(78	1/		
	(79	1/	1454.88	3595.00
39-37	99	All	2304.00	5693.18
39-38	100	All	2304.00	5693.18
39-39	101	All	2304.00	5693.18
39-40	104	All	2304.00	5693.18
39-41	105	All	2304.00	5693.18
39-42	106	All	2304.00	5693.18
39-43	107	All	2304.00	5693.18

ICY BAY (contd.)

Tract No.	Block	Description	Hectares	Acreage
39-44	108	All	2304.00	5693.18
39-45	109	All	2304.00	5693.18
39-46	110	All	2304.00	5693.18
39-47	111	All	2304.00	5693.18
39-48	112	All	2304.00	5693.18
39-49	113	All	2304.00	5693.18
39-50	114	All	2304.00	5693.18
39-51	115	All	2304.00	5693.18
39-52	116	All	2304.00	5693.18
39-53	117	All	2304.00	5693.18
39-54	118	All	2304.00	5693.18
39-55	119	All	2304.00	5693.18
39-56	120	All	2304.00	5693.18
39-57	121	All	2304.00	5693.18
39-58	122	All	2304.00	5693.18
39-59	123	1/	1740.19	4300.00
39-60	(124			
	(125	1/	894.37	2210.00
39-61	142	All	2304.00	5693.18
39-62	143	All	2304.00	5693.18
39-63	144	All	2304.00	5693.18
39-64	145	All	2304.00	5693.18
39-65	149	All	2304.00	5693.18
39-66	150	All	2304.00	5693.18
39-67	151	All	2304.00	5693.18
39-68	152	All	2304.00	5693.18
39-69	153	All	2304.00	5693.18
39-70	154	All	2304.00	5693.18
39-71	155	All	2304.00	5693.18
39-72	156	All	2304.00	5693.18
39-73	157	All	2304.00	5693.18
39-74	158	All	2304.00	5693.18
39-75	159	All	2304.00	5693.18
39-76	160	All	2304.00	5693.18
39-77	161	All	2304.00	5693.18
39-78	162	All	2304.00	5693.18
39-79	163	All	2304.00	5693.18
39-80	164	All	2304.00	5693.18
39-81	165	All	2304.00	5693.18
39-82	166	All	2304.00	5693.18
39-83	167	All	2304.00	5693.18
39-84	168	All	2304.00	5693.18
39-85	169	1/	2193.44	5420.00
39-86	185	All	182.55	451.08
39-87	186	All	2304.00	5693.18
39-88	187	All	2304.00	5693.18
39-89	188	All	2304.00	5693.18
39-90	189	All	2304.00	5693.18

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ICY BAY (contd.)

Tract No.	Block	Description	Hectares	Acreage
39-91	193	All	2304.00	5693.18
39-92	194	All	2304.00	5693.18
39-93	195	All	2304.00	5693.18
39-94	196	All	2304.00	5693.18
39-95	197	All	2304.00	5693.18
39-96	198	All	2304.00	5693.18
39-97	199	All	2304.00	5693.18
39-98	200	All	2304.00	5693.18
39-99	201	All	2304.00	5693.18
39-100	202	All	2304.00	5693.18
39-101	203	All	2304.00	5693.18
39-102	204	All	2304.00	5693.18
39-103	205	All	2304.00	5693.18
39-104	206	All	2304.00	5693.18
39-105	207	All	2304.00	5693.18
39-106	209	All	2304.00	5693.18
39-107	210	All	2304.00	5693.18
39-108	211	All	2304.00	5693.18
39-109	229	All	286.87	708.86
39-110	230	All	2304.00	5693.18
39-111	231	All	2304.00	5693.18
39-112	232	All	2304.00	5693.18
39-113	233	All	2304.00	5693.18
39-114	239	All	2304.00	5693.18
39-115	240	All	2304.00	5693.18
39-116	241	All	2304.00	5693.18
39-117	242	All	2304.00	5693.18
39-118	243	All	2304.00	5693.18
39-119	247	All	2304.00	5693.18
39-120	248	All	2304.00	5693.18
39-121	249	All	2304.00	5693.18
39-122	273	All	391.15	966.53
39-123	274	All	2304.00	5693.18
39-124	275	All	2304.00	5693.18
39-125	283	All	2304.00	5693.18
39-126	284	All	2304.00	5693.18
39-127	285	All	2304.00	5693.18
39-128	291	All	2304.00	5693.18
39-129	292	All	2304.00	5693.18
39-130	293	All	2304.00	5693.18
39-131	294	All	2304.00	5693.18
39-132	295	All	2304.00	5693.18
39-133	317	All	495.38	1224.08

ICY BAY (contd.)

Tract No.	Block	Description	Hectares	Acreage
39-134	318	All	2304.00	5693.18
39-135	319	All	2304.00	5693.18
39-136	320	All	2304.00	5693.18
39-137	321	All	2304.00	5693.18
39-138	322	All	2304.00	5693.18
39-139	323	All	2304.00	5693.18
39-140	327	All	2304.00	5693.18
39-141	328	All	2304.00	5693.18
39-142	329	All	2304.00	5693.18
39-143	335	All	2304.00	5693.18
39-144	336	All	2304.00	5693.18
39-145	337	All	2304.00	5693.18
39-146	338	All	2304.00	5693.18
39-147	339	All	2304.00	5693.18
39-148	340	All	2304.00	5693.18
39-149	362	All	2304.00	5693.18
39-150	363	All	2304.00	5693.18
39-151	364	All	2304.00	5693.18
39-152	365	All	2304.00	5693.18
39-153	366	All	2304.00	5693.18
39-154	367	All	2304.00	5693.18
39-155	368	All	2304.00	5693.18
39-156	369	All	2304.00	5693.18
39-157	370	All	2304.00	5693.18
39-158	371	All	2304.00	5693.18
39-159	372	All	2304.00	5693.18
39-160	373	All	2304.00	5693.18
39-161	380	All	2304.00	5693.18
39-162	384	All	2304.00	5693.18
39-163	408	All	2304.00	5693.18
39-164	409	All	2304.00	5693.18
39-165	410	All	2304.00	5693.18
39-166	411	All	2304.00	5693.18
39-167	412	All	2304.00	5693.18
39-168	413	All	2304.00	5693.18
39-169	414	All	2304.00	5693.18
39-170	415	All	2304.00	5693.18
39-171	416	All	2304.00	5693.18
39-172	417	All	2304.00	5693.18
39-173	453	All	2304.00	5693.18
39-174	454	All	2304.00	5693.18
39-175	455	All	2304.00	5693.18
39-176	456	All	2304.00	5693.18

1/ That portion seaward of the three geographical mile line.

OCS OFFICIAL PROTRACTION DIAGRAM, NO 6-2, MIDDLETON ISLAND
(Approved October 31, 1974)

Tract No.	Block	Description	Hectares	Acreage
39-177	104	All	2304.00	5693.18
39-178	105	All	2304.00	5693.18
39-179	106	All	2304.00	5693.18
39-180	107	All	2304.00	5693.18
39-181	108	All	2304.00	5693.18
39-182	147	All	2304.00	5693.18
39-183	148	All	2304.00	5693.18
39-184	149	All	2304.00	5693.18
39-185	150	All	2304.00	5693.18
39-186	151	All	2304.00	5693.18
39-187	152	All	2304.00	5693.18
39-188	153	All	2304.00	5693.18
39-189	154	All	2304.00	5693.18
39-190	192	All	2304.00	5693.18
39-191	193	All	2304.00	5693.18
39-192	194	All	2304.00	5693.18
39-193	211	All	2304.00	5693.18
39-194	212	All	182.55	451.08
39-195	255	All	2304.00	5693.18
39-196	256	All	286.87	708.86
39-197	296	All	2304.00	5693.18
39-198	297	All	2304.00	5693.18
39-199	298	All	2304.00	5693.18
39-200	299	All	2304.00	5693.18
39-201	300	All	391.15	966.53
39-202	340	All	2304.00	5693.18
39-203	342	All	2304.00	5693.18
39-204	343	All	2304.00	5693.18
39-205	344	All	495.38	1224.08

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13. Lease Terms and Stipulations. Leases issued as a result of this sale will be on Form 3300-1 (February 1971) which is available from the Manager, Alaska Outer Continental Shelf Office, at the address stated in paragraph 2. However, the following language will be excluded from section 3(a)(1), paragraph 3, sentence 2 of Form 3300-1: ". . .and gas used for purposes of production from the operations upon the leased area or unavoidably lost. . . .," and one or more of the following stipulations will be included in each lease:

Stipulation No. 1. (To be included in all leases resulting from this sale.)

(a) If the Supervisor, having reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as "cultural resource," may exist in the lease area, shall, within one year from the effective date of this lease, give the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall immediately upon receipt of such notice comply with the following requirements: Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct geophysical

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surveys to determine the potential existence of any cultural resource that may be affected by such operation. All data produced by such geophysical surveys shall be examined by a qualified marine archaeologist or archaeological surveyor to determine if anomalies are present which suggest the existence of a cultural resource that may be adversely affected by any lease operation. If such anomalies exist, the lessee shall: (1) locate the site of such operation so as not to adversely affect the anomaly identified; or (2) establish, to the satisfaction of the Supervisor, on the basis of further archaeological investigation conducted by a qualified marine archaeological surveyor using such survey equipment and techniques as deemed necessary by the Supervisor either that such operation will not adversely affect the anomaly identified or that the potential cultural resource suggested by the occurrence of the anomaly does not exist.

Upon completion of any geophysical or other survey conducted for archaeological purposes, the lessee shall forward a report prepared by the archaeological surveyor to the Supervisor for his review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its disposition. 2/

The lessee agrees that, if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its disposition.

(b) Structures for drilling or production, including pipelines, shall be kept to the minimum necessary for proper exploration, development, and production and to the greatest extent consistent therewith, shall be placed so as not to interfere with other significant uses of the Outer Continental Shelf including commercial fishing and marine mammals and bird rookeries. To this end, no structure for drilling or production, including pipelines, may

2/ Cultural resources will be handled according to Procedures outlined in the Code of Federal Regulations, 36 CFR Part 800.

be placed on the Outer Continental Shelf until the Supervisor has found that the structure is necessary for the proper exploration, development, and production of the lease area and that no reasonable alternative placement would cause less interference with other significant uses of the Outer Continental Shelf including commercial fishing and marine mammals and bird rookeries. The lessee's exploratory and development plans, filed under 30 CFR 250.34, shall identify the anticipated placement and grouping of necessary structures including pipelines, showing how such placement and grouping will have the minimum practicable effect on the other significant uses of the Outer Continental Shelf, including commercial fishing and marine mammals and bird rookeries.

(c) The lessee shall have the pollution containment and removal equipment available as required by the Supervisor and shall at the request of the Supervisor demonstrate the capability of such equipment prior to drilling.

After notification by the Operator to the Supervisor of a significant oil spill as defined by the Supervisor or an oil spill of any size or quantity which cannot be immediately controlled, the Operator shall immediately deploy the appropriate equipment to the site of the oil spill, unless, because of weather and attendant safety of personnel, the Supervisor shall modify this requirement.

(d) The exploration and development plan required by 30 CFR 250.34 must include a detailed description of materials and energy to be introduced into the marine environment and may be required to include site-specific biological surveys and monitoring programs to insure that operations on any lease will have minimum adverse effects to biotic communities, commercial fishing, recreation, and other significant uses of the Outer Continental Shelf. The lessee shall conduct or bear the cost of conducting the required surveys and monitoring. No permit to conduct operations will be approved until the above conditions have been met.

Stipulation No. 2. (To be included in leases resulting from this sale for tracts 39-1, 39-2, 39-3, 39-4, 39-5, 39-6, 39-11, 39-12, 39-13, 39-14, 39-15, 39-16, 39-33, 39-34, 39-35, 39-36, 39-58, 39-59, 39-60, 39-84, and 39-85.)

No production platforms or wellheads will be placed within four (4) nautical miles of the coastline (mean lower low water line) between the west block line of block 3 and the east block line of block 169, Icy Bay Protraction Diagram NO 7-1.

Stipulation No. 3 (To be included in all leases resulting from this sale for tracts 39-17, 39-105, 39-132, 39-149, 39-198, 39-203, 39-204.)

All of this tract may be subject to mass movement (slumping) of sediments. Emplacement of platforms or sea floor wellheads for production or storage of oil or gas will not be allowed within the area of mass movement which may necessitate development of oil or gas reservoirs from platforms located off this tract and outside of the area of potential mass movement of sediments.

Stipulation No. 4 (To be included in leases resulting from this sale for tracts 39-18, 39-39, 39-40, 39-41, 39-64, 39-65, 39-78, 39-79, 39-80, 39-81, 39-91, 39-103, 39-104, 39-106, 39-121, 39-130, 39-131, 39-133, 39-134, 39-135, 39-146, 39-147, 39-148, 39-150, 39-151, 39-163, 39-164, 39-173, 39-197, 39-199, 39-200, 39-202, 39-205.)

Portions of this tract may be subject to mass movement (slumping) of sediment. Emplacement of platforms or sea floor wellheads for the production or storage of oil or gas will not be allowed on those portions of the tract which may be subject to mass movement

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of sediments unless or until the lessee has demonstrated to the Supervisor's satisfaction that the potential for mass movement of sediments does not exist or that structures can be safely designed to withstand such mass movement at the proposed location of the structure.

Stipulation No. 5 (To be included in all leases resulting from this sale).

To assist coastal communities in planning for the impact of activities during exploration under this lease, the lessee shall submit, for review and comment, to the Governor of the State of Alaska and to local jurisdictions that will be directly affected by those activities a "Notice of Support Activity for the Exploration Program" (called hereafter in this stipulation "Notice"). The lessee shall not be required to include privileged information in the Notice. A lessee shall have discretion whether to submit a separate Notice in connection with each Exploration Plan submitted under 30 CFR 250.34 on a lease or to submit a Notice in connection with two or more Plans on one or more leases. The Notice shall not be subject to approval or disapproval by the Supervisor, but the Supervisor, in acting on an Exploration Plan, will take into account the comments of the State and local communities.

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A copy of the Notice shall be submitted to the Supervisor simultaneously with or prior to the Exploration Plan with a certification that it has already been submitted to the Governor of the State of Alaska and to the local jurisdictions that will be directly affected by activities under the Plan. If the lessee shall submit a Notice in connection with two or more Exploration Plans, he shall not be required to submit additional copies of the Notice, but may instead refer to that previous submission. Before the Supervisor approves or disapproves the Exploration Plan, he shall allow at least 30 days from the date of receipt of the certification for the Governor and local jurisdictions to submit comments on the Notice to him as well as to the lessee. Subsequent to the submission of the certification, significant changes in estimated support activities will be forwarded by the lessee, as an amendment to the Notice, to the Governor, local jurisdictions that will be directly affected by the program, and the Supervisor.

The Notice shall include with respect to the lessee and his contractors:

(1) A description of the facilities, including site and size, that may be constructed, leased, rented or otherwise procured in affected areas;

(2) The location and amount of acreage required within the State for facilities, including the need for storage of various supplies;

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(3) An estimate of the frequency of boat and aircraft departures and arrivals, on a monthly basis, and the onshore location of terminals;

(4) The approximate number of persons who will be engaged in onshore support activities and transportation, the approximate number of local personnel who will be employed for or in support of the exploration program, and the approximate total number of persons who will be employed for the exploration program;

(5) The approximate addition to the population of the local jurisdiction because of the exploration program and the approximate number of persons needing housing and other facilities;

(6) An estimate of any significant quantity of major supplies and equipment to be procured within the State; and

(7) The onshore addresses of the lessee's operation offices and of the contractors' offices involved with the exploratory operation.

14. Restrictions on Leases. Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. For the location of these existing or potential areas and for other restrictions which are or may be imposed by the Corp of Engineers, a bidder should consult the District Engineer, Anchorage District, U.S. Army Corps of Engineers.

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15. OCS Orders.

Operations on all leases resulting from this sale will be conducted in accordance with the provisions of the Gulf of Alaska OCS Orders which have been issued effective March 1, 1976, and additional OCS Orders which will be issued covering development activities.

The OCS Orders issued effective March 1, 1976, include:

OCS Order No. 1 - Marking of Wells, Platforms, and Structures

OCS Order No. 2 - Drilling Procedures

OCS Order No. 3 - Plugging and Abandonment of Wells

OCS Order No. 4 - Suspension and Determination of Well Producibility

OCS Order No. 5 - Subsurface Safety Devices

OCS Order No. 7 - Pollution and Waste Disposal

OCS Order No. 12 - Public Inspection of Records

In addition to the above, OCS Orders will be issued which will provide requirements related to lease development. These Orders will include:

OCS Order No. 6 - Completion and Workover of Oil and Gas Wells

OCS Order No. 8 - Platforms and Structures

OCS Order No. 9 - Oil and Gas Pipelines

OCS Order No. 11 - Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights

OCS Order No. 13 - Commingling and Measurement of Oil and Gas Production

OCS Order No. 14 - Diligence Requirements

OCS Order No. 15 - Submittal of Information for Plans of Development

OCS Order No. 8 will provide requirements for the installation and operation of production platforms. In addition to provisions for safety and pollution control equipment and procedures, design criteria will be set forth based on the environmental conditions expected for the Gulf of Alaska area. This will include wind, wave, current, and other environmental loading forces and the response spectrum for stabilized ground acceleration, plastic straining, and vibration resulting from seismic actvities. The design, construction, and installation of all structures necessary for lease operation within the sale area will be verified by a third party, approved by the Geological Survey, to insure that 1) the structure has been designed for safe installation and operation according to applicable site-specific criteria, 2) consideration has been given to the maximum environmental forces which could contribute to structure damage, and 3) the construction methods are in accordance with the approved design specifications.

The Departments of the Interior and Transportation are entering into a memorandum-of-understanding concerning the design, installation, operation, and maintenance of offshore pipelines. Consistent with this and in accordance with existing and future regulations issued by the Department of Transportation, OCS

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Order No. 9 will provide requirements for pipelines intended for lease operations.

16. Suggested Bid Form. It is suggested that bidders submit their bids to the Manager, Alaska Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No.	Total Amount Bid	Amount Per Hectare	Amount of Cash Bonus Submitted with Bid
________	____________	___________	__________________

Proportionate Interest of Company Submitting Bids

Qualification File No.________ ________% ____________________
Company

____
Address

____
Signature
(Please type signer's name under signature)

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17. Required Joint Bidder's Statement

In the case of joint bids, each joint bidder must execute the following statement before a notary public.

Joint Bidder's Statement

I hereby certify that ______________ (entity submitting bid) is not disqualified from joint bidding under 43 CFR 3302.3-4(c).

____
Signature
(Please type signer's name under signature)

Sworn to and subscribed before me this _______ day of _____________ 19_____

____
NOTARY PUBLIC

State of __________________________

(County of ________________________

* * * * * * *

GEORGE L. TURCOTT,
Acting Director,
Bureau of Land Management.

Approved: March 8, 1976.

STANLEY D. DOREMUS,
Acting Assistant
Secretary of the Interior.

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