DEPARTMENT OF HEALTH AND HUMAN SERVICES SEMIANNUAL REGULATIONS AGENDA AND REVIEW LIST—Continued

Title	Summary	Contact
	Food and Drug Administration	
Health Maintenance Organizations (42 CFR Part 110).	A. *Description:* Existing regulations at 42 CFR Part 110 establish requirements for the organization and operation of Health Maintenance Organizations (HMOs). B. *Why Significant:* Existing regulations will be revised to conform with the HMO Amendments of 1981 in the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). In addition, the regulations, and in particular 42 CFR Part 110, Subparts A and H, which establish requirements for HMOs and for employees' health benefits plans, will be reviewed for the purpose of removing burdensome requirements that are not required by statute or are not necessary for sound program implementation. C. *Regulatory Analysis:* Not required. D. *Need:* To amend existing regulations in conformance with Pub. L. 97-35 and to remove burdensome requirements which hinder the growth and financial soundness of HMOs. E. *Legal Authority:* Public Health Service Act, Sections 215 (42 U.S.C. 216), and 1301-1318 (42 U.S.C. 300c-300c-17). F. *Chronology:* Regulations recently published in the FEDERAL REGISTER at 42 CFR Part 110; Subpart A, October 31, 1980 (45 FR 72524); Subpart H, October 31, 1980 (45 FR 72512). Pub. L. 97-35 enacted on August 13, 1981. G. *Regulatory Flexibility Analysis Required:* Yes	Frank H. Seubold, Ph. D., Acting Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, MD 20857, (301) 443-4106.
Various Categorical Grant Regulations (42 CFR Parts 51b, 51c, 51d, 51f, 55a, 56, and 59).	A. *Description:* Regulations at 42 CFR Parts 51b, 51c, 51d, 51f, 55a, 56, and 59 establish requirements that eligible applicants must meet to receive various Pubic Health Service grants. B. *Why Significant:* These existing regulations are being reviewed to identify and remove burdensome and unnecessary requirements in those Public Health Service regulations for categorical grants that were not included in the block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). C. *Regulatory Analysis:* Not required. D. *Need:* To remove burdensome and unnecessary requirements in existing Public Health Service regulations governing various categorical grants. E. *Legal Authority:* Public Health Service Act, as amended. F. *Chronology:* None. G. *Regulatory Flexibility Analysis Required:* Yes.	Robert L. Spencer, PHS Regulations Officer, Office of the Assistant Secretary for Health, Room 17D06, Parklawn Bldg., Rockville, MD 20857, (301) 443-6330.
Reduction of Recordkeeping and Reporting Requirements (42 CFR Part 1 to Part 399).	A. *Description:* Existing regulations at 42 CFR Part 1 to Part 399 establish specific recordkeeping and reporting requirements that must be met to comply with applicable provisions of the Public Health Service Act and related statutes. Those requirements will be reviewed to identify and eliminate unnecessary or burdensome requirements and to request Office of Management and Budget (OMB) approval for recordkeeping and reporting requirements which have not yet been cleared. B. *Why Significant:* Elimination of unnecessary or burdensome recordkeeping and reporting requirements in existing regulations will assure that paperwork burden demands on the public will be kept to the minimum. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) related to improving the economy and efficiency of the government and the private sector by improving Federal information policymaking and reducing the paperwork burden demand on the public. E. *Legal Authority:* Public Health Service Act, as amended; Paperwork Reduction Act of 1980 (Pub. L. 96-511). F. *Chronology:* None. G. *Regulatory Flexibility Analysis Required:* Yes.	Dr., Gooloo S. Wunderlich, Associate Director for Statistical Policy, Office of Health Research, Statistics and Technology, Office of the Assistant Secretary for Health, Room 17A46, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2940.

[FR Doc. 81-33214 Filed 11-9-81; 8:45 am]

BILLING CODE 4110-12-M

federal register

Tuesday
November 10, 1981

Part III

Department of Energy

Office of Conservation and Renewable Energy

Methane Transportation Research and Development

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 478

[Docket No. CAS-RM-81-204]

Methane Transportation Research and Development; Proposed Regulations for Review and Certification of Contracts, Grants, Cooperative Agreements, and Projects

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy ("DOE") hereby issues a notice of proposed rulemaking to implement section 4(d) of the Methane Transportation Research, Development, and Demonstration Act of 1980. This new Act confers authority on the Secretary of Energy to expend Federal funds in order to undertake research and development activities and conduct demonstrations and technologies for methane-powered vehicles and related facilities used in fleet and farm applications. Today's notice proposes administrative regulations, as required by the Act, that establish procedures for ensuring that new contracts, grants, cooperative agreements, DOE projects, or other agency projects to be funded under the Act, supplement rather than supplant, duplicate, displace, or lessen research and development activities in the private sector. This notice solicits comments on the proposed rule and provides for a public hearing. Were it not for the legal requirement to promulgate these regulations, DOE would not do so because the Administration, as part of its policy of budgetary restraint, has proposed to Congress to prohibit DOE from expending any funds to carry out the Act.

DATES: Written comments must be received on or before January 11, 1982.

Public hearing: 9:30 a.m., December 4, 1981. Requests to speak must be received by 4:30 p.m., e.s.t., November 20, 1981. DOE will notify by November 25, 1981, persons selected to speak. Persons selected should bring 15 copies of their hearing statements to the hearing location.

ADDRESSES: Written comments and requests to speak should be addressed to: Department of Energy, Hearing and Dockets, Mail Stop 6B-025, Room 1F-085, 1000 Independence Avenue, SW., Washington, D.C. 20585 (Attn. Docket CAS-RM-81-204), Telephone (202) 252-9319.

Public hearing location: Forrestal Building, Room GJ-015, 1000 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Ralph D. Fleming, Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-8055

Jo Ann Scott, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9516

Hearings and Dockets (Hearing Procedures), Office of Conservation and Renewable Energy, Department of Energy, 1000 Independence Avenue, SW., Room 1F-085, Washington, D.C. 20585, (202) 252-9319

SUPPLEMENTARY INFORMATION:

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A. General Operation of Proposed Program
B. Specific Provisions of Proposed Regulations
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I. Introduction

A. General

DOE today gives notice of proposed regulations setting forth procedures, standards, and criteria for review and certification of new contracts, grants, cooperative agreements, DOE projects, and other agency projects under its Methane Transportation Research and Development Program. Section 4(d) of the Methane Transportation Research, Development, and Demonstration Act of 1980 ("ACT" or "Methane Act"), Pub. L. 96-512, 94 Stat. 2827, requires promulgation of these regulations. The objective of this review and certification program is to ensure that Federal funds to expended under the Act do not support efforts on research and development ("R&D") of methane-fueled vehicles and related facilities that supplant, duplicate, displace, or lessen the same efforts occurring or that have occurred in the private sector. These regulations, when final, will apply to any R&D contracts, grants, cooperative agreements, DOE projects, and other agency projects to be funded under the Act, including activities conducted by employees of Federal agencies.

The Administration is not seeking funds for implementation of the Methane Act. In proposed budget amendments for FY 1982 (H.D. 97-29), language has been proposed for incorporation into DOE's FY 1982 appropriation that would preclude the expenditure of such funds to implement the Act. Despite this action, the present statutory requirements, that DOE promulgate the administrative regulations under section 4(d), stand until Congress provides otherwise.

B. Statutory Background

The purpose of the Act is to establish a program within DOE involving simultaneous R&D activities and demonstrations of technologies for vehicles operating on methane as well as for related supportive facilities. The Act and the regulations proposed today define "methane" as either natural gas as defined in section 2(1) of the Natural Gas Policy Act of 1978), gas derived from coal, liquefied natural gas, or any gaseous transportation fuel produced from biomass, waste products, and other renewable resources. The program provides for advanced and accelerated research into methane vehicle design, methane distribution systems, and storage faciltiies. It is also intended to demonstrate the economic and technological practicalities of methane-fueled vehicles for fleet use and on-farm operations.

The statutory provisions governing the requirements and applicability of the review and certification program are the six subsections of section 4(d) and the provisions of section 5(a).

Section (d)(1) of section 4 sets forth the substantive policies to be followed by DOE in the exercise of its overall management responsibility for conducting the program. The subsection requires DOE to conduct the program so as to supplement private industry R&D efforts, and avoid supplanting, duplicating, displacing, or lessening those efforts.

Section (d)(2) requires DOE to issue the administrative regulations, which are published in proposed form today. Procedures, standards, criteria, and certification requirements are the specified content of these regulations. The subsection calls for discussion in

the certification of the relationship of any related or comparable industry R&D to the R&D proposed to be conducted under the Act, as well as related issues such as cost sharing and patent rights. Section (d)(3) requires that the certifications be available to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources. In addition, the subsection makes certifications subject to public disclosure under the Freedom of Information Act and the Federal Nonnuclear Energy Research and Development act of 1974, as amended. However, the subsection does not permit judicial review of any certifications and otherwise exempts them from coverage by the Administrative Procedures Act.

Sections (d)(4) and (d)(5) require that a discussion similar to that contained in the certifications be included in annual reports and budget submissions under the Act.

Section (d)(6) limits the scope of section 4(d) to new contracts, grants, cooperative agreements, DOE projects, or other agency projects. It excludes from coverage the contracts, grants, cooperative agreements, DOE projects, or other agency projects formally initiated prior to enactment, as well as any renewal or extension thereof.

Section 5 directs the Secretary to coordinate the functions of this program with related regulatory activities and other responsibilities of DOE and other Federal departments or agencies, and directs other entities within the Federal executive branch to carefully consider any written request for assistance from the Secretary.

II. Development of Proposed Regulations

The proposed regulations would ensure that R&D supported under the Act will not supplant, duplicate, displace, or lessen similar efforts occurring in the private sector. The procedures established in these regulations are intended to make certain that DOE program officials are fully cognizant of related R&D being carried out under private auspices. In particular, the requirement of an annual review of industry programs and the requirement that a DOE program plan be prepared annually and reviewed by the private sector and other Federal agencies provide an explict vehicle for identifying possible areas of duplication prior to the commitment of DOE funds. Other Federal agencies which may comment include, but are not limited to, the Department of Transportation ("DOT"), Department of Agriculture ("USDA"), Environmental Protection Agency ("EPA"), National Aeronautics and Space Administration ("NASA"), Department of Defense ("DOD"), Department of Commerce ("DOC"), and National Science Foundation ("NSF").

The process is intended to be flexible to enable DOE officials to be well informed about current R&D in the area of methane transportation. They then will be able to accurately exercise professional judgment in the course of determining certification as required by the Act. Such certification may be carried out concurrently with technical review of applications for R&D support in order that applicants may receive prompt and complete decisions from DOE on the disposition of their proposals.

The proposed regulations differ from the approach taken by DOE in implementing similar requirements with respect to automotive propulsion under Pub. L. 95–238. While that approach was cited favorably by the report of the Senate Committee on Energy and Natural Resources (S. Rept. 96–1006), the approach proposed today is preferable since it reduces the burden on the public. It does so by providing for critique of overall program plans prior to program execution rather than soliciting comments on a project-by-project basis. Further, the proposed approach places responsibility for knowledge of private sector activities squarely upon the Federal program manager rather than relying upon the private sector to object to individual projects on a case-by-case basis. It is believed that the regulations proposed will more fully permit DOE to carry out the Act than would the approach used to implement Pub. L. 95–238, because it will require the appropriate Federal officials to have public comments in the context of the entire methane transportation R&D program.

III. Discussion of Proposed Regulations

A. General Operation of Proposed Program

R&D projects can be conducted under a variety of arrangements, and although not all of these arrangements may be used, the regulations proposed today are designed to anticipate all the possibilities. Under the Act, the possible arrangements are R&D—

1. By employees of DOE or national laboratories operated by DOE (DOE project);

2. By employees of other Federal agencies or national laboratories operated by other Federal agencies (agency project);

3. Under an unsolicited or solicited contract, grant, or cooperative agreement entered into by DOE with a person, private organization, or non-Federal public agency; and

4. Under an unsolicited or solicited contract, grant, or cooperative agreement entered into by a Federal agency other than DOE (such as NASA) with a person, private organization, or non-Federal public agency pursuant to an interagency agreement with DOE.

The major features of the proposed regulations are:

1. Development and compilation of information for use by DOE and other program managers, identifying industry R&D relevant to the Act;

2. Reviewing requested comment on DOE program plans by industry and other Federal agencies;

3. Standards and criteria to prevent duplication, displacement or lessening of private industry R&D;

4. Review and certification of proposed projects by program managers with the assistance of appropriate technical experts.

In the event that a manager is dealing with an application or proposal for a new contract, grant, or cooperative agreement, the proposed regulations call for completion of the review process prior to actual negotiation of the agreement with the result to be promptly reported to the applicant. The certification document will be prepared by the manager in advance of such a negotiation, but not formally signed until the negotiations are completed. In this way, no applicant for a contract, grant, or cooperative agreement will have to negotiate with uncertainty as to the outcome of the review process under the regulations.

DOE emphasizes that the procedures and requirements proposed today as 10 CFR Part 478 are in addition to, rather than in substitution for, the general contract, grant, and cooperative agreement procedures and requirements of whichever Federal agency funds the research (in the case of DOE, 10 CFR Part 600 for grants and cooperative agreements and the Federal procurement regulations as modified by 41 CFR Chapter 9 for contracts). Certification under 10 CFR Part 478 does not constitute the award of the contract, grant, or cooperative agreement, but certification is necessary before an award can be made.

B. Specific Provisions of Proposed Regulations

1. *Development of Information Describing Industry R&D.* Under § 478.3, today's proposal would ensure that no contract, grant, cooperative agreement, DOE project, or agency project be

certified without the program manager having undertaken systematically to determine its relationship to ongoing industry activities relevant to the Act. This determination will be based on current information concerning industry R&D activities for methane-powered vehicles and related facilities. This information can be developed through analysis of current technical literature, through searching subject data archives such as the National Technical Information Center or the Smithsonian Science Information Exchange, and through contacts with private sector organizations performing related R&D. A formal mandatory survey using a standardized survey instrument is not proposed due to the burden it would place on respondents and the problems of designing categories to avoid problems with proprietary data or information. Assembly of such information annually is intended to provide the funding agency with a background needed to make informed professional judgments. The information, including the sources and contacts, will be complied by the program manager, and excluding any proprietary information, will be available to the public.

2. *Comments on DOE Program Plan.* In accordance with sound R&D management principles, DOE must necessarily complete a written plan for program execution before committing public funds each fiscal year. As part of the process of ensuring that planned program commitments will not supplant, duplicate, displace or lessen private-sector efforts, this plan will be subject to review and comment by experts in public and private organizations. The program manager will request comments from other Federal agencies, such as DOT, EPA, NASA, USDA, DOD, DOC, and NSF, which have an interest in the outcome of the R&D or which have potentially duplicating activities. To carry out the purposes of the Act, the reviewers will be asked to comment on the appropriateness of Federal versus private sector support for the R&D projects as well as on the technical substance of the program plan. A notice of the availability of the program plan for comment will be placed in the *Commerce Business Daily* and the **Federal Register** in order to assure that the opportunity exists for all interested parties to comment. The program manager will keep a record of those notices and of the comments received and of their disposition, and this record will be available to the public; however, final responsibility for the content of the DOE program plan must rest with the judgment of the DOE program manager.

3. *Standards and Criteria.* The standards and criteria in § 478.8 are the basis for determining whether a contract, grant, cooperative agreement, DOE project, or other agency project is certifiable under the Act. As noted above, they are in addition to the normal requirements of DOE or other Federal agencies for the award of contracts, grants, or projects.

The proposed § 478.8 states six related standards and criteria in general terms. If adopted, these standards and criteria would permit certification only upon findings that the R&D to be performed—

1. Supplements private R&D on methane-fueled vehicles and related facilities;

2. Is not duplicative of previously abandoned R&D without good cause;

3. Would not be performed during the term of the award without Federal funding;

4. Results in an accelerated target date for commercialization;

5. Is not duplicative of successful past and current private R&D; and

6. Does not constitute a Federal subsidy of existing efforts but rather accelerates R&D efforts by an applicant for a contract, grant, or cooperative agreement.

These standards and criteria are based on the language of the Act and DOE experience in setting standards and criteria for the automotive propulsion program under the DOE Act of 1978.

4. *Review by Manager.* The proposed regulations define the term "manager" to mean the program official who requests that a contracting officer negotiate a contract, grant, or cooperative agreement; who authorizes the start of a DOE project as defined in § 478.2; or who requests that a contracting officer authorize transfer of DOE funds for an agency project as defined in § 478.2. DOE and agency projects are conducted only by full-time Federal employees or employees of Federal national laboratories. In some instances, the manager will be an employee of DOE, in others, an employee of another agency, such as DOT or NASA. The manager should not be the employee responsible for formal negotiation of a grant, contract, or cooperative agreement.

The timing of the review differs depending upon the arrangement under which the proposed R&D is to take place. For unsolicited proposals for contracts, grants, or cooperative agreements, the manager will be reacting to a proposal from outside the Federal Government. In the case of solicitations for contracts, grants, or cooperative agreements, the manager will be reviewing the solicitation prior to its release, and the manager will also be responsible for reviewing incoming proposals at a later stage of the certification process.

5. *Information Required from Applicant.* Apart from the general information resources, which will bring about informed decisionmaking under the review and certification system proposed today, the proposed regulations call for project-specific information or justification from applicants for contract, grant, or cooperative agreements. This specific material will enable managers to focus on the impact a contract, grant, or cooperative agreement would have upon the R&D program of the applicant in light of the standards and criteria of § 478.8. The requirements for this material are set forth in § 478.5 of the proposed regulations and, in responding to them, the applicant will provide information necessary to apply the standards and criteria.

In some instances, § 478.5 asks questions calling for simple answers:

1. Will the R&D initiate or continue an R&D program?

2. What is the expected delay in an applicant's timetable for the development of a methane-fueled vehicle or related facility that would occur but for the grant, cooperative agreement, or contract?

In other instances, complex responses may be anticipated. For example, the proposed section would have applicants—

1. Discuss allegedly comparable industrial R&D; and

2. Justify further R&D of abandoned systems.

In casting the provisions of § 478.5, DOE has sought to minimize the burden of responding, consistent with its statutory obligations. Under this section, an applicant would have to provide a written certification to DOE that the grants, cooperative agreement, or contract funds would represent a real year-to-year increase in the expenditure of the applicant's resources. DOE has not asked for submission of detailed budget figures because it believes that the possibility of an investigation and the possible consequences of discovery are enough to warrant belief in the veracity of such assurance. DOE also wishes to minimize the burden and cost of applying for a grant, cooperative agreement, or contract.

Applicants or other persons submitting information under the

regulations should bear in mind that DOE is subject to the disclosure requirements of the Freedom of Information Act and the Federal Nonnuclear Energy Research and Development Act of 1974.

6. *Certification.* Based on a consideration of all relevant information, including the DOE program plans and comments thereon, data from appropriate Federal agency and private sector sources compiled annually under § 473.3, as well as information submitted by the applicant, the manager decides whether to certify the proposed R&D project. Examples of private sector sources are: international symposia; foreign and domestic fleet operations using methane fuel; professional and manufacturing organizations such as the Society of Automotive Engineers, the American Society of Mechanical Engineers, the American Gas Association, and the Motor Vehicle Manufacturers Association; and semiannual Contractor Coordination Meetings at which DOE staff and contractors report on the status of advances in automotive technology. If the manager is not an employee of DOE, the proposed regulations require DOE concurrence in the certification decision. DOE concurrence stems from its overall management responsibility stipulated in the Act. Negative decisions are to be communicated in writing to applicants in the case of contracts, grants, or cooperative agreements. Affirmative decisions will lead to preparation of a certification of the contract, grant, cooperative agreement, DOE project, or other agency project, with distribution of copies to the applicant and DOE program manager, as appropriate.

Reflecting the provisions of section 4(d) of the Act, the proposed regulations require the manager to include in the certification a discussion of the contract, grant, cooperative agreement, or agency project R&D to be performed, showing compliance with the applicable standards and criteria and any arguably comparable private R&D. Also reflecting statutory demands, the proposed regulations require that the certification deal with cost sharing and patent rights, where relevant, in the case of grants, cooperative agreements, or contracts. The information on cost sharing and patent rights will also be incorporated in the actual award.

The proposed regulations also contain § 478.5, describing the extent to which certifications are subject to review or disclosure. The provisions of that section are drawn from the statute and are included for the convenience of readers of the Code of Federal Regulations.

C. Review Under the Regulatory Flexibility Act of 1980

These proposed regulations were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. DOE has concluded that a regulatory flexibility analysis is not necessary because the main function of these regulations is to define the procedures which DOE itself will follow. The chief effects of these regulations on small businesses and other sections of the industry and the public will be the minor delay involved in processing proposals, and potential savings on duplicative R&D. The costs to small businesses and other sections of the public for compliance with these regulations will be comparatively small and limited to the costs of providing information in an application for a grant, cooperative agreement, or contract.

Furthermore, only new contracts, grants, cooperative agreements, and projects will come under the regulations. The Act and regulations specify that the renewals and extensions of existing contracts, grants, cooperative agreements, or projects are not subject to the review and certification program.

For all the above reasons, this hereby certifies that 10 CFR Part 478 will not have a significant economic impact on a substantial number of small entities.

D. Review Under Executive Order 12291 and OMB Circular A–116

These regulations were also reviewed under Executive Order 12291 (46 FR 13193, February 19, 1981), implementing DOE directives thereunder, and Office of Management and Budget ("OMB") Circular A–116. These regulations are not "major" according to the terms of the Executive Order, for the reasons stated in discussion of the Regulatory Flexibility Act. That is, they do not result in an annual effect on the economy of $100 million or more; a major increase in costs for consumers, industries, or government; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of domestic businesses to compete with foreign enterprises. These regulations will not have an impact which is truly major in terms of gross economic and social effects or of promoting achievement of national energy conservation goals. Therefore, they do not require analysis under Executive Order 12291 or an urban community impact analysis under OMB Circular A–116.

E. Review Under the Paperwork Reduction Act of 1980

A copy of these regulations has been submitted to the Director of OMB for review under the Paperwork Reduction Act of 1980 (Pub. L. 95–511). DOE recognizes that OMB approval is necessary under section 3507 of Pub. L. 96–511 in order to request the applicant information required under § 478.5 of this notice. However, DOE is not yet requesting OMB approval because the Administration is not seeking funds to implement the Methane Act. Should funds be appropriated for the methane R&D program, OMB approval will be obtained prior to any information gathering under § 478.5 of this notice.

IV. Environmental Considerations

DOE has concluded that promulgation of these regulations does not require preparation of an environmental assessment or of an environmental impact statement under the National Environmental Policy Act ("NEPA") of 1969 (42 U.S.C. 4321, et. seq. (1970)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (45 FR 20694, March 28, 1980). The regulations are procedural in nature and their issuance will not result in a predictable significant environmental impact. DOE is, however, committed to ensuring that individual contracts, cooperative agreements, grants, or projects executed by DOE will comply with applicable requirements of NEPA.

V. Federal Grant and Cooperative Agreement Act of 1977

The Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501–509 (1970)) requires that the appropriate assistance instrument (grant or cooperative agreement) or procurement contract be used in Federal assistance or acquisition programs. The proposed regulations refer to cooperative agreements because DOE anticipates that there may be instances when section 6 of the Federal Grant and Cooperative Agreement Act will permit their use because of substantial involvement between DOE and the recipient.

VI. Period for Public Comment

A 60-day comment period is being provided for public review and comment on this proposed rulemaking.

VII. Comment and Public Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to today's proposed procedures, standards, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation—Methane Transportation R&D—Proposed Rule (Docket No. CAS-RM-81-204). Ten copies should be submitted. All comments received before 4:30 p.m., e.s.t. on (date TBD) and all other relevant information will be considered by DOE before final action is taken on the proposed regulations. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, appropriately labeled for limited disclosure, and ten copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE will make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Hearing Procedures

The time and place of the public hearing are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before 4:30 p.m. e.s.t. on November 20, 1981, and may be hand delivered to such address, between the hours of 9 a.m. and 5 p.m. e.s.t., Monday through Friday. A request should be labeled both on the document and on the envelope—Methane Transportation R&D—Proposed Rule (Docket No. CAS-RM-81-204).

The person making the request should briefly describe the interest concerned, state why she or he is a proper representative of a group or class of persons that has such an interest, if appropriate, and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day before the hearing.

DOE will notify, before 4:30 p.m. e.s.t., November 25, 1981, each person selected to appear at the hearing. Each person selected to be heard should bring 15 copies of her or his statement to the hearing location.

C. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to the registration desk. DOE will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8 a.m. and 4 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In consideration of the foregoing, DOE hereby proposes to amend Chapter X of title 10, Code of Federal Regulations, by establishing Part 478 as set forth below.

Issued in Washington, D.C., October 20, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

10 CFR is amended by adding a new Part 478, reading as follows:

PART 478—METHANE TRANSPORTATION RESEARCH AND DEVELOPMENT; REVIEW AND CERTIFICATION OF CONTRACTS, GRANTS, COOPERATIVE AGREEMENTS, AND PROJECTS

Sec.

478.1 Purpose and scope.
478.2 Definitions.
478.3 Development of information on industry research and development.
478.4 Review of DOE program plans.
478.5 Required information from applicant.
478.6 Review and certification by manager.
478.7 Disclosure and reviewability of certification.
478.8 Standards and criteria.

Authority: Methane Transportation Research, Development, and Demonstration Act of 1980, Pub. L. 96-512, 94 Stat. 2827 (15 U.S.C. 3801); Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 note).

§ 478.1 Purpose and scope.

These regulations implement section 4(d) of the Methane Transportation Research, Development, and Demonstration Act of 1980 (15 U.S.C. 3801), and apply to each new contract, grant, cooperative agreement, Department of Energy (DOE) project, or other agency project funded or to be funded under the research and development authority conveyed upon the Secretary of Energy by that Act. These regulations do not apply to subcontractors, contractors under grants or cooperative agreements, or to contracts, grants, cooperative agreements, DOE projects, or other agency projects entered into, made, or formally approved and initiated prior to December 12, 1980, or with respect to any renewal or extension thereof. Insofar as contracts, grants, and cooperative agreements are concerned, these regulations provide procedures and requirements, in addition to those generally applicable under the assistance and procurement regulations of the Federal agency funding the research and development under the Act.

§ 478.2 Definitions.

For purpose of these regulations—

"Act" means the Methane Transportation Research, Development, and Demonstration Act of 1980, Pub. L. 96-512, 94 Stat. 2827 (15 U.S.C. 3801).

"Agency project" means research and development requested by DOE under the Act performed by employees of a Federal agency or of a national laboratory operated for a Federal agency.

"Applicant" means any private laboratory, university, nonprofit organization, industrial organization, private agency, institution, organization, corporation, partnership, individual, or public agency other than a Federal agency.

"DOE" means the United States Department of Energy.

"DOE project" means research and development under the Act by employees of DOE or of a national laboratory operated for DOE.

"Federal agency" means an executive agency as defined by 5 U.S.C. 105.

"Manager" means the Federal program official who requests that a contracting or grants officer negotiate a contract, grant, or cooperative agreement; who requests that a contracting officer authorize transfer of DOE funds for an agency project; or who authorizes a DOE project to begin.

"Methane" means either natural gas (as defined in section 2(1) of the Natural Gas Policy Act of 1978), gas derived from coal, liquefied natural gas, or any gaseous transportation fuel produced from biomass, waste products, and other renewable resources.

"Related facilities" means any facility for the transmission, storage, or dispensing of methane fuel for vehicles.

"Research and development" means activities constituting a project to advance the state of the art of methane-fueled vehicles or related facilities and does not mean activities involving technology transfer to mass production, evaluative testing, preliminary planning for a DOE or an agency project, or program administration and management.

"Solicitation" means a formal, written request for proposals/applications to perform research and development under a contract, grant, or cooperative agreement, typically including evaluation criteria and a statement of the work to be done or areas to be investigated.

"Vehicle" means any truck, van, station wagon, bus, or car used on public roads or highways as well as off-road agricultural equipment, such as tractors, harvesters, and so forth, which currently burn gasoline or diesel fuel.

§ 478.3 Development of information on industry research and development.

Before completing program planning for each fiscal year, the manager shall search appropriate data archives to identify planned, ongoing, or completed research and development on methane-fueled vehicles and related facilities. In addition, when necessary the manager shall contact private sector entities to determine the nature of any research and development of this kind which they may be planning or conducting. This information, which will provide a data base for making certifications under § 478.6, shall be compiled and made available to the public, after removal of any proprietary information as described in 10 CFR § 1004.10(b)(4).

§ 478.4 Review of DOE program plans.

In formulating a program plan for the program authorized by the Act, the DOE manager shall make the draft program plan available for review and shall solicit comments from persons, in both the private sector and other Federal agencies, concerned with research and development of methane-powered vehicles and related facilities. At the same time, the manager shall place in the *Commerce Business Daily* and the **Federal Register** notices that the plan is available for comment. The manager shall take these comments into account in ensuring that planned projects will not supplant, duplicate, displace, or lessen private sector activities as provided in the Act. The manager shall maintain and make available a record of the comments solicited and received, and shall include in the paragraph plan a discussion of the consideration of the comments.

§ 478.5 Required information from applicant.

Any proposal for a contract, grant, or cooperative agreement, under the Act to support research and development activities of methane-fueled vehicles or related facilities must—

(a) State whether the activities will initiate or continue research and development of methane-fueled vehicles or related facilities;

(b) State, insofar as the applicant has information, whether and to what extent the activities to be supported are technically the same as activities conducted previously or to be conducted during the term of the award by any person for research and development of a substantially similar methane-fueled vehicle or related facility;

(c) Justify research and development activities on methane-fueled vehicles or related facilities abandoned by any person because of a lack of mass production potential by presenting information showing a significant intervening technological advance, promising conceptual innovation, or other special consideration;

(d) Provide an assurance that the amount of the applicant's own funds to be expended for research and development of methane-fueled vehicles or related facilities will not be diminished as a result of the award of a contract, grant, or cooperative agreement.

(e) Provide to the extent possible—

(1) An assurance that the time period for completing research and development of the methane-fueled vehicles or related facilities is likely to be shorter as a result of a contract, grant, or cooperative agreement; and

(2) The estimated delay, if any, which is likely to occur if the application for a contract, grant, or cooperative agreement is denied.

Information required from the applicant shall also be set forth in the solicitation notice for a contract, grant, or cooperative agreement.

§ 478.6 Review and certification by manager.

(a) The manager shall reject any proposal that has not been completed in accordance with § 478.5 of these regulations or any other generally applicable requirements for the submission of proposals. A rejected proposal may be corrected, amended or resubmitted as permitted by the applicable procedures under the assistance and procurement regulations of the Federal agency receiving the proposal.

(b) After the preliminary review and prior to recommending that contracting officials negotiate an award, the manager shall review the proposed research and development to be performed under contract, grant, or cooperative agreement, to determine whether the proposed project meets the standards and criteria of § 478.8.

(c) Upon consideration of all relevant information, including the DOE program plan, any applicable comments on the program plan, information on private-sector research and development programs compiled annually under § 478.3, and all material submitted by the applicant, the manager—

(1) Shall determine whether the research and development to be performed complies with the standards and criteria of § 478.8;

(2) Shall obtain the concurrence of DOE on the certification decision, either affirmative or negative, if the manager is not an employee of DOE;

(3) Shall, in the event of a negative determination under this section, advise the applicant of the decision in writing with a brief statement of supporting reasons; and

(4) Shall, in the event of an affirmative determination under this section, prepare a certification—

(i) Explaining the determination;

(ii) Discussing any allegedly related or comparable industrial research and development considered and not deemed to be an adequate basis for not certifying the contract, grant or cooperative agreement;

(iii) Discussing issues regarding cost sharing and patent rights related to the standards and criteria of § 478.8 of these regulations; and

(iv) Discussing any other relevant issue.

(d) After complying with paragraph (c) of this section, the manager shall sign the certification and distribute copies to the applicant, if any, and to DOE, if the manager is not a DOE employee—

(1) Immediately in the case of a DOE or agency project; and

(2) After the agreement has been negotiated in the case of a contract, grant, or cooperative agreement. The applicant's copy shall accompany the award. In this case, the manager shall informally notify the applicant of the outcome of his decision under paragraph (c)(1) of this section as soon as possible after it is made.

§ 478.7 Disclosure and reviewability of certification.

Any certification issued under these rules is—

(a) Subject to disclosure under 5 U.S.C. 552 and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, 42 U.S.C. 5918; and

(b) Available to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate; and

(c) Subject neither to judicial review nor to the provisions of 5 U.S.C. 551–559, except as provided under paragraph (a) of this section.

§ 478.8 Standards and criteria.

Research and development to be performed under a contract, grant, or cooperative agreement, as a DOE project, or as an agency project under the Act may be certified under these regulations only if the research and development to be conducted—

(a) Supplements the research and development efforts of industry or any other researcher on methane-fueled vehicles or related facilities;

(b) Is not duplicative of efforts previously abandoned by private researchers unless the project has been justified by an intervening technological advance, promising conceptual innovation, or other special consideration;

(c) Would not be performed during the term of the award but for the availability of the Federal funding being sought;

(d) Is likely to produce an advanced methane-fueled vehicle or related facility suitable for steps toward technology transfer to mass production in a shorter time period than would otherwise occur;

(e) Is not technologically the same as efforts, by any person, conducted previously or to be conducted during the term of the award regarding a substantially similar advanced methane-fueled vehicle or related facility; and

(f) Is not likely to result in a decrease in the level of private resources expanded for research and development on methane-fueled vehicles and related facilities by substituting Federal funds without justification.

[FR Doc. 81-32480 Filed 11-9-81; 8:45 am]
BILLING CODE 6450-01-M

federal register

Tuesday
November 10, 1981

Part IV

Department of Agriculture

Office of the Secretary

Uniform Federal Assistance Regulations

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3015

Uniform Federal Assistance Regulations

AGENCY: Department of Agriculture (USDA).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes Department-wide policies and standards for administration of grants and cooperative agreements. Issuance of these regulations will effect uniformity in policy and standardization of guidance for all USDA Agencies providing assistance through grants and cooperative agreements. The rules primarily implement OMB Circulars A–102 and A–110, which standardize the administration of grants and cooperative agreements, and specify the principles for determining allowable costs under USDA grants and cooperative agreements.

EFFECTIVE DATE: November 10, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Wilson, Deputy Director, Finance, Office of Operations and Finance, USDA, Room 131–W, Administration Building, Washington, D.C. 20250 (Telephone (202) 447–7161).

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. Although this rule will directly affect recipients of Federal assistance received from agencies administrated by the Department of Agriculture, this rule does not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, it will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). This determination is based on the fact that these final rules publicly implement the policies already published by the Office of Management and Budget (OMB) in Circulars A–102, A–110, A–87, A–21 and A–122, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977 (43 FR 36860, August 18, 1978). In addition, USDA Federal assistance will be provided to recipients pursuant to the authorities and restrictions in program statutes and USDA authorizations and appropriations acts.

Introduction

USDA is legally responsible for approximately 100 Federal assistance programs. All of these programs and related activities are the result of specific authorizations and agency regulations or directives. USDA programs cover a broad spectrum of activities, encompassing direct payments, grants, cooperative agreements, subsidies, loans, loan guarantees, insurance, services, information, and property donation. In the past, USDA issued internal regulations on administration of grants and cooperative agreements which directed the agencies to implement USDA, OMB and other guidance agencies' policies and directives through issuance of their own individual agency assistance regulations or directives. This prior policy procedure has lead to confusion, duplication and complexity in the administration and management of Federal assistance provided by USDA.

Additionally, Pub. L. 95–224, the "Federal Grant and Cooperative Agreement Act of 1977," and the implementing guidance and study issued by OMB emphasized the need for uniform policy and standardization of guidance for all assistance programs. In line with the recommendations in the study report of Pub. L. 95–224, OMB is responsible for establishing and directing a program to improve Federal assistance management. Heads of Executive Departments and Selected Agencies are to (1) fully cooperate with the Director of OMB, (2) designate an official or unit to act as a focal point for coordinating internal assistance-related policies and procedures, and work with other agencies and the public, and (3) insure that the management of assistance programs meets the performance standards to be developed by OMB.

Within USDA, the Assistant Secretary for Administration is the focal point for coordinating internal assistance-related policies and procedures and working with other agencies and the public. The Deputy Director, Finance, Office of Operations and Finance, is the internal coordinator for the day-to-day operations dealing with USDA assistance programs.

Additionally, the Inspector General Act of 1978 (Pub. L. 95–452) consolidates all responsibility for audits with the Inspector General. Therefore, the audit requirements set forth in subpart I implement Attachment P of Circular A–102 and are applicable to all Federal assistance provided by USDA agencies to State and local governments and Indian Tribal governments. Attachment P requires that all such entities that are recipients of Federal assistance have an organization-wide financial and compliance audit at least once every two years. The audits are to be performed by independent State or local government auditors or independent public accountants, under arrangements made by the recipients. It is intended that a single audit of each of these entities will meet the needs of all parties concerned and that no additional requirements to perform or obtain audits be placed upon the recipients, except as prescribed by law. The audits are to be performed in accordance with a standard guide published by the General Accounting Office, compliance supplements approved by OMB, and audit standards established by the Comptroller General and the American Institute of Certified Public Accountants. Attachment P also establishes a cognizant audit agency structure. This means that each State department, local government, Indian Tribal government, or subdivision of such entities, that receive Federal assistance, is assigned to a Federal audit agency which will act on behalf of all Federal audit agencies in dealing with the audit requirements of Circular A–102 concerning a specific recipient organization. Attachment P does not limit authority of Federal agencies to make additional audits of recipient organizations as they deem necessary.

On July 20, 1981, the Department of Agriculture published proposed Uniform Federal Assistance Regulations (46 FR 37252, July 20, 1981) to establish Department-wide policies and standards for administration of grants and cooperative agreements. Comments on this proposal were requested by September 3, 1981.

Part 3015 primarily consolidates internal policies and procedures into one document which will be readily available to the public and where all interest parties may find the great majority of the administrative rules applicable to USDA grants, cooperative agreements and subgrants. The majority of the policies and procedures set forth in Part 3015 are derived from OMB Circulars A–102, A–110, A–87, A–122, and A–21.

During the comment period, the Department received 38 letters in response to the proposed rulemaking for Part 3015. Letters were received from 11 universities, 7 State agencies, 1 Indian agency, 2 public interest groups, 16 USDA agencies and regional offices and

the Office of Management and Budget. In light of the comments received, the Department has made various changes, primarily clarifying policies and procedures.

Discussion of Comments

Subpart A—General

Six commenters expressed concern that agency adminstrative manuals, such as the Agriculture Handbook 381 (Hatch Administrative Manual), will be superseded by Part 3015. Section 3015.1(b) as published in the July 20, 1981, **Federal Register**, states that these rules supersede and take precedence over any individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on statutory provision or an exemption from OMB. USDA recognizes that program-specific manuals and directives may be necessary to supplement these regulations in order to meet the requirements of the individual USDA programs. However, such guidance should be consistent with Part 3015 except, in those instances, where the agency guidance is based on a statutory provision or OMB has provided an exception to all or certain provisions of the Circulars.

Accordingly, if any inconsistent provisions are found in existing USDA agency regulations and directives, such as the Hatch Manual and the Extension Administrative Handbook, such regulations and directives are not superseded automatically in their entirety by Part 3015. To the extent that such USDA agency regulations and directives are consistent with Part 3015 and to the extent that any deviations therein are based on statute or an exception from OMB, such regulations and directives continue to be in effect. Part 3015 supersedes and takes precedence only over specific provisions in such regulations and directives, if any, which directly conflict with the provisions of Part 3015 and which are not based on statute or an exception from OMB. USDA agencies are expected to review existing agency regulations and directives to remove any unauthorized inconsistencies as soon as possible.

Two commentors asked whether previous exceptions from the Office of Management and Budget will remain in effect upon implementation of part 3015. Exceptions from provisions of OMB Circulars for the administration of grants and cooperative agreements, which were granted by OMB prior to the publication of this part, will remain in effect for the time granted by OMB, unless later rescinded by OMB. We have included a new § 3015.3(d) to specifically state this.

Two commentors questioned whether formula funds are covered by Part 3015. The term "formula funds" is the same as "mandatory grants" in these regulations. As noted in § 3015.2(a), this part applies to USDA grants and cooperative agreements. This is true regardless of whether the grant is mandatory or formula, or discretionary. Therefore, formula funds are covered by part 3015. Additionally, throughout the regulations, any references to "mandatory grants" have been amended to read "mandatory or formula grants."

Subpart B—Cash Depositories

Six comments were received on this subpart from USDA agencies. Changes recommended were not in compliance with OMB Circulars A–110 and A–102. Therefore, no substantive changes were made.

Subpart C—Bonding and Insurance

Several comments of a general nature were received from USDA agencies on this subpart. However, the comments were inconsistent with OMB Circulars A–102 and A–110. Therefore, no changes were made.

Subpart D—Record Retention and Access Requirements

One commentor recommended that the word "programmatic" records be deleted in § 3015.20(a) because it was too broad and could lead to misinterpretation. We concurred with this recommendation and have deleted "programmatic" records. This section now conforms to language set forth in OMB Circulars A–102 and A–110.

Additionally, one commentor recommended that a paragraph be added requiring a three year record retention period for nonexpendable property being charged to programs. This paragraph has been added and is consistent with OMB Circulars A–102 and A–110.

Subpart E—Waiver of "Single" State Agency Requirements

This section was revised to reference Section 204 of the Intergovernmental Cooperation Act of 1968 as the basis for authorizing Federal agencies to waive "single" State agency requirements on requests of the Governor or other duly constituted State authorities.

Subpart F—Grant Related Income

Four comments were received indicating a desire for further clarification in definitions of income. We have attempted to clarify these sections on income by an expansion of § 3015.40.

Subpart G—Cost Sharing or Matching

Twelve general comments were received on subpart G. One commentor recommended that OMB Circular FMC 73–3 should be cited in this section. However, this Circular was recently rescinded by OMB. Two commentors requested that a reference to subpart T, Cost Principles, be cited in this section. This has been included in § 3015.51. Other minor changes were made for clarity.

Subpart H—Standards for Financial Management Systems

Four commentors observed that § 3015.61(a) conflicted with the requirements of § 3015.82(b). Section 3015.62(b) has been clarified to indicate that the provisions of the grant or subgrant may specify that reports be on either a cash or accural basis. If not specified in the grant award, recipients shall report program outlays and program income on the same accounting basis which they use in their accounting system.

Subpart I—Audits

Thirty-eight comments were received on this subpart. The commentors made general observations and specific comments on the audit requirements. Specific comments are addressed below.

The phrase "on at least a biennial basis" was added to § 3015.70 for clarity. To eliminate the appearence of USDA imposing its regulations on other federal agencies, the phrase "or other federal agencies" has been deleted. Two commentors suggested that the language in § 3015.70(d) inferred that USDA could impose additional audit requirements on recipients. This section has been reworded to eliminate the inference that USDA may impose additional requirements on recipients.

Two commentors suggested that § 3015.72(b) pertaining to the Memorandum of Understanding was not clear and that further explanation was needed. This section has been deleted based on a determination that it is ambiguous and unnecessary.

One commentor suggested that § 3015.73(3) pertaining to coordination of procurement documents with the Cognizant Agency was in conflict with OMB Circular A–102, Attachment O. The section has been revised to

eliminate the conflict with Attachment O requirements.

One commentor suggested that § 3015.74(d) was not clear as to its purpose and intent. We have attempted to clarify the section by incorporating an example of a limitation of audit scope.

Four comments were received indicating a need for further clarification of § 3015.76. One commentor suggested that it would be helpful to mention that the recipient should have a system to follow up on subrecipient audit findings and to make sure that corrective action is taken. We agree and therefore have revised the language to incorporate the suggestion and to clarify the intent of this section.

One commentor suggested that the language in § 3015.79(a) is much broader than OMB Circular A–110 and therefore should be revised to be more consistent with OMB Circular A–110. We agree and, therefore the section has been reworded to incorporate the suggestion.

One commentor recommended that the regulation address audits of for-profit organizations. We have not done this in these final regulations. However, we would like additional comments regarding inclusion of for-profit organizations in any future amendments to the regulations.

Subpart J—Financial Reporting Requirements

Thirteen comments were submitted addresssing various aspects as this section. The Department concurred with two recommendations to include a provision in § 3015.83(d) which would in effect waive specific reporting requirements when advances are less than $10,000 per month, and when other authorized forms are used to monitor advances. One commentor recommended that the due date for the Financial Status Report be changed to either 45 days after the reporting period covered or postmarked 30 days after the reporting period. The Department felt that this recommendation was not in accordance with Circulars A–102 or A–110. Minor language changes were also made for clarity.

Subpart K—Monitoring and Reporting Program Performance

There were five comments addressing recommended language changes in this section. The Department has made the recommended language changes for clarity.

Subpart L—Payment Requirements

There were eight general and specific comments received addressing this particular section. Specifically, two comments suggested that the Letter of Credit include all USDA programs. Although OMB Circular A–102 recommends whenever possible the use of a consolidated Letter of Credit, it is the Department's view that because of the diversities and peculiarities of its programs the Agencies are better able to administer this function.

Subpart M—Programmatic Changes and Budget Revisions

There were eighteen comments addressing this section. Three commentors specifically addressed the misuse of terminology involving mandatory or formula grants. The Department concurred that specific language clarification was needed in addressing these terms. As such, it was decided to include formula grants whenever mandatory grants are used within the regulations. Two commentors were concerned that § 3015.115(a)(1) would prohibit the flexibility granted in A–110, Attachment J. This allows, but does not require awarding agencies to request recipients to seek prior approval before transferring budgeted indirect costs to absorb increases in direct costs or vice versa. The Department did not concur with these comments because, under § 3015.115(2), language has been provided which allows the awarding agency to waive this requirement. The Department however, did concur with two concerns addressing the need to revise § 3015.115(a)(ii) by limiting its applicability to training allowances. As such, the specific language in § 3015.115(a)(ii) has been modified to directly reflect the requirements prescribed in OMB Circular A–110, Attachment J.

Subpart N—Grant and Subgrant Closeout, Suspension and Termination

There were ten comments received recommending language changes for clarity. These changes were made.

Subpart Q—Application for Federal Assistance

Three comments were received recommending that this section be revised to include nonprofit organizations. This has been done.

Subpart S—Procurement

Minor changes have been made in this subpart to conform to language used in OMB Circulars A–102 and A–110. However, many commentors recommended that this subpart be expanded to include all major procurement requirements set forth in OMB Circulars A–102 and A–110. Since this would be a major change from what was set forth in our proposal of July 20, 1981, additional comments are requested regarding expansion of this subpart.

Subpart T—Cost Principles

There were fifteen comments addressing this section. The majority of these comments requested specific language revisions which the Department concurred with for the purpose of clarity. There were however, three general comments concerning the broad applicability of these principles to grants, subgrants, cooperative agreements, cost type contracts and cost type subcontracts under grants. The Department believes that these principles are in accordance with OMB Circulars A–102 and A–110. As such, they are in conformance with generally acceptable guidance and standards governing cost principles. Another related comment addressed § 3015.196(b)(1) as being too broad, unclear and as a time consuming requirement. The Department did not concur with this comment because § 3015.196(c) contains specific language granting awarding agencies with the flexibility to effectively waive this requirement for prior approval of direct costs. Accordingly, it is the Department's intention to leave this decision with the awarding agency in order to better enable the proper and sound administration of the programs. Additionally, as addressed earlier in this preamble, statutes and OMB exceptions take precedence over this part.

Subpart U—Miscellaneous

No substantive changes were made. However, § 3015.203 was clarified to indicate that this section applies only to those USDA programs covered by OMB Circular A–95.

Appendix A

The definition of grant and cooperative agreement was amended to conform with Pub. L. 95–224, the "Federal Grant and Cooperative Agreement Act of 1977."

Commentors Recommending Further Expansion of the Regulations

One commentor recommended that the regulations set forth Departmental policies on the allowability and level of the profit or fee a recipient may receive as well as the type of recipient permitted to earn a profit or fee.

One commentor recommended that general Federally mandated assurance and compliance clauses covering such areas as Animal Welfare, Human subjects. Use of U.S. Flag Carriers, Activities Involving Recombinant DNA

Molecules, etc., be included in the regulations.

Two universities recommended expansion to include uniform requirements for other elements of grants and cooperative agreements such as the Statement of Work, Project Budget, Technical Reporting Requirements and Additional Terms and Conditions.

Acceptance of these recommendations would greatly expand the scope of Part 3015, as proposed on July 20, 1981. Therefore, additional comments are being requested regarding such expansion of Part 3015.

John Schrote,

Assistant Secretary for Administration.

Approved:

John R. Block,

Secretary of Agriculture.

November 4, 1981.

The Department adds Part 3015 of Title 7 of the Code of Federal Regulations as follows:

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

Subpart A—General

Sec.
3015.1 Purpose and scope of this part.
3015.2 Applicability.
3015.3 Conflicting policies and deviations.
3015.4 Special restrictive terms.

Subpart B—Cash Depositories

3015.10 Physical segregation and eligibility.
3015.11 Separate bank accounts.
3015.12 Moneys advanced to recipients.
3015.13 Minority and women owned banks.

Subpart C—Bonding and Insurance

3015.15 General.
3015.16 Construction and facility improvement.
3015.17 Fidelity bonds.
3015.18 Source of bonds.

Subpart D—Record Retention and Access Requirements

3015.20 Applicability.
3015.21 Retention period.
3015.22 Starting date of retention period.
3015.23 Microfilm.
3015.24 Access to records.
3015.25 Restrictions to public access.

Subpart E—Waiver of "Single" State Agency Requirements

3015.30 Waiver of "single" State agency requirements.

Subpart F—Grant Related Income

3015.40 Scope.
3015.41 General program income.
3015.42 Proceeds from sale of real property and from sale of equipment and supplies acquired for use.
3015.43 Royalties and other income from a copyrighted work.
3015.44 Royalties or equivalent income earned from patents or from inventions.
Sec.
3015.45 Other program income.
3015.46 Interest earned on advances of grant funds.

Subpart G—Cost-Sharing or Matching

3015.50 Scope.
3015.51 Acceptable contributions and costs.
3015.52 Qualifications and exceptions.
3015.53 Valuation of donated services.
3015.54 Valuation of donated supplies and loaned equipment or space.
3015.55 Valuation of donated equipment, buildings, and land.
3015.56 Appraisal of real property.

Subpart H—Standards for Financial Management Systems

3015.60 Scope.
3015.61 Financial management standards.

Subpart I—Audits

3015.70 Audits of State, local, and Indian Tribal governments.
3015.71 Definitions.
3015.72 Authority.
3015.73 Audit arrangement and requirements.
3015.74 Scope of audit tests.
3015.75 Reporting requirements.
3015.76 Subrecipient standards.
3015.77 OIG cognizant agency responsibilities.
3015.78 [Reserved]
3015.79 Audits of institutions of higher education, hospitals, and other nonprofit organizations.

Subpart J—Financial Reporting Requirements

3015.80 Scope and applicability.
3015.81 General.
3015.82 Financial status report.
3015.83 Federal cash transactions report.
3015.84 Request for advance or reimbursement.
3015.85 Outlay report and request for reimbursement for construction programs.

Subpart K—Monitoring and Reporting Program Performance

3015.90 Scope.
3015.91 Monitoring by recipients.
3015.92 Performance reports.
3015.93 Significant developments.
3015.94 Site visits.
3015.95 Waivers, extensions and enforcement actions.

Subpart L—Payment Requirements

3015.100 Scope.
3015.101 General.
3015.102 Payment methods.
3015.103 Withholding payments.
3015.104 Requesting advances or reimbursements.
3015.105 Payments to subrecipients.

Subpart M—Programmatic Changes and Budget Revisions

3015.110 Scope and applicability.
3015.111 Cost principles.
3015.112 Approval procedures.
3015.113 Programmatic changes.
3015.114 Budgets—general.
3015.115 Budget revisions.
Sec.
3015.116 Construction and nonconstruction under the same grant, subgrant, or cooperative agreement.

Subpart N—Grant and Subgrant Closeout, Suspension and Termination

3015.120 Closeout.
3015.121 Amounts payable to the Federal government.
3015.122 Violation of terms.
3015.123 Suspension.
3015.124 Termination.
3015.125 Applicability to subgrants.

Subpart O [Reserved]

Subpart P [Reserved]

Subpart Q—Application for Federal Assistance

3015.150 Scope and applicability.
3015.151 Authorized forms.
3015.152 Preapplication for Federal assistance.
3015.153 Notice of preapplication review action.
3015.154 Application for Federal assistance (non-construction programs).
3015.155 Application for Federal assistance (for construction programs).
3015.156 Application for Federal assistance (short form).
3015.157 Authorized form for non-governmental organizations.

Subpart R—Property

3015.160 Scope and applicability.
3015.161 Additional requirements.
3015.162 Title to real property, equipment and supplies.
3015.163 Real property.
3015.164 Statutory exemptions for equipment and supplies.
3015.165 Rights to require transfer of equipment.
3015.166 Use of equipment.
3015.167 Replacement of equipment.
3015.168 Disposal of equipment.
3015.169 Equipment management requirements.
3015.170 Damage, loss or theft of equipment.
3015.171 Unused supplies.
3015.172 Federal share of real property, equipment and supplies.
3015.173 Using or returning the Federal share.
3015.174 Subrecipient's share.
3015.175 Intangible personal property.

Subpart S—Procurement

3015.180 Scope and applicability.
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Authority: 5 U.S.C. 301.

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a) This part establishes USDA-wide uniform requirements for the administration of grants and cooperative agreements and sets forth the principles for determining costs applicable to activities assisted by USDA grants and cooperative agreements. This part contains rules that apply to almost all of USDA's grants and cooperative agreements. It primarily implements OMB Circulars A-102 and A-110, which are two of the Office of Management and Budget's (OMB) most important Circulars for standardizing the administration of grants and cooperative agreements and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements as set forth in OMB Circulars A-87, A-21, and A-122. Additionally, this part establishes uniform audit requirements and policy for State and local governments and Indian Tribal governments that receive Federal assistance from USDA.

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

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

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

§ 3015.2 Applicability.

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

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

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

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

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

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

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

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

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

(1) Foreign governments or organizations,

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

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

(4) Individuals.

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

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

§ 3015.3 Conflicting policies and deviations.

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

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

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

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

§ 3015.4 Special restrictive terms.

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

(1) Is financially unstable,

(2) Has a history of poor performance, or

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

In these cases the awarding agency may impose special conditions that are more restrictive than otherwise permitted by this part. If so, the awarding agency must tell the recipient

in writing why it is imposing the special conditions and what corrective action is needed.

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

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

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

Subpart B—Cash Depositories

§ 3015.10 Physical segregation and eligibility.

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

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

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

§ 3015.11 Separate bank accounts.

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

§ 3015.12 Moneys advanced to recipients.

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

§ 3015.13 Minority and women-owned banks.

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

Subpart C—Bonding and Insurance

§ 3015.15 General.

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

§ 3015.16 Construction and facility improvement.

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

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

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

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

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

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

§ 3015.17 Fidelity bonds.

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

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

§ 3015.18 Source of bonds.

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

Subpart D—Record Retention and Access Requirements

3015.20 Applicability.

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

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

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

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

3015.21 Retention period.

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

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

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

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

3015.22 Starting date of retention period.

(a) *General.* The retention period starts from the date of the submission of the final expenditure report or, where USDA grant support is continued or renewed at annual or other intervals, the 3-year retention period for the records of each funding period starts on the day the recipient submits to USDA its annual or final expenditure report for that period. If an expenditure report has been waived, the 3-year retention period

starts on the day the report would have been due. Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

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

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

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

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

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans; and

(iii) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

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

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

§ 3015.23 Microfilm.

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

§ 3015.24 Access to records.

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

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

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

§ 3015.25 Restrictions to public access.

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

Subpart E—Waiver of "Single" State Agency Requirements

§ 3015.30 Waiver of "single" State agency requirements.

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

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

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

Subpart F—Grant Related Income

§ 3015.40 Scope.

This subpart contains policies and requirements related to program income and interest and other investment income earned on advances of grant funds. Appendix A defines the term "program income." There are five categories of program income covered in this subpart. Each is treated in a separate section. The categories are: (a) General program income; (b) proceeds from sale of real property and from sale of equipment and supplies acquired for use; (c) royalties and other income earned from a copyrighted work; (d) royalties or equivalent income earned from patents or inventions; and (e) income after the period of grant or subgrant support not otherwise treated.

§ 3015.41 General program income.

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

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

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

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

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

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

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

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

(1) Expanding the project or program.

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

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

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

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

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

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

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

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

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

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

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

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

§ 3015.45 Other program income.

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

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

§ 3015.46 Interest earned on advances of grant funds.

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

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), States, as defined in the Act, shall not be accountable to the Federal government for interest or investment income earned by the State itself, or by its subrecipents, where this income is attributable to grants-in-aid, as defined in the Act.[1]

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

Subpart G—Cost-Sharing or Matching

§ 3015.50 Scope.

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

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

established by the specific grant agreement.

§ 3015.51 Acceptable contributions and costs.

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

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

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

§ 3015.52 Qualifications and exceptions.

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

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

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

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

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

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

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

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

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

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

§ 3015.53 Valuation of donated services.

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

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

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

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

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

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

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

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

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

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

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

depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 3015.56 Appraisal of real property.

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

Subpart H—Standards for Financial Management Systems

§ 3015.60 Scope.

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

§ 3015.61 Financial management standards.

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

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

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

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

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

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

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

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

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

Subpart I—Audits

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

(a) Sections 3015.70 through 3015.77 of this subpart implement the audit requirements for government organizations contained in the following documents which are incorporated in this subpart by reference:

(1) OMB Circular A–102, Attachment P, dated October 22, 1979, and any subsequent revisions;

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

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

(4) Guidelines for Financial and Compliance Audits of Federally Assisted Programs issued by the General Accounting Office (GAO) in February 1980, and any subsequent revisions;

(5) Compliance supplements issued by OMB on August 18, 1980, and any subsequent revisions; and

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

(b) All of the requirements contained in paragraphs (a) (1) through (5) must be met by the recipients before an audit can be accepted as a Federal audit by the respective cognizant audit agencies referenced in paragraph (a)(6).

(c) Under OMB Circular A–102, Attachment P, OMB has established uniform audit requirements for State, local and Indian Tribal governments, or their subdivisions that receive financial assistance from USDA. Attachment P requires recipients and subrecipients of USDA financial assistance to arrange for independent audits of financial operations, including compliance with certain provisions of Federal laws and regulations and to assure that audits are made on an organization-wide basis rather than on a grant-by-grant basis. Such organization-wide audits are to determine whether:

(1) Financial operations are conducted properly;

(2) Financial statements are presented fairly;

(3) Recipients and subrecipients are complying with the laws and regulations that affect the expenditures of Federal funds;

(4) Recipients and subrecipients have established internal procedures to meet the objectives of Federally assisted programs; and

(5) Recipients and subrecipients are providing accurate and reliable financial information to the Federal government.

If the recipients or subrecipients fail to arrange for the required audits on at least a biennial basis or fail to assure that an acceptable audit is performed on at least a biennial basis, the respective cognizant audit agencies may arrange for the performance of the required audits. If the cognizant audit agencies arrange for the required audits because

of these circumstances, the recipients and/or subrecipients shall reimburse the respective cognizant audit agencies for the cost of these organization-wide audits.

(d) Unless specifically required by law or approved by OMB, USDA shall not impose any additional audit requirements on recipients or subrecipients. Audit requirements in USDA regulations for assistance programs administered in cooperation with State, local and Indian Tribal governments shall be limited to requiring compliance with Attachment P and this subpart.

(e) State, local and Indian Tribal governments for whom OMB has assigned USDA as the "cognizant audit agency" shall apply the audit requirements in this subpart.

(f) State, local and Indian Tribal governments that receive financial assistance from USDA and have been assigned a cognizant audit agency other than USDA shall follow the audit requirements established by the respective cognizant audit agency. If the designated cognizant audit agency has not established Attachment P audit requirements or if OMB has not designated a cognizant audit agency, these units of government shall follow the audit requirements contained in OMB Circular A–102, Attachment P, and this subpart.

§ 3015.71 Definitions.

(a) "Cognizant audit agency" means the Office of Inspector General (OIG) or other designated audit organizations of the Federal agencies that OMB has identified in the **Federal Register** as having the audit responsibility for Attachment P, Circular A–102. In those instances where OMB designates USDA as the cognizant audit agency, OIG will act for the Department and recipients shall communicate with the appropriate OIG Regional Inspector General for Auditing about all matters concerning compliance with Circular A–102, Attachment P.

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

(c) "Organization-wide audit" means an audit which encompasses all financial operations and all funds (regardless of source) of the audited entity, and which will satisfy the needs of all interested parties for audited financial information.

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

(e) "Recipient" means a State department, local government, an Indian Tribal government or a subdivision of such entities that receive Federal assistance directly from the Federal government. It does not include State or local institutions of higher education, hospitals or other nonprofit organizations, which are covered by Circular A–110 and § 3015.79 of this subpart.

(f) "Subrecipient" means a State department, local government, and Indian Tribal government or a subdivision of such entities that receives Federal assistance indirectly (through a recipient) from the Federal government.

§ 3015.72 Authority.

The Inspector General Act of 1978 (Pub. L. 95–452) established OIG's audit authority. The Act includes, among other powers, the authority to have access to all records, reports, audits, reviews, documents, papers, recommendations or other material related to USDA assistance programs administered by recipient and subrecipient organizations. The provisions of Circular A–102, Attachment P, or this subpart do not limit the OIG's authority to make audits of recipient and subrecipient organizations. However, if the recipients and subrecipients arrange for independent audits that meet the requirements in this subpart, OIG shall rely on those audits and any additional work shall build upon the work already done.

§ 3015.73 Audit arrangements and requirements.

(a) *Arrangements.* (1) State, local and Indian Tribal governments shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in Circular A–102, Attachment P, and this subpart.

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

(2) Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded for audits required by this subpart (see paragraph 16 of Attachment P, Circular A–102).

(3) In arranging for audits, recipients shall coordinate proposed audit plans and related documents with the appropriate USDA Regional Inspector General prior to initiating the audit. The purpose of coordinating the proposed audit plans and related documents is to enable the Regional Inspectors General to provide timely technical assistance and assure that satisfactory audit coverage is planned.

(4) Provisions shall be included in audit contracts requiring the audit organization to retain audit working papers for a minimum of three years from the date of the audit report unless the auditor is notified in writing by OIG of the need to extend the retention period. The audit contracts shall also contain a provision which requires the audit organizations to provide the workpapers to OIG and GAO upon request.

(b) *Requirements.* (1) All audits shall be performed in accordance with the GAO Standards for Audit of Government Organizations, Programs, Activities, and Functions; generally accepted audit standards established by the AICPA; GAO Guidelines for Financial and Compliance Audits of Federally Assisted Programs; OMB approved compliance supplements and other compliance supplements developed in accordance with OMB policies.

(2) At a minimum, the audits shall include examinations of the systems of internal control established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipients and subrecipients.

(3) These examinations shall determine:

(i) If controls over the accounting for revenues, expenditures, assets, and liabilities are proper and effective;

(ii) If the audited entity's financial statements are presented fairly in accordance with generally accepted accounting principles;

(iii) If the Federal financial reports (including Financial Status Reports, Cash Transactions Reports, and claims for advances and reimbursements) contain accurate and reliable financial data and are presented in accordance with the terms of applicable agreements and in accordance with subpart J of this part; and

(iv) If Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

§ 3015.74 Scope of audit tests.

(a) To achieve the above purposes, a representative number of charges to the Federal awards shall be tested. The tests must be representative of (1) the universe of all Federal awards received, and (2) all cost categories that materially affect the awards. The tests are to determine if the charges:

(i) Were necessary and reasonable to properly administer the program or project;

(ii) Conformed to any limitations or exclusions in the award;

(iii) Received consistent accounting treatment and were applied uniformly to both Federally and non-Federally assisted activities;

(iv) Were net of applicable credits;

(v) Excluded costs properly chargeable to other Federally-assisted programs;

(vi) Were properly recorded and supported by source documents;

(vii) Were approved in advance, if subject to prior approval in accordance with OMB Circular A–87 and this part;

(viii) Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of Circular A–102 and subpart S of this part; and

(ix) Were allocated equitably to the benefiting activities, including non-Federal activities.

(b) The use of statistical sampling is a particularly appropriate technique for testing the charges to Federal awards and determining the impact of the results of the tests. OIG recommends the use of this technique unless it is not feasible. Where statistical sampling techniques are not used, the reasons should be documented in the audit working papers.

(c) Because charges that a subrecipient incurs are a part of the universe of the total Federal charges the recipient incurs, subrecipient charges should be tested to the extent necessary for the auditor to be able to make the required determinations. Where subrecipients are audited separately by independent public accounting firms or State or local government audit groups, the recipient's auditor will rely on the subrecipient audits to the extent possible, providing those audits meet the requirements of Attachment P and this subpart.

(d) It is inappropriate to limit the audit scope of a recipient in a way that excludes an audit of material expenditures of the recipient or its subrecipient. For example, denial of access to sources of information, such as books, records, and supporting documents, or denial of opportunity to obtain explanation by officials and employees of the organization, program, or activity under audit, would be inappropriate.

(e) Audits shall be made annually but not less frequently than every two years, and shall cover the period beginning immediately after the end of the period covered by the previous audit.

(f) The auditor shall promptly notify and request guidance from OIG upon becoming aware of irregularities in the operations of the recipient or subrecipient organizations. Matters that auditors shall consider as irregular include conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

§ 3015.75 Reporting requirements.

(a) Audit reports shall include:

(1) Financial statements, including footnotes, of the recipient or subrecipient organization being audited.

(2) Auditors' comments on the financial statements which shall:

(i) Identify the statements examined and the period covered;

(ii) Identify by awarding agency, the various programs under which the recipient or subrecipient received Federal funds and the amounts of the individual awards received;

(iii) State that the audit was done in accordance with the GAO and AICPA Standards; the Guidelines for Financial and Compliance Audits of Federally Assisted Programs; OMB approved compliance supplements and other compliance supplements developed in accordance with OMB policies; and

(iv) Express an opinion as to whether the financial statements were fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) Auditors' comments on compliance and internal control which shall:

(i) Include comments on weaknesses in and any non-compliance with the system of internal control, separately identifying material weaknesses;

(ii) Identify the nature and impact of any noted instances of non-compliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports. The auditor shall explain the impact in terms that are meaningful and relative to the total universe, or defined subuniverse of Federal charges such as estimates of the dollar value or rates of non-compliance with the particular audit universe; and

(iii) Contain an expression of positive assurance with respect to compliance with the requirements for tested items and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims submitted to Federal agencies for advances or reimbursement.

(5) Comments on corrective action that the recipient or subrecipient has taken or planned.

(b) Recipient organizations shall provide the number of copies of final reports needed by the Regional Inspectors General for proper distribution of the reports to the other audit agencies concerned and program officials.

(c) The auditor shall retain audit working papers and reports for a minimum of three years from the date of the audit report unless OIG notifies the auditor in writing of the need to extend the retention period. The auditor, upon request, shall provide or make the working papers available to the OIG and the GAO or their designees.

§ 3015.76 Subrecipient standards.

(a) Recipients must (1) Establish a system for assuring that subrecipients meet the requirements of these regulations; (2) establish a system for evaluating the acceptability of subrecipient audits; and (3) establish a system for following up on results of subrecipient audits.

(b) Subrecipient audit reports shall be transmitted by the subrecipient to the applicable primary recipient. These reports shall not be routinely transmitted to OIG. Instead, the recipient shall retain all subrecipient audit reports on file and make them available to OIG and GAO officials or their designees upon request.

(c) The recipient is responsible for taking appropriate action on subrecipient audits and incorporating the results of these audits into their financial records and related reports. The recipient's auditors shall state in the audit report the amount of funds at the subrecipient level that were audited by the subrecipient's auditors and make any pertinent comments concerning those audits. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

§ 3015.77 OIG cognizant agency responsibilities.

As a cognizant audit agency, OIG shall be responsible for:

(a) Obtaining or making quality assessment reviews of the audit work of non-Federal auditors and providing the review results to other interested audit

agencies. (When a non-Federal auditor is responsible for auditing recipients that have different cognizant audit agencies and it is practicable to do so, OIG shall arrange for a single quality assessment review.);

(b) Assuring that all recipient audit reports affecting Federally assisted programs are received, reviewed, and distributed to the proper audit agencies. These agencies (including USDA OIG) are responsible for distributing audit reports to their respective program officials;

(c) Advising the recipient and the auditor of significant inadequacies found in an audit and the actions needed to correct the inadequacies. If the auditor fails to take corrective action, OIG shall notify the recipient organization and the appropriate audit agencies of the facts and OIG's recommendations. OIG shall refer to appropriate professional bodies major inadequacies or repetitive substandard audit work;

(d) Assuring that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of Circular A–102, Attachment P, and this subpart;

(e) Providing technical advice and acting in a liaison capacity with Federal agencies, independent auditors, and recipient organizations, including providing technical assistance in arranging for audit services;

(f) Maintaining a followup system on audit findings and investigative matters to assure that audit findings are resolved;

(g) Informing other affected audit agencies of disclosed irregularities. These agencies shall in turn inform appropriate officials in their agencies. OIG shall inform State or local government law enforcement and prosecuting authorities of irregularities that fall within their jurisdiction; and

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

§ 3015.78 [Reserved].

§ 3015.79 Audits of institutions of higher education, hospitals and other non-profit organizations.

(a) Non-Federal audits. Institutions of higher education, hospitals and other non-profit organizations that receive Federal assistance shall comply with the requirements for non-Federal audits in OMB Circular A–110, including amendments to those requirements published in the Federal Register by OMB.

(1) Each recipient must arrange for a financial and compliance audit annually but not less frequently than every two years.

(2) The recipient's audits must comply with the GAO "Standards For Audit Of Governmental, Organization, Programs, Activities and Functions," including the standards for auditor independence.

(3) The audit shall be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests shall include an appropriate sampling of Federal agreements. Awarding agencies may not impose grant-by-grant (or subgrant-by-subgrant) audit requirments except as may be prescribed by law.

(4) Recipients must establish a system for:

(i) Assuring that subrecipients meet the requirements of these regulations;

(ii) Evaluating acceptability of subrecipient audits;

(iii) Following up on results of subrecipient audits.

(5) Subrecipients audit reports shall be transmitted by the subrecipient to the applicable primary recipient. These reports shall not be routinely transmitted to OIG. Instead the recipient shall retain all subrecipient audit reports on file and make them available to OIG and GAO officials or their designees upon request.

(6) The recipient is responsible for taking appropriate action on subrecipient audits and incorporating the results of these audits into their financial records and related reports. The recipient's auditors shall state in the audit report the amount of funds at the subrecipient level that were audited by the subrecipients' auditors and make any pertinent comments concerning those audits. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(7) Each recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) *Federal audit responsibilities.* (1) Audits of Federal contracts and assistance programs at institutions of higher education are performed periodically by the Federal agencies designated as cognizant audit agencies in OMB Circular A–88. In addition, OIG may perform audits of USDA programs at Land Grant Institutions from time to time. Such audits shall be coordinated in advance with the cognizant audit agency and shall, to the extent possible, not duplicate work done by the Federal cognizant audit agency, or by independent auditors in accordance with Circular A–110.

(2) OIG reserves the right to perform audits of USDA assistance programs at other nonprofit organizations as determined by OIG to be necessary. In performing such audits, OIG shall rely to the extent feasible on audit work performed by other Federal and non-Federal auditors.

Subpart J—Financial Reporting Requirements

§ 3015.80 Scope and applicability.

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

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

§ 3015.81 General.

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

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

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

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

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

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

computer printouts instead of prescribed formats.

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

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

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

§ 3015.82 Financial status report.

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

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

(c) *Frequency.* The awarding agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 3015.4, 3015.81(e), or by statute. If the awarding agency does not specify the frequency of the report, it shall be submitted annually. Upon expiration or termination of the grant or cooperative agreement, if a period of time remains not covered by a periodic report (i.e., a quarterly, semi-annual or annual report), a final report shall be required.

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

(e) *Final reports.* (1) Final reports (i.e., the last report submitted) must not show any unpaid obligations. (2) if the recipient will still have unpaid obligations when the final report is due, the recipient shall submit a provisional final report (showing the unpaid obligations) by the due date, and a true final report when all obligations have been paid. When submitting a provisional final report, the recipient shall tell the awarding agency when it expects to submit a true final report. (3) As provided in § 3015.81(f), awarding agencies may waive provisional final reports.

§ 3015.83 Federal cash transactions report.

(a) *Form.* (1) For grants or cooperative agreements paid by letters of credit (or Treasury check advances) through any USDA payment office, the recipient shall submit to USDA a Standard Form 272, Federal Cash Transactions Report, and, when necessary, its continuation sheet, SF–272a. Recipients under the Regional Disbursing Office (RDO) system shall not be required to submit a SF–272. For these recipients, awarding agencies shall use information contained in the Request for Payment to monitor recipient cash balances and to get disbursement information. (2) The SF–272 will be used by USDA to monitor cash advanced to recipients and to obtain disbursement or outlay information from recipients for each grant or cooperative agreement. The format of the report may be adapted, as appropriate, when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the identical information is submitted.

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

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

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

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

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

§ 3015.84 Request for advance or reimbursement.

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

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

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

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

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

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

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

due date shall be governed by § 3015.82 (c) and (d).

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

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

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

Subpart K—Monitoring and Reporting Program Performance

§ 3015.90 Scope.

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

§ 3015.91 Monitoring by Recipients.

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

§ 3015.92 Performance reports.

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

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

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

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

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

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

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

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

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

§ 3015.93 Significant developments.

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

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

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

§ 3015.94 Site visits.

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

(a) Review program accomplishments and manage control systems.

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

§ 3015.95 Waivers, extensions and enforcement actions.

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

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

Subpart L—Payment Requirements

§ 3015.100 Scope.

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

§ 3015.101 General.

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

§ 3015.102 Payment methods.

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

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

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

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

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

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

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

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

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

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

§ 3015.103 Withholding payments.

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

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

§ 3015.104 Requesting advances of reimbursements.

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

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

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

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

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

§ 3015.105 Payments to subrecipients.

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

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

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

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

Subpart M—Programmatic Changes and Budget Revisions

§ 3015.110 Scope and applicability.

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

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

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

§ 3015.111 Cost principles.

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

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

§ 3015.112 Approval procedures.

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

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

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

§ 3015.113 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of

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

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

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

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

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

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

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

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

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

(i) Producing an audiovisual.

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

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

(2) Prior approval is not required for:

(i) Any audiovisual activity under a subgrant.

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

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

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

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

(ii) Showing in commercial motion picture theaters.

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

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

§ 3015.114 Budgets—general.

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

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

§ 3015.115 Budget revisions.

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

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

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

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

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

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

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

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

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

Subpart N—Grant and Subgrant Closeout, Suspension and Termination

§ 3015.120 Closeout.

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

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

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

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

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

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

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

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

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

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

§ 3015.121 Amounts payable to the Federal government.

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

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

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal government;

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

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

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

§ 3015.122 Violation of terms.

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

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

§ 3015.123 Suspension.

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

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

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

§ 3015.124 Termination.

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

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

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

(2) By written notification by the recipient to the awarding agency setting forth the reasons for termination, the effective date, and in the case of partial termination, the portion to be terminated. In the case of a partial termination, if the awarding agency decides that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the awarding agency may terminate the award in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

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

§ 3015.125 Applicability to subgrants.

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

Subpart O [Reserved]

Subpart P [Reserved]

Subpart Q—Application for Federal Assistance

§ 3015.150 Scope and applicability.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals, non-profit organizations, and institutions of

higher education operated by a government) in applying to USDA for discretionary grants. This subpart is not applicable, however, to mandatory or formula grants or programs which do not require applicants to apply to USDA for funds on a project basis.

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

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

§ 3015.151 Authorized forms.

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

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

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

§ 3015.152 Preapplication for Federal assistance.

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

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

(2) Determine the potential applicant's eligibility;

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

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

§ 3015.153 Notice of preapplication review action.

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

§ 3015.154 Application for Federal assistance (nonconstruction programs).

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

§ 3015.155 Application for Federal assistance (construction programs).

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

§ 3015.156 Application for Federal assistance (short form).

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

§ 3015.157 Authorized form for nongovernmental organizations.

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

Subpart R—Property

§ 3015.160 Scope and applicability.

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

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

(c) This subpart does not apply to:

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

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

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

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

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

§ 3015.161 Additional requirements.

Provided they observe the requirements of this subpart, recipients may follow their own property management policies and procedures. Unless specifically required by Federal statutes or Executive Orders, awarding agencies may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart.

§ 3015.162 Title to real property, equipment and supplies.

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

§ 3015.163 Real property.

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

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

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

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

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

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

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

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

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

§ 3015.164 Statutory exemptions for equipment and supplies.

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

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

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

§ 3015.165 Rights to require transfer of equipment.

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

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

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

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

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

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

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

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

§ 3015.166 Use of equipment.

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

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

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

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

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

be given to other projects or programs funded by the same USDA awarding agency.

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

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

§ 3015.167 Replacement of equipment.

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

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

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

§ 3015.168 Disposal of equipment.

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

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

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

§ 3015.169 Equipment management requirements.

Recipient procedures for managing equipment shall, as a minimum, meet the following requirements (including replacement equipment) until such actions as transfer, replacement or disposal takes place:

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

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

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

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

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

(5) Acquisition date and unit acquisition cost.

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

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

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

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

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

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

§ 3015.170 Damage, loss, or theft of equipment.

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

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

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

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

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

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

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

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

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

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

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

(3) *Recipient compensated.* If the recipient is compensated for the damage, loss, or theft and replaces the equipment, section 3015.167 applies to the replacement equipment. If the recipient is compensated but does not replace the equipment, § 3015.168 applies as though the recipient had sold the equipment. (All of § 3015.168 applies including the rule permitting the amount due the Federal government to be reduced by 10 percent of the proceeds or $100, whichever is greater.) The amount received for trade-in or sale is considered the lesser of (i) the amount of compensation or (ii) the market value of the equipment at the time it was damaged, lost, or stolen.

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

§ 3015.171 Unused supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3015.173 Using or returning the Federal share.

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

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

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

§ 3015.174 Subrecipient's share.

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

§ 3015.175 Intangible personal property.

(a) *Inventions and patents.* (1) If the recipient is a small business or non-profit organization (including universities and other institutions of higher education), the allocation of rights in inventions produced under a grant or cooperative agreement shall be determined in accordance with the provisions of sections 202 through 204 of Pub. L. 96-517 (35 U.S.C. 202-204) and all implementing regulations.

(2) For all other recipients, the allocation of rights in inventions shall be determined in accordance with the "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23,

1971, and statement of Government Patent Policy as printed in 36 FR 16889).

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

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

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

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

(c) *Exceptions.* It is permissible for the other provisions of a grant award to restrict the owner from exercising, preserving, or transferring the rights. For a subgrant, the restrictions may be in the provisions of the grant or subgrant or both.

Subpart S—Procurement

§ 3015.180 Scope and applicability.

(a) This subpart contains information for complying with Attachment 0, "Procurement Standards", of OMB Circulars A–102 and A–110. Circular A–102 covers grant and cooperative agreement programs with State and local governments and Indian Tribal governments. Circular A–110 covers grant and cooperative agreement programs with institutions of higher education, hospitals, and other nonprofit organizations. Copies of both Circulars may be obtained from O&F.

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

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

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

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

§ 3015.181 Standards of conduct.

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

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

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

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

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

§ 3015.182 Open and free competition

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

3015.183 Access to contractor records.

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

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

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

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

§ 3015.184 Equal employment opportunity.

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

(b) If construction is to be assisted by a grant or subgrant, the Executive Order and the Department of Labor supplementing regulations apply, unless an exemption is granted by or under those regulations. Recipients shall observe all applicable requirements of the Order and regulations and include in their nonexempt construction contracts the specific clauses prescribed by 41 CFR 60–1.4(b) and, if applicable, 41 CFR 60–4.3.

Subpart T—Cost Principles

§ 3015.190 Scope.

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

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

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

(1) *Third party in-kind contributions.* Because they are not allowable costs of the party that receives them, the value of third party in-kind contributions received may not be included in determining maximum allowable costs.

However, as provided in subpart G of this part, third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of the Federal grant.

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

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

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

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

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

§ 3015.191 Governments.

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

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

§ 3015.192 Institutions of higher education.

(a) OMB Circular No. A–21, including any amendments to the Circular published in the **Federal Register** by OMB, shall be used in determining the allowable costs of activities conducted by institutions of higher education (other than for-profit institutions).

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

§ 3015.193 Other non-profit organizations.

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

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

§ 3015.194 For-profit organizations.

The principles to be used in determining the allowable costs of activities conducted by for-profit organizations are contained in the Federal Procurement Regulations at 41 CFR 1–15.2. Exception: Independent research and development costs including the indirect costs allocable to them are unallowable. Independent research and development are defined in the Federal Procurement Regulations at 41 CFR 1–15.205–35.

§ 3015.195 Subgrants and cost-type contracts.

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

§ 3015.196 Costs allowable with approval.

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

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

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

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

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

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

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

Subpart U—Miscellaneous

§ 3015.200 Acknowledgement of support on publications and audiovisuals.

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

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

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

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

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

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

§ 3015.201 Use of consultants.

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

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

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

(2) *Exceptions.* (i) In unusual cases, using a consultant may constitute a transfer of substantive programmatic work, which requires prior approval under discretionary grants. (ii) Consulting fees paid by an organization to its own employees require prior approval.

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

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

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

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

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

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

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

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

(e) *Documentation standards.* (1) Charges for consulting payments must be supported in the records of the recipient or cost-type contractor by an invoice from the consultant and a copy of the written report (if a report is appropriate) or other documented evidence of the work performed from the consultant.

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

(i) The name of the consultant;

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

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

(iv) Whichever of the following is applicable:

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

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

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

§ 3015.202 Limits on total payments to the recipient.

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

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

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

(1) The amount of Federal funds authorized.

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

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

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

§ 3015.203 OMB Circular A-95.

(a) *Part I—Project notification and review system (PNRS).* (1) Except as noted in paragraph (a)(4) of this section, applicants desiring Federal assistance, under covered programs, must notify the appropriate state and areawide clearinghouses of their intention to apply for USDA funds. Clearinghouses have 30 days to review and comment on this notification of intent (NOI) which summarizes the proposed project. Clearinghouses may have another 30 days to review and comment on a completed application from the applicant. In cases where a completed application is initially submitted in lieu of a NOI, the clearinghouses will have a 60 day review and comment period. Clearinghouse comments must be submitted with applications to USDA.

(2) USDA agencies may not award grants for projects that are covered by Circular A-95 until the applicant has complied with those requirements.

(3) The kinds of projects covered by the project notification and review system are described in the A-95 Circular.

(4) Applicants desiring USDA housing assistance for projects involving new construction or substantial rehabilitation may submit an application to USDA rather than to a clearinghouse. In this case, USDA will transmit a copy of the application to the appropriate State and areawide clearinghouse for a 30 day review and comment period.

(b) *Part II—Direct Federal development.* USDA agencies engaged in direct development of Federal projects must consult with State and local governments and environmental agencies that might be affected by those projects. State and areawide clearinghouses must be used to the greatest extent practicable in securing State and local views and comments.

(c) *Part III—Review of State plans.* Before a State submits a State plan or any amendment to USDA for approval, the State shall give its Governor or his designated agency 45 days to comment. The Governor's comments shall be submitted with the plan or amendment. If the Governor does not comment, the State official submitting the plan or amendment shall certify to the awarding agency that the Governor was given 45 days to comment, but did not comment.

(d) *Part IV—Coordination of planning in multijurisdictional areas.* USDA agencies responsible for areawide planning programs must assure coordination of planning in multijurisdictional areas as prescribed by Part IV of Circular A–95.

§ 3015.204 Federal Register publications.

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

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

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

(2) Who is eligible;

(3) How to obtain application kits;

(4) Where to submit applications; and

(5) The deadline for submitting applications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix A—Definitions

Section I *"Grant" and "Cooperative Agreement"*

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

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

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

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

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

Section II *Other Definitions.*

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

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment. It includes the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment useable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the

regular accounting practices of the organization purchasing the equipment.

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

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

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

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in, minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value, shown on an invoice. For example, suppose that a recipient can buy a new machine for $5,000 in cash. The recipient actually buys this machine by trading in a used machine and paying $3,000 in cash. In this case, the amount received for trade-in would be $2,000 ($5,000 minus $3,000) regardless of the trade-in allowance shown on the invoice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Federally recognized Indian Tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him or her through the Bureau of Indian Affairs.

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

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

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

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

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

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

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

"O&F" means the Office of Operations and Finance, which is an organizational

component in USDA reporting to the Assistant Secretary for Administration.

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

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

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

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

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

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

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

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

The following are not considered program income:

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

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant, cooperative agreement, or subgrant.

(3) Income earned by contractors or subcontractors.

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

(5) Third party in-kind contributions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Termination" does not include:

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

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

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

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

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

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

"Third party" means, with respect to a grant or cooperative agreement, any entity except (1) the Federal government, (2) the

recipient of the cooperative agreement, and (3) subrecipients under that grant or cooperative agreement. Note that contractors of recipients are third parties under this definition, although subrecipients are not.

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

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

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

[FR Doc. 81-32539 Filed 11-9-81; 8:45 am]
BILLING CODE 3410-01-M