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PART IV



DEPARTMENT OF LABOR

Office of the Secretary

■

PROGRAMS UNDER THE COMPREHENSIVE TRAINING ACT

Migrant and Other Seasonally Employed
Farmworkers Programs

Title 29—Labor

SUBTITLE A—OFFICE OF THE
SECRETARY OF LABORPART 94—GENERAL PROVISIONS FOR
PROGRAMS UNDER THE COMPREHENSIVE
EMPLOYMENT AND TRAINING ACTPART 97—SPECIAL FEDERAL PROGRAMS
AND RESPONSIBILITIES UNDER THE
COMPREHENSIVE EMPLOYMENT AND
TRAINING ACTMigrant and Other Seasonally Employed
Farmworker Programs

On Tuesday, August 6, 1974, the Department of Labor published in the *FEDERAL REGISTER* (39 FR 28400) regulations for Title III, section 303 of the Comprehensive Employment and Training Act of 1973 as amended (Pub. L. 93-203, 87 Stat. 839 and Pub. L. 93-567, 88 Stat. 1845). At that time, the Department invited interested persons to submit comments on the regulations, and stated comments would be evaluated to determine whether the regulations should, in any respect, be amended.

Numerous comments were received by the Department pursuant to this invitation. The Department studied these comments carefully, and considered each of them on its own merits and in relation to other comments received on the same or similar subjects.

The purpose of this issuance is to amend Part 97, Subpart C in certain aspects in response to comments received. These amendments are described below and are incorporated in the set of revised regulations published today. In addition, the consolidated Table of Contents in Part 94 is revised to reflect changes in Part 97.

Since these regulations constitute revision of the August 6, 1974, regulations, for which comments were invited and received, and since most of the changes in this revision are the results of comments received since August 6, 1974, and since it is necessary that interested parties be informed of the rules applicable to grants for Fiscal Year 1976, I find it would be contrary to the public interest to delay the effective date of this revised Subpart C in order to receive further comments.

These revised regulations will become effective August 8, 1975; they are not applicable, however, with one exception, to programs funded in Fiscal Year 1975. Those programs will continue to be governed by the regulations published August 6, 1974. The one exception relates to the requirement contained in these revised regulations requiring public disclosure of the names of program participants and staff (§ 97.265). That requirement will also apply to Fiscal Year 1975 programs.

These revised regulations are being published in their final form in this *FEDERAL REGISTER*. However, due to the major changes in the regulations and the length of time since this publication for comment on August 6, 1974, the Department will consider comments submitted until August 8, 1975. If warranted, revisions will be made based on the comments.

Persons interested in submitting comments should send them to: Assistant Secretary for Manpower, United States Department of Labor, 6th and D Streets, NW., Washington, D.C. 20213. Attention: Pierce A. Quinlan, Associate Manpower Administrator for Manpower Development Programs.

A description of the amendments with a short explanatory statement follows:

In § 97.202 *Scope and purpose of this subpart*, the list of titles of the Act has been amended to be consistent with the provisions of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567, 88 Stat. 1845) which established a new Title VI for the Comprehensive Employment and Training Act, and renumbered the previous Title VI as Title VII. Appropriate changes have been made throughout the regulations to reflect the change of Title VI to Title VII.

A specific reference to the regulations for the Act published in the *FEDERAL REGISTER* on May 23, 1975, has been included.

In § 97.203 *Definitions*, the following additions and changes have been made:

A definition for the term "allocation" was added.

A definition for the term "appropriate amount" has been added to specify the commitment of resources required of Title I prime sponsors eligible to apply for section 303 funds.

The definitions for the terms "co-operative" and "compensation" were deleted since the terms are not used in this revision.

The definition of the term "eligible applicant" was revised to add public agencies and to require Title I prime sponsors applying for section 303 funds to commit an appropriate amount of Title I or Title II funds for eligible farmworkers.

A definition for "emergency assistance" has been added to clarify the specific activity.

In lieu of the definitions of the terms "farmworker" and "seasonal basis," this regulation contains new definitions of "farmwork" and "seasonal farmworkers." This change was made to assure consistency in the definitions used by different units of the Manpower Administration.

A definition for the term "planning estimate" was added to describe the funding levels to be published on or about July 1 of each year.

The definitions for the terms "program of demonstrated effectiveness" and "qualified applicant" were deleted.

A definition for the term "relocation assistance" was added.

A definition for the term "residential support" was added.

A definition for the term "supportive services" was added to indicate that supportive services activities unrelated to manpower training are allowable.

In § 97.204 *Allocation of funds*, the language in paragraph (b) was amended to delete the word "contingency" throughout, and to delete the terms High School Equivalency Program, College Assistance Migrant Programs, "programs of demonstrated effectiveness," and the reference

to OMB Circular A-102. Language was added to specify that private profitmaking organizations will not be awarded grants and to specify which section of the regulations apply to National Account programs.

The references to the Economic Opportunity Act Title III-B and Manpower Development and Training Act Migrant Worker Program funds, and permanent housing, emergency food and medical services, high school equivalency projects, college assistance migrant programs, and the National Migrant Clearinghouse were deleted from paragraph (c)(2). Additional language was added to paragraph (c)(2) to give the Secretary the right to suspend the provisions of paragraphs (1) and (2) in the event that the funds appropriated during any fiscal year are less than the previous year's appropriation.

The language of paragraph (c)(3) concerning allocation exceptions was changed to allow the Secretary to decide not to grant funds to States receiving an allocable amount less than \$50,000. The amendment to this paragraph requires the Secretary to make the decision on allocation of funds to a State with less than \$50,000 of allocable funds on or about July 1 of each fiscal year.

The language on transition funding was deleted from paragraph (c)(3) and the specifics for the notification of termination were clarified.

The funding cycle was changed to delete mention of the deadline for submission of the Qualifications Statement, which is no longer required, to add a due date for a preapplication form, and to allow more time for submission of the Funding Requests and negotiations after a decision has been made on potential grantees.

In § 97.205 *Eligibility for allocable funds*, the language describing Title I prime sponsor eligible applicants was changed to conform to the definition of eligible applicants in § 97.203. The requirements for Title I prime sponsors was amended to require concurrence from other prime sponsors in the State in whose jurisdiction they propose to operate and to allow interstate programs.

In § 97.211 *Announcement of State planning estimates and invitation to submit Funding Requests*, the heading for this section was changed to reflect the elimination of the Qualifications Statement process. The date of the Secretary's announcement of State planning estimates was changed to "on or about July 1". Reference to the Qualifications Statement was changed to the Funding Request.

Language was added to require eligible applicants to notify the Secretary of their intention to apply for a State allocation.

A review and comment section was added which requires the Department to publish on August 20 of each year a list of all eligible applicants which notified the Department by August 1 of their intention to apply for allocable funds. All eligible applicants wishing to review and comment on the Funding Request of another applicant in its State may request

a copy of the Funding Request from that applicant. Comments on Funding Requests are to be submitted to the Secretary before October 8 of each year.

In § 97.212 *Submission of Qualifications Statement*, the language requiring submission of the Qualifications Statement was eliminated.

Section 97.213 *Review of Qualifications Statement*, was eliminated.

Section 97.214 *Notification of qualified applicants*, was deleted.

Section 97.212 *Preapplication for Federal Assistance*, replaces the original § 97.212, *Submission of Qualifications Statement*.

Language was added to require the submission of the Preapplication for Federal Assistance form, Part I, contained in Federal Management Circular 74-7 in order to be eligible to submit a funding request.

In § 97.213, *Content and description of Funding Request*, (§ 97.215 in the August 6, 1974, FEDERAL REGISTER), language was added to include the eligibility documentation originally required under the Qualifications Statement. The requirement of compliance with OMB Circular A-95 was added to the Assurances and Certifications.

Language describing the Project Operating Plan was replaced with language describing the Program Planning Summary and Budget Information Summary.

In § 97.214, *Submission of Funding Requests*, (§ 97.214 in the August 6, 1974, FEDERAL REGISTER), language was added to require that copies of the Funding Request shall be sent to State clearinghouses and eligible applicants within a State who request a copy. Language was added to require comments on Funding Requests by eligible applicants and State clearinghouses be submitted to the Secretary before October 8, 1975; however, all reviewers will be allowed at least thirty days to submit comments.

In § 97.215, *Review of Funding Requests*, (§ 97.217 in the August 6, 1974, FEDERAL REGISTER) language was added to allow a review by the Department of Health, Education, and Welfare and to allow the Secretary to conditionally designate potential grantees.

The rating criteria were revised to assign a maximum of 50 points for the proposed program and a maximum of 50 points for the applicant's experience in providing CETA-type services.

In § 97.216, *Notification of selection*, (§ 97.218 in the August 6, 1974, FEDERAL REGISTER), language was added to allow the Secretary to invite new applications if no potential grantee is selected in a State, and to require the Secretary to notify State clearinghouses of the decision(s) on selection.

In § 97.218, *Grant award*, (§ 97.220 in the August 6, 1974, FEDERAL REGISTER), language was added to specify the documents which shall constitute the grant agreement.

In § 97.219, *Annual competition*, (§ 97.221, *Option to renew* in the August 6, 1974, FEDERAL REGISTER), language was added to require the Secretary to invite Funding Requests every year in each State except in unusual circumstances.

In § 97.220, *Modification of grant agreement*, (§ 97.222 in the August 6, 1974, FEDERAL REGISTER), language was added to provide consistency with regulations for Title I of the Act on modification of grant agreement.

In § 97.221 *Modification of the Comprehensive Plan for Farmworkers* (was § 97.223 in the August 6, 1974, FEDERAL REGISTER), language was added to provide consistency with the regulations for Title I of the Act relating to modification of the Comprehensive Plan.

In § 97.232, *Eligibility for participation in section 303 programs*, language was added to require that participants be legally able to accept employment in the occupations in which they are receiving training and that they be legally in the country. Also, language was added to allow concurrent enrollment in programs funded under different titles and sections of the Act.

In § 97.233 *Types of program activities available*, language on extended education as a separate activity was deleted and was added under classroom training and other activities. Language was also added to allow post-placement services.

Sections 97.234 *Training allowances*, 97.235 *Wages, Minimum duration of training, and reasonable expectation of employment*, 97.236 *General benefits for program participant's*, were moved to Grant Administration and renumbered § 97.256.

In § 97.237, *Performance Standards*, (§ 97.243 in the August 6, 1974, FEDERAL REGISTER), language was added to make the performance standards in this section bench mark guidelines rather than minimum levels of performance.

In § 97.250, *Grant Administration in general*, the language was revised to clarify which sections apply to public agencies and which to private nonprofit organizations.

In § 97.253, *Reporting requirements*, the language concerning the Project Operating Plan was revised to reflect the two new reporting forms required in its place: the Program Status Summary and the Financial Status Report.

This section combines §§ 97.252, 97.253, 97.254 in the August 6, 1974, FEDERAL REGISTER.

In § 97.255, *Allowable Federal costs*, language on travel restrictions similar to those in Title I of the Act was added to this section. The travel restrictions previously in § 97.259(i) were deleted. The revised travel regulations do not require prior approval for out-of-State travel.

In § 97.2356, *Allowances, wages, and general benefits for program participants*, the language combines §§ 97.234, 97.235 and 97.236 of the August 6, 1974, regulations.

In § 97.259, *Basic personnel standards for grantees and subgrantees*, language was added to emphasize that these standards apply only to private nonprofit organizations. The travel reimbursement restrictions were revised and placed in § 97.255. The language on wages and salaries was revised to allow grantees authority to administer their own salary and wage structure without having to

request salary waivers in most circumstances.

In § 97.261, *Grantee contracts and subgrants*, the language was changed to reference procurement standards in regulations for Title I of the Act as well as those in these regulations and to require subgrantees and contractors to comply with these regulations.

In § 97.265, *Maintenance and retention of records*, the language in the regulations for Title I of the Act making participant and staff names public information has been incorporated by reference into this section.

In § 97.269, *Allowances and reimbursement for board and advisory council members*, language was added to allow grantees to reimburse board and advisory council members whose income falls within the OMB poverty guidelines for lost wages.

Additionally, editorial, stylistic and technical changes were made in this revision.

Title 29 is amended as follows:

1. Section 94.3 of Part 94 is revised by deleting the present Table of Contents for Part 97, Subpart C, and substituting therefor the new Table of Contents for Part 97, Subpart C, so that the revised section reads as follows:

§ 94.3 Consolidated Table of Contents for Parts 94-99.

* * * * *

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

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Part 97, Subpart C, is revised to read as set forth below.

Subpart C—Migrant and Other Seasonally Employed Farmworker Programs

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Sec.	
97.201	Scope and purpose of Title III, Section 303 Programs.
97.202	Scope and purpose of this subpart.
97.203	Definitions.
97.204	Allocation of funds.
97.205	Eligibility for allocable funds.
GRANT PLANNING AND APPLICATION PROCEDURES	
97.210	Grant planning and application procedures in general.
97.211	Announcement of State Planning estimates and invitation to submit Funding Requests.
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97.214	Submission of Funding Requests.
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97.256	Allowances, wages, general benefits, and working conditions for program participants.
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97.266	Program income and limitations on program expenditures.
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ASSESSMENT AND EVALUATION	
97.280	Assessment and evaluation.
ADMINISTRATION REVIEW	
97.290	Purpose and policy.
97.291	Procedure for complaints by eligible individuals and program participants.
97.292	Procedure for complaints arising from the selection of potential grantees.

AUTHORITY: Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93-203, 87 Stat. 839; Pub. L. 93-567, 88 Stat. 1845), secs. 702(a) and 303, unless otherwise noted.

GENERAL

§ 97.201 Scope and purpose of Title III, section 303 Programs.

(a) It is the purpose of Title III section 303, of the Act to provide manpower and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry, which has been substantially affected by recent advances in technology and mechanization. These individuals constitute a substantial portion of the nation's rural manpower problem and substantially affect the entire national economy.

(b) Because of the special nature of the problem faced by migrant and seasonal farmworkers, the programs developed and implemented under this section of the Act shall be administered by the Manpower Administration at the national level. Such programs will be flexible in design and shall have these primary objectives:

(1) *Alternatives to agricultural labor.* Provision of services to migrant and other seasonally employed farmworkers and their families who wish to seek alternative job opportunities to seasonal farmwork, which will equip them to compete in other labor markets and to secure stable year-round employment providing an income above the poverty level.

(2) *Improved agricultural life style.* Provision of services necessary to improve the well-being of migrants and other seasonally employed farmworkers and their families who remain in the agricultural labor market and/or to upgrade their skills to enable them to take advantage of job opportunities created by changing agricultural technology.

§ 97.202 Scope and purpose of this subpart.

(a) The regulations promulgated to carry out the Act are set forth in 29 CFR Parts 94-99 as published in the FEDERAL REGISTER on May 23, 1975 (40 FR 22674). As each substantive title of the Act provides for the establishment of a specific type of program, the regulations promulgated in Parts 94 through 99 provide a separate part for each basic type of activity, and two parts deal with general matters relating to the Act. This subpart deals with all matters pertaining to the implementation and operation of Migrant and Seasonal Farmworker Manpower Programs pursuant to section 303 of the Act. It is designed to contain in itself all the regulatory material under the Act necessary for the operation of section 303 programs except where specific reference is made to other parts of this title. When the provisions of this subpart conflict with the provisions of other regulations under the Act, the provisions of this subpart shall prevail.

(b) Statutory authority for the regulations contained in this Subpart C may be found in sections 303 and 702(a) of the Act, as amended as well as in other substantive provisions of the Act.

§ 97.203 Definitions.

A listing of definitions of terms used in the regulations promulgated to implement the Act is set forth in § 94.4 of this subtitle. Those definitions applicable only to section 303 or having special significance to section 303 are the following:

"Allocation" shall mean the distribution of funds among programs in states according to the procedures specified in § 97.204(c).

"Appropriate amount" for the purposes of committing Title I and/or II funds for farmworkers shall mean an amount proportional to the significance of the farmworkers in the prime sponsor's population; for example, the amount whose ratio to the total Title I funds available to the prime sponsor is equivalent to the ratio of the number of farmworkers to the total number of low-income workers in the prime sponsor's jurisdiction.

"Eligible Applicant," for purposes of receiving funds allocable pursuant to § 97.204(c) of this title, shall mean:

(a) A recognized prime sponsor under CETA Title I having within its jurisdiction a significant segment of migrant and other seasonally employed farmworkers for whom it has committed funds provided under Title I and/or II of the Act in an appropriate amount; or a public agency designated by such prime sponsor to receive section 303 funds;

(b) A private nonprofit organization authorized by its charter or articles of incorporation to provide manpower or such other services as may be funded under this subpart.

"Emergency assistance" shall mean temporary services on an emergency basis which are not immediately available from non-section 303 sources.

"Establishment" shall mean an economic unit, generally at a single physical location, where business is conducted (For example: Farm, orchard, ranch). For the purposes of the "seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

"Farmwork" shall mean work performed for wages in agricultural production or agricultural services (as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions included in industries 01, 02 (excluding 027), and 07 excluding 074, 0752, 0761, and 078).

"Farmworker organization" shall mean a private nonprofit organization directed principally by farmworkers.

"Funding Request" shall mean a formal proposal submitted by an applicant which detail the type and extent of services to be provided to farmworkers and their dependents for consideration by the Secretary for funding under section 303.

"Health care" shall include but is not limited to preventive and clinical medical treatment for farmworkers and their dependents.

"Manpower services" shall mean such services as: (a) Outreach; (b) intake and assessment; (c) orientation; (d) counseling; (e) job development; (f) referral; (g) job placement; (h) transportation; (i) follow-up.

"Migrant farmworker" shall mean a seasonal farmworker who performs or has performed during the preceding twelve months agricultural labor which requires travel such that the worker is unable to return to his/her domicile (accepted place of residence) within the same day.

"Nutritional assistance" shall mean services including but not limited to assisting farmworkers and their dependents to obtain food stamps and vouchers, access to other food programs, fair hearings and limited direct cash purchases of food.

"Planning estimates" shall mean the preliminary allocations announced for the purpose of providing target funding levels for each State.

"Relocation assistance" shall mean the activities necessary to arrange for a family to move to a new abode for the purpose of receiving services and/or training which will lead to alternative job

opportunities to seasonal farmwork. Activities may include but are not limited to: Necessary manpower services; the costs of the actual transfer of goods and property including mileage for the families' travel; emergency assistance; rent subsidies; and other supportive services.

"Residential support" shall mean the provision of temporary housing for families receiving training, supportive services, or post-placement services. The grantee may offer such housing in several ways including but not limited to directly operating a residential facility with all necessary services or through the grantee's subsidizing all or part of the rental and utility costs for an enrolled family.

"Seasonal farmworker" shall mean a person who during the preceding twelve months worked at least 25 days in farm work and worked less than 150 consecutive days at any one establishment. "Seasonal farmworker" includes both migratory and nonmigratory farmworkers, but does not include nonmigratory individuals who are full-time students, or supervisors or other farmworkers.

"Section 303" shall mean the Migrant and Seasonal Farmworker Manpower Programs, section 303, Title III of the Comprehensive Employment and Training Act of 1973 (Pub. L. 93-203, 87 Stat. 839).

"State" includes the Commonwealth of Puerto Rico.

"Supportive Services" shall mean such services as health and medical service, child care, emergency assistance, relocation assistance, residential support, nutritional services, and legal services, designed to improve the well being of those remaining as seasonal farmworkers as well as such services described in § 94.4 (ddd) of this subtitle.

"Target area" shall mean a geographic area to be served by a section 303 grant. Such an area may be a county, multi-county area, a state, or a multi-state area.

"Target population" shall mean farmworkers and their dependents who meet the eligibility criteria set forth in § 97.232.

§ 97.204 Allocation of funds.

(a) *Available funds.* For the purpose of implementing this subpart and pursuant to section 303 of the Act, the Secretary shall reserve, from funds available for Title III programs, funds to serve migrants and other seasonally employed agricultural workers in an amount equal to not less than 5 percent of the amount allocated pursuant to section 103 (a) (1) of the Act.

(b) *National Account.* (1) No more than twenty percent (20%) of the statutory reserve for section 303 activities will be set aside for the National Account, to be used at the discretion of the Secretary for experimental programs; clearing house activity; labor market information; interstate programs; special needs, including but not limited to projects such as permanent housing; programs to meet the needs of emergency situations and changing agricultural technology; and other programs.

(2) Funds from the National Account may be obligated by the Secretary by means of either contracts or grants to private nonprofit agencies or contracts to private profit making organizations. National Account funds obligated to states and local units of government shall be awarded through grants.

(3) The Secretary shall fund programs from the National Account according to procedures deemed advisable by the Secretary, but all National Account programs shall include performance standards specifically designed for those programs.

(4) The provisions of this Subpart C apply in their entirety to programs funded from the National Account, with the exception of §§ 97.205, (Eligibility for Allocable Funds), 97.211 (Allocations), 97.213-97.215 (Selection of Potential Grantees) and paragraph (b) of § 97.237 (Performance Standards).

(c) *State allocations (allocable funds).*

(1) No less than eighty percent (80%) of the funds reserved for section 303 activities shall be allocated for farmworker programs in individual states in an equitable manner using the best data available as determined by the Secretary.

(2) *Hold harmless clause.* No state shall be allocated an amount which is less than 90 percent of the amount of allocable section 303 funds obligated in the prior fiscal year for use in that state. If during any fiscal year the appropriation for section 303 is less than that appropriated in the previous fiscal year, the Secretary reserves the right to suspend the provision's of paragraphs (c) (1) and (2) of this section.

(3) *Allocation Exceptions.* (i) The Secretary reserves the right not to allocate any funds for use in a State whose allocation is less than \$50,000. The Secretary will announce which state(s) will not be allocated funds on or about July 1 of each fiscal year. If the State allocation would be an amount less than \$50,000, the Secretary may allocate \$50,000 for programs in that State.

(ii) Currently funded programs which are unsuccessful applicants for grant funds shall be given notice of termination and at least ninety-days lead time to phase out their operations, but such notice will not bind the Secretary to obligate additional funds. The notification of non-selection shall be the notice of termination and the requirements of § 97.264 are to be followed.

(4) *Funding cycle.* All projects funded through State allocations shall be funded beginning January 1 of each year in accordance with the following funding cycle:

(i) On or about July 1: Announcement of State planning estimates and the invitation to submit Funding Requests for State(s) or area(s) open for competition as provided in § 97.219.

(ii) August 1: Deadline for submission of Preapplication Forms for Federal Assistance forms (3 p.m., e.d.t.).

(iii) September 1: Deadline for submission of Funding Requests (3 p.m., e.d.t.).

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(iv) On or about November 1: Notification of selection as potential grantees.

(v) January 1: Commencement of grant awards.

If the Secretary deems it advisable to alter the funding cycle provided herein a revised funding cycle shall be published in the FEDERAL REGISTER on or about July 1 of any fiscal year.

§ 97.205 Eligibility for allocable funds.

The following organizations and units of government shall be eligible to receive allocable funds available under section 303:

(a) A recognized prime sponsor under CETA Title I having within its jurisdiction a significant segment of migrant and other seasonally employed farmworkers for whom it has committed funds provided under Title I and/or II of the Act in an appropriate amount; or a public agency within such a prime sponsor's geographic boundaries designated by that eligible prime sponsor to receive section 303 funds in its place.

(1) An applicant eligible under paragraph (a) of this section which wishes to apply for consideration for grant funds to operate programs in an area outside the area in which it is eligible to operate under CETA Title I may do so only with the concurrence of the Title I prime sponsor for that area so affected. Such concurrence may be accomplished by means of an agreement that provides for a subgrant from the applicant prime sponsor to the affected Title I prime sponsor or by letter from the affected prime sponsor authorizing the applicant prime sponsor to operate programs in the affected area.

(b) A private nonprofit organization authorized by its charter or articles of incorporation to provide manpower or such other services as are permitted by this subpart.

(c) An organization which wishes to be considered for grant funds to operate programs in more than one State shall submit separate Funding Requests for each state for which it wishes to be considered for funding. An applicant eligible under paragraph (a) of this section which wishes to operate programs in an area outside of its State may do so only with the concurrence of the Title I prime sponsor for that area.

GRANT PLANNING AND APPLICATION PROCEDURES

§ 97.210 Grant planning and application procedures in general.

Sections 97.210-97.220 provide procedures for obtaining and modifying a grant to operate programs under section 303 of the Act. Specifically, these sections describe the procedures in the grant award process from the announcement of invitation to submit Funding Requests, through the grant application process, to review by the Department and approval of the grant.

§ 97.211 Announcement of State planning estimates and invitation to submit Funding Requests.

(a) *Announcements.* (1) *State planning estimates.* On or about July 1 of each fiscal year the Secretary shall announce State planning estimates of resources available to implement section 303 programs.

(2) *States or areas open for competition under section 303.* On or about July 1 of each fiscal year the Secretary shall announce a list of States and/or areas open for competition under section 303 as provided in § 97.219.

(3) *Invitation to submit funding requests.* On or about July 1 of each fiscal year, the Secretary shall invite eligible applicants as defined in § 97.203 interested in receiving funding under section 303 to submit a Funding Request. The invitation will cover only those areas designated by the Secretary as open for competition.

(4) These announcements shall be made in the FEDERAL REGISTER and through the appropriate Assistant Regional Director for Manpower.

(b) *Intention to apply.* (1) Any eligible applicant intending to apply for funds from a State allocation must submit a Preapplication for Federal Assistance form to the Secretary by August 1, of each fiscal year.

(c) *Opportunity for review and comment:* (1) On or about August 20, of each fiscal year, the Secretary shall publish in the FEDERAL REGISTER a list of all eligible applicants which have submitted preapplications for all or part of each State allocation: (2) Eligible applicants wishing to review and comment on the Funding Request of any eligible applicant within their State as listed in the FEDERAL REGISTER pursuant to paragraph (c) (1) of this section must request a copy of the Funding Request from the eligible applicant so listed.

(3) Eligible applicants submitting a Funding Request to the Secretary to be considered for all or part of a State's allocable funds must send a copy of the Funding Request to all other eligible applicants within the State which have requested a copy of the Funding Request pursuant to paragraph (c) (2) of this section.

(4) These copies must be submitted to requesting organizations at the same time the Funding Request is submitted to the Secretary. Funding Requests sent by mail to requesting organizations pursuant to paragraph (c) (2) and (3) of this section shall be sent by registered or certified mail with return receipt requested or if a Funding Request is delivered by hand, the recipient eligible applicant shall provide a written receipt bearing the time and date of delivery.

(5) Comments of Funding Requests shall be submitted to the Secretary at the address provided in § 97.214, within 30 days of receipt of the Funding Request, but no later than October 8, of each fiscal year. A copy of all comments must

also be sent to the concerned eligible applicant by registered mail at the same time.

§ 97.212 Preapplication for Federal Assistance.

(a) An applicant eligible to receive allocable funds available under section 303 shall submit a preapplication to the Secretary. The preapplication will consist of the Preapplication for Federal Assistance form, Part I, contained in Federal Management Circular (FMC) 74-7 (formerly OMB Circular A-102), with an attachment identifying the target area by State and Counties.

(b) Preapplication for Federal Assistance form, Part I, shall be submitted to the offices identified in § 97.214 (a) and (b). If an organization does not submit a Preapplication for Federal Assistance form by August 1, its Funding Request shall not be considered.

§ 97.213 Content and description of Funding Request.

(a) *General.* (1) This section describes the Funding Request forms which applicants shall use to apply for funds under section 303.

(2) Forms and instructions are contained in the Forms Preparation Handbook and its section 303 supplement and are available from the Secretary upon request.

(3) The Funding Request consists of four parts: The Application for Federal Assistance; the Eligibility documentation; the Comprehensive Plan for Farmworkers; and the Assurances and Certifications form.

(b) *Funding Request forms.* (1) *Application for Federal Assistance.* This identifies the applicant and the amount of funds requested. It provides information concerning the area to be served and the number of farmworkers expected to benefit from the program. The form provided in Federal Management Circular 74-7, Part I, grant application for nonconstruction programs, shall be used with such other forms, as may be required.

(2) *Eligibility documentation.* The following documents shall be submitted by an applicant to meet the eligibility requirements for section 303. In addition, the Secretary shall develop a form to be used by incumbent section 303 grantees and by applicants considered eligible in the previous fiscal year, which will indicate and briefly describe changes in eligibility documentation.

(i) A statement indicating the legally constituted authority under which the organization functions;

(ii) An employer identification number from the Internal Revenue Service; and, for private nonprofit applicants, proof of their tax-exempt status;

(iii) A certification by the chief fiscal officer of a public organization or by a CPA for private nonprofit organizations attesting to the adequacy of the applicant's accounting system, if applicable (refer to § 97.251 to determine applicability);

(iv) A copy of the Comprehensive Manpower Plan component which describes CETA Titles I and/or II services to be made available to farmworkers for the fiscal year for which funds are requested (for CETA prime sponsor applicants only) pursuant to § 97.205(a).

(v) Documentation of concurrences from affected prime sponsor(s), as described in § 97.205(a) (for CETA prime sponsor applicants only).

(3) *Comprehensive Plan for Farmworkers.* The Comprehensive Plan for Farmworkers is a detailed explanation of how the applicant proposes to use section 303 funds for farmworkers within its target area. Upon incorporation into the grant agreement, the amended Comprehensive Plan for Farmworkers will become the basis for programmatic and fiscal accountability of the section 303 grant. The Comprehensive Plan for Farmworkers consists of the Narrative Description of the Program, the Program Planning Summary, and Budget Information Summary described below:

(i) *Narrative description of program.* The Narrative Description of the Program analyzes the manpower and social problems of the target population within the target area to set priorities and goals, describes proposed program activities and delivery systems to meet those goals, proposes performance standards for all program activities, and projects the results which may be expected from the program. The Narrative Description of the Program requires a detailed justification and description of each program activity, including the following specific items (the Forms Preparation Handbook is a guide for completing these items):

(A) Objectives and needs for assistance:

(1) Policy statement on purpose of program;

(2) Description of economic conditions;

(3) Analysis of labor market and social service situation;

(4) Statement of number of farmworkers and dependents to be served; and

(5) Goals and priorities.

(B) Program design and results expected:

(1) Statement of strategy for accomplishing goals;

(2) Detailed description of each program activity and service, including costs, manner of delivery, specific objectives, and performance standards; and

(3) Enumeration of objectives and performance standards related to goals identified in Part A of the Narrative Description of Program.

(C) Approach:

(1) Description of the planning system, participation of and role of the governing board or advisory councils in planning and implementation;

(2) A copy of the by-laws or other official documents showing the structure of pertinent Boards, Area Councils, or Advisory bodies;

(3) Description of the delivery system;

(4) Description of recruitment and eligibility verification methods;

(5) Description of the applicant's administrative system;

(6) Resumes of key management staff;

(7) Justification of section 303 funded administrative costs as defined in § 97.255, in excess of 20 percent;

(8) Documentation of past experience; and

(9) A description of linkages with other manpower programs, other social service programs, and farmworker organizations, including letters of commitment for all services to be provided section 303 participants at no cost to section 303.

(D) Geographic location served. Description of the geographic locations within the target area in which the applicant has operated and in which the proposed program will operate, and in which it will recruit and refer participants.

(E) Detailed Budget. For each program activity, section 303 grantees will be required to submit an itemized budget of allowable costs, as defined in §§ 97.255 and 97.257. The CETA and the non-CETA share of the total costs shall be noted for each program activity. For all section 303 funds requested, personnel and nonpersonnel costs shall be itemized for each program activity proposed and for the cost category of administration. This itemization shall include individual operational staff salaries, staff fringe benefits, staff travel, equipment purchases, etc.

(i) *Program planning summary.* The Program Planning Summary requires an applicant to provide a quantitative statement of enrollment levels, the number of participants to be served by each program activity (classroom training, on-the-job training, work experience, services to participants, and other activities), and outcomes for program participants. It also requires identification of the number of individuals to be served within the target population.

(ii) *Budget information summary.* The Budget Information Summary requires an applicant to provide a quantitative statement of planned expenditures and obligations. It requires an applicant to indicate yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services); the applicant is to reflect planned quarterly obligations and expenditures by program activity.

(4) *Assurances and certifications.* The Assurances and Certifications form is a signature sheet on which the applicant assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars from the General Services Administration (GSA). Signature of the Assurances and Certifications form by private non-profit section 303 Eligible Applicants and Grantees shall mean that section 303 funds shall be expended in compliance with Federal Management Circulars 74-4 and 74-7; provided that if a Federal Management Circular applicable to the administration of grants to non-profit organizations becomes effective before

the grant period, such Circular shall supersede any provisions of FMC 74-4 and 74-7 (made applicable to private non-profit organizations by this subpart) which conflict with the provisions of such Circular. The Assurances and Certifications form is contained in the Forms Preparation Handbook. The following is a summary of the items which are described in detail on that form:

(i) Compliance with the Act and regulations issued under the Act

(ii) Compliance with Federal Management Circulars 74-4 and 74-7 and OMB Circular A-95;

(iii) Legal authority to apply for a section 303 grant;

(iv) Nondiscrimination (section 703 (1));

(v) Compliance with Title VI and VII of the Civil Rights Act of 1964;

(vi) Compliance with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970;

(vii) Compliance with the Hatch Act and restrictions on political activities (as applicable);

(viii) Prohibition on use of position for private gain;

(ix) Access of Comptroller General and Secretary to records and documents pertaining to the Act;

(x) Nonsupport of religious facilities;

(xi) Maintenance of required health and safety standards;

(xii) Provision of appropriate worker's compensation to participants;

(xiii) Use of funds under the Act to supplement rather than supplant funds otherwise available, prohibition on displacement of employed workers by participants employed under the Act, and prohibition on impairment of existing contracts for services;

§ 97.214 Submission of Funding Request.

(a) An eligible applicant shall submit three copies of the Funding Request to the address listed below:

U.S. Department of Labor
Manpower Administration
Patrick Henry Building—Room 7122
601 D Street, NW
Washington, D.C. 20213
ATTN: Chief, Migrant and Seasonal Farmworker Division

(b) Two copies of the Funding request shall also be submitted directly to the appropriate Assistant Regional Director for Manpower at the same time the three copies are submitted to the above address and labeled: Funding Request for CETA 303 Farmworker Program.

(c) (1) Copies of the Funding Request shall also be submitted to the appropriate State and/or area clearinghouse(s) and eligible applicant(s) which request an opportunity for review and comment as provided in § 97.211(c) at the same time the Funding Request is submitted to the above address.

(2) All comments from clearinghouses and other reviews shall be submitted to the above address by October 8. However, no notification of selection of potential grantee(s) for a State or area

will be made until all clearinghouses and other reviews have had at least 30 days from receipt of the Funding Request from that State or area to submit comments.

(d) Funding Requests sent by mail to the address provided in paragraphs (a) and (c) of this section must be registered or certified with return receipt requested. In order to be considered to be submitted on time by the Manpower Administration, the following conditions must be met:

(1) The Funding Request must be registered or certified by the Postal Service on or before 3 p.m. September 1. In the event that September 1 falls on a Sunday, on a holiday, or at any other time during which the Postal Service is not operational, it shall be the responsibility of the applicant to properly register and certify the Funding Request so that it will bear a post mark prior to 3:00 p.m. September 1. No deviation in this condition will be made by the Manpower Administration, and all Funding Requests received bearing postmarks after 3:00 p.m. September 1, shall be returned without consideration.

(e) Funding Requests delivered by hand must be taken to the address given in paragraph (a) of this section. All applicants who deliver a Funding Request will be given a receipt bearing a time and date of delivery. Funding Requests will be accepted daily between the hours of 8:15 a.m., and 4:45 p.m., Washington, D.C. time, except Saturdays, Sundays, and holidays. Funding Requests will not be received after 3 p.m., e.d.t., on September 1. In the event that September 1 falls on a Saturday, Sunday or, holiday, it shall be the responsibility of the applicant to deliver the Funding Request so that it will be received prior to 3 p.m., e.d.t., September 1. No deviation in this condition will be made by the Manpower Administration and no Funding Request delivered after 3 p.m., e.d.t., September 1 shall be accepted.

§ 97.215 Review of Funding Requests.

(a) *Standards for reviewing Funding Requests for allowable funds.* Funding Requests submitted by applicants shall be reviewed and evaluated by the Secretary to determine those judged to be most qualified to receive a grant under section 303 for program operations in a particular target area according to the procedures outlined in paragraph (a) of this section. In addition, when appropriate under section 306 of the Act, Funding Requests shall be reviewed by the Secretary of the Department of Health, Education, and Welfare (DHEW) or his/her designee in accordance with section 306 of the Act.

(1) *Determination of eligibility.* The Secretary shall review the documentation described in § 97.213(b)(2) to determine the eligibility of each applicant and shall: (i) Designate the organization as eligible under section 303; or (ii) determine that the organization is conditionally eligible pending submission of further documentation; or (iii) determine that the organization is ineligible under section 303. An organization de-

termined to be ineligible shall not be reviewed further.

(2) *Review of Comprehensive Plan for Farmworkers.* The Comprehensive Plans for Farmworkers submitted by applicants shall be reviewed and evaluated by the Secretary to determine those applicants which will be designated potential grantees for a particular target area.

(i) Factors for evaluating Plans. Plans shall be evaluated by the Secretary based on the criteria listed in this paragraph.

(ii) Each of the following factors is assigned a numerical range which shall be used to rank Plans. A separate rating within the identified range for each factor shall be assigned to each Plan based on information provided in the Plan. The sum of the ratings shall constitute the overall rating of the Plan. The following factors shall be considered in assigning ratings:

(A) *Program development.—Range 0-10.* The program development factor is a rating of the proposed program's potential impact on the full range of farmworker needs and its fulfillment of the intent of section 303. The rating will consider the following elements:

(1) *Training.* The proposed program provides alternatives for farmworkers to leave farmwork by offering training in a number of occupations providing a wage above the poverty level into which participant can be successfully placed within the existing economic and labor market conditions in the target area. The proposed program provides alternatives for farmworkers to secure full time agriculture work providing an income above the poverty level.

(2) *Services.* The proposed program provides supportive services which are necessary to assist farmworkers in leaving seasonal farmwork and/or provides services which will improve the living and working conditions of farmworkers remaining in agriculture.

(3) *Program impact.* The proposed program will directly impact on the problems and needs of farmworkers in the particular target area. The highest rating of 10 shall be awarded to an organization which has adequately analyzed the economic situation of the target area and identified the social and economic needs of the target population, and has developed a program based on this analysis and identification, which provides service including training and supportive services that can be successfully implemented within the existing target area economic and labor market situations to meet these needs.

(B) *Delivery system.—Range 0-10.* The delivery system factor is a rating of the applicant's system for delivering the comprehensive program services and its potential ability to provide effective and timely services to farmworkers. This rating shall include the potential effectiveness of subgrantees and contractors in providing services specifically for farmworkers.

(1) The highest rating of 10 shall be awarded to an organization whose delivery system is efficiently integrated and whose subgrantees' and contractors' de-

livery systems are coordinated with the applicant's into a functioning unit.

(C) *Administrative capability.—Range 0-10.* The administrative capability factor is a rating of the applicant's management experience and efficiency. The rating shall include consideration of the managerial expertise of the organization's present and proposed staff in managerial and decisionmaking positions. This factor shall also consider administrative efficiency based on comparative administrative cost. The highest rating of 10 shall be awarded to organizations which can demonstrate the capability to administer efficiently a multi-activity delivery system with comparatively low administrative costs.

(D) *Responsiveness to farmworkers.—Range 0-10.* The responsiveness to farmworkers factor is a rating of the organization's active and visible involvement of farmworkers in its planning and the proposed involvement of farmworkers in implementation of its proposed program of services. The rating will also consider the sensitivity of the organization's present and proposed staff in program positions. The rating will consider the following elements:

(1) *Involvement of Farmworker Boards/Advisory Councils.* This factor is a rating of the involvement of farmworkers on applicant's governing boards and advisory councils in the planning, implementation and operation of the proposed program. This involvement shall be manifested by the responsibilities incorporated in the board's or advisory council's by-laws and the farmworker representation on these bodies. The highest rating of seven shall be awarded to organizations whose boards or advisory councils have responsibility for reviewing and making recommendations on section 303 plans, monitoring section 303 program operations, recommending corrective action, and having established mechanisms for effecting necessary corrective actions, and whose membership includes farmworkers.

(2) *Staff sensitivity.* The sensitivity factor is a rating of the ability of the organization's staff to relate to farmworkers and be responsive to their needs. The highest rating of 3 shall be awarded to those organizations whose staffing includes ex-farmworkers and reflects the ethnic, racial, and sexual composition of the target population.

(E) *Linkages and coordination.—Range 0-10.* The linkages and coordination factor is a rating of an organization's demonstrated and documented programmatic ties with appropriate State and local agencies, private non-profit organizations, and other groups providing resources and services to farmworkers. The highest rating of 10 shall be awarded to applicants which would operate programs incorporating services at no cost to section 303 from other agencies for the purpose of providing manpower and other services to participants and whose Funding Request includes letters of commitment for these services.

(F) *Review of experience.*—Range 0-50. The organization's past experience in providing a comprehensive program of manpower and other services shall be reviewed and evaluated by the Secretary to determine those judged to be most qualified to receive a grant under section 303 for program operations in a particular target area. A numerical range of 0-50 shall be used to rank the experience of applicants.

(i) *Existing section 303 grantees.* For existing section 303 grantees competing as eligible applicants, the review of experience will be based on the record of performance in delivering section 303 services. The Secretary shall review and evaluate the grantee's performance through review of reports, monitoring and/or auditing of the program. The highest rating of 50 may be awarded to a grantee which has provided an effective program of services for farmworkers; the factors in this ratio shall include but not be limited to (A) exceeding all of the individual grant performance standards in its Comprehensive Plan for Farmworkers; (B) meeting planned performance levels on its Program Planning Summary, and Budget Information Summary for the prior fiscal year (or on its Project Operating Plan); and (C) having met the requirements for program operations and grant administration of this Subpart C.

(ii) *Other eligible applicants.* For applicants who are not section 303 grantees, the review of experience will be based on information submitted in the Funding Request. In order to receive a rating for experience, an applicant must have adequately identified the funding source(s) to which it was accountable. The assertions of success should be adequately substantiated and documented in the Funding Request, including official evaluations, if available. The Secretary reserves the right to verify the information submitted in the Funding Request and to obtain additional information if the information submitted is not adequate for the purpose of this review. The following factors shall be considered in assigning ratings:

(A) *Program experience, regardless of nature of clientele.*—Range 0-40.

(1) The organization has operated an effective comprehensive program of services, including but not limited to the program activities and supportive services described in paragraphs (c) through (g) of § 97.233.

(2) The organization has provided training and other manpower services effectively.

(3) The organization has met the stated objectives for program performance of all program activities it has provided.

(4) The organization has effectively administered a multi-activity delivery system, if applicable.

(5) The administration and management of the program has conformed to acceptable management standards, including but not limited to those set forth in the Grant Administration sections of

this Subpart C and Part 98 of this subtitle.

(B) *Farmworker experience.*—Range 0-10. The organization or its subgrantee(s) has provided services specifically for farmworkers. A maximum rating of 10 shall be awarded for farmworker clientele. The highest rating of 50 shall be awarded to an organization which has operated a comprehensive multi-activity program of manpower and other services, whose assertions of effectiveness are supported by individuals from the funding source(s) and/or by an official evaluation, and has served farmworkers. The highest rating of 50 shall also be awarded to prime sponsors whose experience meets the standards presented above and whose subgrantees include farmworker organization(s).

(b) *Selection of potential grantees.* As a result of the procedures set forth in paragraph (a) of this section, of consideration of the potential effectiveness and efficiency of the proposed programs, and of comments received pursuant to § 97.214(c) the Secretary shall designate potential grantees to receive a grant under section 303 for program operations in a designated target area. The consideration of the potential effectiveness and efficiency of the proposed programs includes but is not limited to the following: (1) Cost effectiveness and, (2) service delivery consideration.

The Secretary may conditionally designate organizations as potential grantees, pending resolution of their eligibility status, submission of additional documentation, or changes in the proposed program.

§ 97.216 Notification of selection.

(a) (1) Potential grantees selected as a result of the procedures set forth in § 97.215 shall be so notified by the Secretary. The notification shall invite each potential grantee to negotiate the final terms and conditions of the grant, shall establish the time and place of the negotiation, and shall indicate the State or area to be covered by the grant. Changes in the proposed program's target area and/or funding level are not appealable under the provision of §§ 97.290-97.292.

(2) In addition, clearinghouses submitting comments on the application will be notified of the selection of the potential grantee. Where a clearinghouse has recommended against the selection of the potential grantee, the notification will include an explanation as to the reasons that the recommendations addressed to substantive merits of the proposal could not be accepted.

(b) In the event that no Funding Requests are received for a specific State or area or that those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the Secretary reserves the right to invite submission of new proposals for that State or area. Such invitation shall be announced in the FEDERAL REGISTER. In the event of a second invitation, the review criteria for allocable funds need not apply, and funds may be awarded at the discretion of the Secretary.

(c) An applicant whose Funding Request is not selected by the Secretary to receive section 303 grant funds shall be notified in writing and shall be provided the names and addresses of potential grantees for its State.

(d) Applicants who submit Funding Requests which have been rejected may resubmit a new Funding Request when the State(s) or area(s) in which they are interested in providing services is announced by the Secretary as open for re-competition.

(e) Any applicant whose Funding Request is considered and rejected by the Secretary for a section 303 grant may request an administrative review as provided in § 97.290 and § 97.292.

§ 97.217 Negotiation of final grant.

(a) Notice of selection as a potential grantee does not constitute approval of the totality of the Funding Request, the funding level sought, nor of the target area requested.

(b) Prior to the actual award of a grant, representatives of the potential grantee and of the Secretary shall enter into negotiations. The subjects of negotiations shall include but shall not be limited to: (1) Program components; (2) subgrantees; (3) funding levels; (4) program objectives; (5) performance levels and standards; and (6) administrative systems.

(c) The Secretary reserves the right to decline to fund any program component(s) or subgrantee(s) or contractor(s) listed in a potential grantee's Funding Request, to add subgrantees, and to modify the target area to be served.

(d) In the event that the negotiations do not result in an acceptable negotiated grant for a section 303 program in a State or area, the Secretary reserves the right to terminate the negotiation and (1) decline to provide funds for section 303 programs in that State or area for that fiscal year or (2) invite submission of new proposals for the State or area. The invitation to submit new proposals shall be announced in the FEDERAL REGISTER.

§ 97.218 Grant Award.

(a) At the conclusion of negotiations a grant document which incorporates the results of all negotiations shall be prepared in conformity with FMC 74-7.

(b) The Secretary shall make a grant award by providing the grantee with a grant agreement consisting of the Grant Signature Sheet, the Assurances and Certification form, the Program of Work, the Program Planning Summary, Budget Information Summary, and Grant Conditions.

(1) The Grant Signature Sheet specifies the amount obligated by the Department, delineates the terms of the grant, and contains the signatures of the Secretary and the grantee official.

(2) The Assurance Certification form is described in § 97.213(b)(4).

(3) The Program of Work shall be a summary statement of the Comprehensive Plan for Farmworkers and shall incorporate the amended Comprehensive Plan for Farmworkers by reference.

(4) Grant Conditions are special restrictions placed on the grant by the Secretary.

(c) The grant agreement becomes effective upon signature by the Secretary.

(d) In signing the Grant Signature Sheet, the grantee official indicates the grantee's acceptance of the grant and of all grant conditions incorporated therein. The grant agreement becomes operational upon signature by both the Secretary and the grantee official.

§ 97.219 Annual competition.

A section 303 grant obtained on the basis of competition will generally be recompleted the following fiscal year. However, in a limited number of circumstances, the Secretary may determine not to reopen competition. The Secretary reserves the right to renew a grant for an additional 12-month period. No grant shall be operated in any State or area for a period of more than 24 months without recompetition.

§ 97.220 Modification of Grant Agreement.

(a) A modification to the grant agreement is required when there is a change in (1) the terms of the grant, (2) the amount funded by the grant, or (3) the assurances and certifications included in the grant agreement. The procedures for modification of the grant agreement shall be undertaken as described in paragraph (b) of this section.

(b) The grant signature sheet shall be used as the instrument to modify an existing grant agreement when there is a change in (1) the terms of the grant, (2) the amount funded by the grant, or (3) the assurances and certification included in the grant agreement.

(c) When the terms or amount funded by the grant are changed, the grantee shall also submit the revised portion of its Comprehensive Plan for Farmworkers to specifically identify the changes. Modifications of the Comprehensive Plan for Farmworkers are described in § 97.221.

§ 97.221 Modification of Comprehensive Plan for Farmworkers.

(a) *General.* Grantees may make three types of modifications to Comprehensive Plans for Farmworkers: Major, minor, and narrative. The Secretary also may require a modification as described in paragraph (e) of this section.

(b) *Major plan modification.* (1) When a plan modification falls into any of the following categories, it will be considered to be a major plan modification:

(i) The cumulative transfer of funds among program activities or cost categories exceeds \$10,000 or 5 percent of the total grant budget whichever is greater; except as provided in § 97.255 (e) (5) (i); or

(ii) The cumulative number of participants to be served, planned enrollment levels for program activities, planned placement terminations, or participants to be served is to be increased or decreased by 15 percent or more.

(iii) The addition or termination of any subgrantee, contractor, or program operators.

(2) A grantee desiring a major modification shall submit a revised Program Planning Summary, Budget Information Summary, and a narrative explanation of the proposed changes as appropriate to the Secretary, with a copy to the appropriate ARDM.

(c) *Minor plan modification.* A grantee may make any change in its Program Planning Summary or Budget Information Summary which is not a major modification as described in paragraph (b) of this section without prior approval, but shall show any such change in the first Program Status Summary or Financial Status Report as appropriate submitted to the Department after the change has been made. At the same time that this report is submitted, an updated Program Planning Summary or Budget Information Summary shall also be submitted to the Secretary with a copy to the appropriate ARDM; only those lines and columns affected by the modification need to be shown.

(d) *Narrative Modification.* (1) Except as provided in paragraph (d) (2) of this section, when a grantee chooses to replan and to change a portion of its narrative description which does not necessitate a commensurate change on the Program Planning Summary or Budget Information Summary, it may submit such a change to the Secretary with a copy to the appropriate ARDM for incorporation into its plan without prior approval.

(2) A narrative modification requires prior approval of the Secretary under the following circumstances:

(i) The proposal of any change from the approved plan in the allowance payment system including but not limited to, the conditions for waiver; or

(ii) The proposal of any substantial changes in program design including but not limited to changes in the design in program activities or changes in target area(s).

(e) *Secretary required modification.* (1) Modification or further conditions may be required by the Secretary as necessary to assure compliance with the regulations and the approved plan.

(2) (i) A grantee is responsible for assuring that its programs are responsive to the changing economic situation in its target area and for requesting modifications to its Comprehensive Plan for Farmworkers which reflect these changes. Such changes shall be considered major, minor, or narrative modifications as described in paragraphs (b), (c), and (d) of this section.

(ii) Procedures pertaining to each kind of modification as specified in paragraphs (b), (c), and (d) of this section shall be followed when that modification is initiated under this paragraph. Each request for a modification pursuant to this paragraph must contain adequate documentation and analysis to support the request.

PROGRAM OPERATIONS

§ 97.230 General.

Sections 97.230-97.237 set forth the program operation requirements for grantees under section 303. The utilization of funds under section 303 is conditioned upon adherence to the Act, terms and conditions of the grant, the regulations under the Act and other applicable law.

§ 97.231 Basic responsibilities of grantees under section 303.

A grantee shall be responsible for: (a) Compliance with plans and assurances, Grant Conditions, and official written communications from the Department;

(b) Compliance with the Grant Administration sections of this Subpart C;

(c) Designing training which is, to the maximum extent feasible, consistent with every participant's fullest capabilities and will lead to employment opportunities enabling every participant to become economically self-sufficient;

(d) Designing program activities which will, to the maximum extent feasible, contribute to the occupational development and upward mobility of every participant;

(e) Providing services only to eligible farmworkers as defined in § 97.232 and their dependents;

(f) Providing training only to participants who are legally able to accept employment in the occupation for which training is being provided;

(g) Advising every participant of his or her rights and responsibilities prior to entering the program and granting the opportunity for an informal hearing as provided in § 97.234; and

(h) Making maximum efforts to achieve the goals set forth in the Program of Work.

§ 97.232 Eligibility for participation in section 303 programs

(a) Eligibility for participation in section 303 programs is limited to farmworkers and their dependents who have, during the 18 months preceding their application for enrollment: (1) Received at least 50 percent of their total earned income as agricultural workers (see § 97.203 "Definitions—Farmworker" and paragraph (a)(2) of this section) during any consecutive 12-month period; and

(2) Been employed in agriculture on a seasonal basis (time spent and income earned by agricultural workers while employed in food processing establishments may be counted as agriculture-related employment for eligibility purposes); and

(3) Been identified as economically disadvantaged as defined below:

(i) Member of a family which receives cash welfare payments; or

(ii) Member of a family whose annual family income in relation to family size does not exceed the poverty level determined in accordance with criteria established by the Office of Management and Budget (OMB). The "nonfarm family"

tables shall be used in determining the poverty level for farmworker families.

(b) It shall be the responsibility of the grantee to establish the necessary procedures to ensure that participants meet the above eligibility criteria. Application forms will be completed for all participants, and the forms must contain sufficient information to determine whether or not the applicants meet the prescribed eligibility criteria.

(c) Citizenship shall not be used as a criterion to prevent permanent resident aliens from participating in a program to the extent consistent with applicable State or local law. However, no services shall be provided to illegal aliens.

(d) Participants in programs authorized under CETA Titles I, II, and VI and under other sections of Title III who meet the eligibility criteria for section 303 at the time of their enrollment may also be transferred into or enrolled concurrently in the section 303 programs. Section 303 participants who met eligibility criteria for Title I at the time of their enrollment may also be transferred into or enrolled concurrently in the Title I program (§ 95.32(f) of this title).

§ 97.233 Types of program activities available.

(a) A grantee may provide any type of activity consistent with the purpose of section 303 of the Act. Such activities include but are not limited to the placement of farmworkers and their dependents in jobs above the poverty level, training, education, and other services needed to enable a farmworker to improve his or her well-being and economic self-sufficiency. A program funded under section 303 may include any activity described in paragraphs (c), (d), (e), (f), (g), and (h) of this section.

(b) A program funded under section 303 may not utilize section 303 funds to implement public service employment programs as described in Part 96 and 99 of this title or to publish a newsletter in violation of the provisions of § 98.23 of this Subtitle.

(c) *Classroom training.* (1) This program activity is any training conducted in an institutional setting designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, including GED (General Education Development) opportunities to earn the equivalent of a high school diploma for farmworkers who dropped out of school; and the provision of other courses, for example, remedial education. Grantees whose target populations include a significant number of persons of limited English-speaking ability should include provisions for training in the primary language of such persons and/or training in English-as-a-second-language or both.

(2) Occupational training shall be designed for occupations in which skills shortages exist (sec. 105(a)(6) and for which there is reasonable expectation of employment (sec. 703(10)). In making

these determinations, a grantee shall utilize available community resources such as the local SESA office, the National Alliance of Businessmen, and similar organizations.

(3) *Allowances.* Allowances and other benefits as provided in § 97.256 may be paid to participants receiving training or education provided that such allowances shall not be paid for any course having a duration of 2 weeks or less or more than 104 weeks.

(4) *Training agreements.* Vocational classroom training may be supported with section 303 funds. In order to obtain such classroom services, grantees may negotiate either financial or nonfinancial agreements on either a class size or individual referral basis with local educational institutions or boards.

(d) *On-the-job training.* (1) On-the-job training (OJT) is training conducted in a work environment designed to enable individuals to learn a bonafide skill and/or qualify for a particular occupation through demonstration and practice. Such training should be conducted on a "hire first, train later" basis, or with reasonable assurance of ultimate placement with an employer other than the training organization. Training shall be designed to lead to the maximum development of participants' potentials and to their economic self-sufficiency.

(2) *Inducements to employers.* Grantees may provide payments or other inducements to public or private employers for the bona fide training and related costs of enrolling individuals in the program; provided that payments to employers organized for profit are only made for the costs of recruiting, training and supportive services which are over and above those normally provided by the employer. Direct subsidization of wages for participants employed by private employers organized for profit is not an allowable expenditure (sec. 101(5)).

(3) *Labor organization consultation.* Appropriate labor organizations shall be consulted in the design and conduct of on-the-job training programs where collective bargaining agreements exist with the employer.

(4) *Participant benefits.* Wages and other benefits provided to OJT participants shall be in accordance with conditions specified in § 97.256.

(e) *Work experience.* (1) Work experience is a work assignment with a public or private nonprofit employing agency. It shall be designed to enhance the potential of participants in obtaining a planned occupational goal.

(2) Program outcomes for work experience participants include (i) return to school; (ii) enrollment in post-secondary education; (iii) enlistment in the military services; (iv) enrollment in manpower training; and (v) placement in subsidized or unsubsidized employment.

(3) Work experience in the private for profit sector is prohibited.

(4) *Participant benefits.* Each participant in a work experience activity shall receive wages. Wages shall be commensurate with such factors as the types of

work performed, the geographical region of the program, and the skill proficiency of the participant, provided that a participant's hourly rate of pay shall be at least the highest of (i) the minimum wage prescribed by State or local law for similar employment or (ii) the minimum hourly wage set out under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Wages in the Commonwealth of Puerto Rico, shall be consistent with the Federal, State, or local law otherwise applicable. Participants in work experience activities shall be provided workmen's compensation and other fringe benefits as specified in § 97.256.

(f) *Services to participants.* This program activity is designated to provide those services which are needed: (1) To enable farmworkers and their dependents to obtain or retain employment or to participate in other program activities leading to their eventual placement in unsubsidized non-seasonal agricultural employment; or (2) To assist those farmworkers, who remain as seasonal agricultural employees, in improving their well-being.

(3) Such services may include, but are not limited to, the following:

- (i) *Manpower Services*
 - (A) Outreach;
 - (B) Intake and assessment;
 - (C) Orientation;
 - (D) Counseling;
 - (E) Referral to non-303 funded training;
 - (F) Job development;
 - (G) Job placement;
 - (H) Transportation; and
 - (I) Follow-up.
- (ii) *Supportive Services* (Training and non-training related.)
 - (A) Health and medical services;
 - (B) Child care;
 - (C) Emergency assistance;
 - (D) Relocation assistance;
 - (E) Residential support;
 - (F) Nutritional services;
 - (G) Assistance in securing bonds;
 - (H) Adult basic education;
 - (I) Family counseling;
 - (J) Family planning services, *Provided*, That such services are made available only on a voluntary basis and are not to be a prerequisite for participation in or receipt of any service of benefit from the program; and
 - (K) Legal services.

(iii) *Post-placement service.* Manpower and supportive services as described in paragraphs (f)(3)(i) and (ii) of this section may be provided as appropriate to terminated participants who have been placed in unsubsidized employment. These services shall be provided at the discretion of the grantee and shall enable the terminated participant to retain employment. Such service may be provided during the 30-day period following a participant's termination from the program.

(iv) *Participant benefits.* Allowances as described in § 97.256 may be paid to participants enrolled in manpower services as described in this paragraph (f)(3) of this section when such services are

a component of another activity as described in § 97.233 or when such services are regularly scheduled as the only activity in which the participant is enrolled.

(g) *Other activities.* (1) These activities are manpower activities which are not described in the categories above or manpower-related activities designed to enhance the economic self-sufficiency of individuals who are eligible to participate in programs funded under section 303. This activity includes but is not limited to high school equivalency programs (HEP) and to tuition assistance projects (extended tuition support programs and other opportunities in post-secondary education). No individual may be a participant in a tuition support program for more than 2 years.

(2) The approved Comprehensive Plan for Farmworkers must describe the basic design, and provide performance standards and a detailed budget for each of the "Other Activities" to be undertaken.

(3) *Participant benefits.* Allowances as described in § 97.256 may be paid to a participant enrolled in "Other Activities" as described in this paragraph (g) of this section when such activities are a component of another activity described in § 97.233 or when such activities are regularly scheduled as the only activity in which the participant is enrolled and are described in the approved Comprehensive Plan for Farmworkers.

(h) *Combined activities.* A participant enrolled in any activity funded under the Act may be enrolled simultaneously in any other activity as a component of the participant's primary activity. The primary activity constitutes any activity in which the participant is enrolled for more than 50 percent of the scheduled time.

§ 97.234 Complaint procedure.

(a) Each grantee shall establish a complaint or grievance procedure for resolving any issue arising between it (including any subgrantee or contractor) and a participant or an individual denied participation under section 303.

(b) Such procedure shall include an opportunity for an informal hearing, and a prompt determination of any issue which has not been resolved in an informal manner. When the grantee proposes to take an adverse action against a participant, such procedures shall also include a written notice setting forth the grounds for any adverse action proposed to be taken by the grantee and giving the participant an opportunity to respond. Final determinations made after an opportunity to respond shall be so identified and provided to the participant in writing.

(c) Any person subject to the issue resolution requirements of this section may initiate the procedures provided in § 97.291(b) only after all remedies provided under paragraphs (a) and (b) of this section have been exhausted.

§ 97.235 Training for low wage industries; relocation of industries.

No participant may be enrolled in any activity or service under this Act in any

low wage industry in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high, nor may any authority conferred by this Act be used to assist in any relocation of an establishment from one area to another unless the Secretary determines that such relocation will not result in an increase in unemployment in the area of original location or any other area where the business entity conducts operations (sec. 704(a)).

§ 97.236 Cooperative relationships between grantee and other manpower agencies.

(a) Each grantee shall, to the extent feasible, establish cooperative relationships or linkages with other manpower and manpower-related agencies in the area within its jurisdiction, in particular, with agencies operating programs funded through the Department (sec. 105(a)(3)(D)).

(b) The establishment of such cooperative relationships or linkages shall include, at a minimum, contacting all appropriate Title I Prime Sponsor(s) and farmworker programs, if any, in the target area prior to implementing the section 303 program of services and developing working relationships with them.

(c) Grantees shall, to the extent feasible, notify the appropriate apprenticeship agency of training activities in apprenticeable occupations (sec. 105(a)(3)(D)).

(d) Any grantee which intends to provide services under the Act to recipients of Aid to Families with Dependent Children (AFDC) should coordinate such services with the local sponsor of the Work Incentive Program, if any, to assure that the delivery of services under this Act is consistent with the WIN requirements. The provision of comprehensive manpower services to recipients of AFDC who are required to register for the WIN program may be affected by provisions of Title IV of the Social Security Act. Limitations on length of training, requirements to accept work in lieu of training, and other regulatory requirements may affect the AFDC recipient's participation in programs under the Act.

§ 97.237 Performance Standards.

(a) (1) The purpose of this section is to establish comparative standards of performance for projects and activities funded under section 303. The Secretary will develop comparative performance standards, which will set national guidelines to serve as bench marks for the development and negotiation of individual grant performance standards in the grant agreement. The comparative performance standards will include, but are not limited to, the standards set forth in paragraph (b) of this section. The Secretary shall apply these standards when evaluating the quality and effectiveness of the components of section 303 programs.

(2) The performance standards contained in the individual grant agreement shall constitute the performance stand-

ards for that grant. For those projects and activities for which no comparative performance standards are provided in paragraph (b) of this section, the grant agreement shall specify levels of performance. Individual grants may include performance standards, developed by the grantee and approved by the Secretary, which will be in lieu of one or more of the comparative performance standards set forth in paragraph (b) of this section. In addition, the comparative performance standards are not intended to cover fully the requirements of local program operations so that most grant agreements should contain additional performance standards tailored to the specific goals and objectives of that grant. If the grant agreement does not contain performance standards, any comparative performance standard(s) applicable to the program activity or service funded shall apply after such standards are published in the FEDERAL REGISTER.

(3) Grantees shall maintain the documentation necessary for adequate demonstration of actual performance. This documentation shall be made available to the Secretary for the purposes of monitoring, evaluation, and auditing.

(4) It is the responsibility of the grantee to notify the Secretary if the grantee anticipates that performance standards may not be met and to request technical assistance in a timely manner. In order to do so, a grantee shall establish at least quarterly bench mark projections which will enable it to predict the likelihood of meeting its applicable performance standards.

(b) *Comparative performance standard for programs funded from allocable funds.* (1) *Administration.* Cost for administration not to exceed 20 percent of the total amount of the grant.

(2) *Referral.* (i) 100 percent of the goal identified in the grant achieved.

(ii) Followup completed on 85 percent of all those participants referred to other agencies for services.

(3) *Training and employment.* (i) 100 percent of enrollment, and referral goals identified in the grant achieved.

(ii) 80 percent of placement goals identified in the grant achieved.

(iii) 100 percent of all placements will be employed at a wage at or above the Federal or State minimum wage, whichever is higher.

(iv) 90 percent of all placements will be employed at a wage at or above the prevailing rate for the particular occupation in the geographic area.

(v) 75 percent of those placed continue to be on the job 90 days after placement in unsubsidized employment.

(4) *Classroom training and on-the-job training.* (i) 100 percent of enrollment goals identified in the grant be achieved.

(ii) 90 percent of enrollees in classroom training and on-the-job training and their families receive services.

(iii) 60 percent of those enrolled in classroom training are placed in unsubsidized employment after training either by their own efforts or through program efforts.

(iv) 75 percent of those placed in on-the-job training continue to be on the job 90 days after the completion of their training period.

(v) At least one-third of classroom training and OJT enrollees are placed in jobs paying at least \$1.00 per hour above the Federal or State minimum wage, whichever is higher.

(5) *Day care.* (i) 90 percent capacity is maintained.

(ii) Cost per child for day care operations serving 0-5 year old children for an extended day of more than 8 hours of operation do not exceed a total cost of \$200 per month. This cost will be based on total cost of operation including funds from sources other than section 303 grants.

(iii) Day care programs shall meet Federal Interagency Day Care Standards and comply with applicable state standards including State licensing requirements.

(6) *Medical services.* Average cost per family not to exceed \$250. This average cost is obtained by dividing the amount of funds available for this service by the number of families receiving this service. The maximum cost for any single family not to exceed \$500.

(7) *Emergency Assistance.* Average cost per family not to exceed \$75. This average cost is obtained by dividing the amount of funds available for this service by the number of families receiving this service.

(8) *Relocation Assistance.* Average cost per family not to exceed \$600. This average cost is obtained by dividing the total amount of funds allowable for this component (set forth in the definition of relocation assistance in § 97.203) by the number of families in the relocation component. The maximum cost for any single family not to exceed \$1,000.

(9) *Residential Support.* Average cost per family not to exceed \$500. This average cost is obtained by dividing the total amount of funds allowable for this component (set forth in the definition of residential support in § 97.203) by the number of families in the residential component. The maximum cost for any single family not to exceed \$700.

GRANT ADMINISTRATION

§ 97.250 Grant Administration in general.

(a) Sections 97.250-97.269 describe Federal requirements relating to the administration by grantees of grants under section 303 of the Act.

(b) In general, administration of section 303 grants shall be governed by Part 98, Subpart A, "Grant Administration," of this Subtitle.

(c) Sections 97.251, 97.259, and § 97.267 relate to grantees which are non-governmental organizations and set forth requirements applicable only to such organizations. Sections 97.252, 97.257, and §§ 97.260, 97.266(a) set forth exception and variations from 29 CFR Part 98, Subpart A, which are applicable to all section 303 grantees. Sections 97.258 and §§ 97.266(b)-97.269 provide additional

grant administration requirements applicable to all section 303 grants.

(d) In Part 98, Subpart A of this Subtitle, (1) All reference to the "ARDM" shall read "the Secretary" when applicable to section 303 programs.

(2) FMC 74-4 and FMC 74-7, designed for public agencies, are hereby made applicable to private nonprofit section 303 grantees. At such time that GSA issues comparable FMC's for private nonprofit organizations, they shall supersede the above Federal Management Circulars.

§ 97.251 Private nonprofit organizations; financial management systems.

For private nonprofit organizations the requirements for financial management systems set forth in § 98.5 of this Subtitle shall apply in their entirety, and in addition the following requirements shall be observed:

(a) *Certification of accounting systems.* Before funds are released to a grantee receiving an initial DOL grant or to a grantee any of whose nongovernmental subgrantees has never administered DOL funds the grantee shall submit a statement to DOL certifying that its accounting system and/or that of the subgrantee(s) meets the standards set in paragraphs (1), (2), and (3) of this section.

(1) Prior to the release of funds of an initial DOL grant, the grantee shall have its accounting system surveyed and evaluated by an auditor. On the basis of the auditor's findings and conclusions, the Secretary shall determine whether the accounting system meets DOL's standard and, if not, whether to suspend the grant.

(2) The accounting system certification shall state that the grantee and/or the subgrantee(s) have established adequate accounting systems with appropriate internal controls to safeguard assets, to check the accuracy and reliability of their accounting data, to promote operating efficiency, and to encourage compliance with prescribed management policies and any additional fiscal responsibilities and accounting requirements established by DOL.

(3) The certification may be furnished by an independent certified public accountant, or an independent state-licensed public accountant.

(b) *Subgrantees.* A grantee shall not release or commit any grant funds to a new subgrantee unless it has received from the proposed subgrantee an accounting system certification appropriately modeled after those required in paragraphs (a) (1), (2) and (3) of this section. These certifications are to be obtained by the grantee from its subgrantees for retention among the grantee's records and need not be transmitted to DOL unless DOL requests them. DOL may disallow as a charge against the grant any funds released in violation of the requirement stated in this paragraph.

(c) The cost incurred by the grantee or subgrantee in providing certifications of accounting systems is not an allowable cost under section 303 unless such cost is approved as part of the Comprehensive Plan for Farmworkers.

§ 97.252 Audit.

The requirements for audit shall be as described in § 98.6 of this subtitle, except that the following special provisions shall apply:

(a) The term "prime sponsor" in § 98.6 of this Subtitle for the purposes of section 303 shall mean grantee.

(b) The requirement for access to books, documents, papers, and records described in paragraph (a) of § 98.6 of this Subtitle shall apply to all section 303 grantees, subgrantees, contractors and other program operators.

(c) Audits conducted under the provisions of § 98.6(e) of this Subtitle shall be subject to prior approval by the Secretary.

§ 97.253 Reporting requirements.

"Reporting requirements in general," set forth in § 98.7 of this Subtitle shall be superseded as follows:

(a) Each grantee will be required to submit four periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. These four reports are: (1) The Program Status Summary; (2) The Financial Status Report (These two reports replace the Quarterly Progress Report); (3) The Quarterly Summary of Participant Characteristics; and (4) The Report of Federal Cash Transactions. In addition, grantees may from time to time be required to prepare and submit reports requested by other Federal agencies for the performance of the legislative responsibilities of these agencies.

(b) *Program Status Summary and Financial Status Report:* The Program Status Summary and Financial Status Report requirements set forth in § 98.8 (a) and (b) of the Subtitle shall be applicable.

(c) *Quarterly Summary of Participant Characteristics:* The Quarterly Summary of Participant Characteristics requirements set forth in § 98.9 of this Subtitle shall be applicable.

(d) *Report of Federal Cash Transactions:* The Report of Federal Cash Transactions requirement set forth in § 98.10 of this Subtitle shall be applicable.

(e) In addition, special reports may be required by the Secretary.

(f) The reports required by paragraphs (b) and (c) of this section shall be prepared to coincide with the ending dates of Federal Fiscal Year quarters. These reports shall be sent by the grantee to be received by the Secretary no later than 30 days after the end of the reporting period. If a grantee's grant period ends on a date other than the end of a Federal fiscal quarter, a fifth set of reports, covering the entire grant period will be required.

(g) Accountability must be maintained by the grantee for each of the activities authorized under the various Titles of the Act. Therefore, separate reports will be required for the section 303 grants.

(h) The Secretary reserves the right to require the submission of these reports by grantees more frequently than quarterly in cases where there appears to be a major negative deviation from the

Program Planning Summary or the Budget Information Summary.

(i) Detailed descriptions of the forms required by paragraphs (c) and (d) are in the Forms Preparation Handbook and supplement.

(j) All required reporting shall be submitted directly to the Secretary at the following address:

U.S. Department of Labor
Manpower Administration
Patrick Henry Building—Room 7122
601 D Street, NW
Washington, D.C. 20213
Attention: Chief, Migrant and Seasonal
Farmworkers Division

Copies of the reports required by paragraphs (a), (b), (c), and (d) of this section shall be sent to the appropriate ARDM at the time of submission to the National Office.

§ 97.254 Reallocation of funds.

The requirements regarding reallocation of funds set forth in § 98.11 of this Subtitle shall be superseded as follows:

(a) *General.* The Secretary may reallocate funds from a grantee under the circumstances and in accordance with the procedures described in this section.

(b) *Reallocation based on nonperformance.* (1) When the Secretary considers through review of the grantee's reports, monitoring, or auditing of the program that its performance may be inadequate or that it may have failed to comply with the Act or regulations, notice shall be given and opportunity shall be allowed for an administrative review as provided in § 97.292.

(2) If the Secretary then decides to reallocate funds based on a ground set forth in paragraph (b)(1) of this section:

(i) The grantee's plan for the area shall be revoked in whole or in part;

(ii) No further payments shall be made under this Act to the grantee, to the extent which the Secretary deems necessary; and

(iii) The grantee shall be notified of the amount of funds which shall be returned from unexpended funds paid to the grantee during that fiscal year.

(3) The Secretary shall make provision for the reallocation of funds to be used by an alternative grantee to service the area which was served by the grantee before the reallocation or the Secretary may serve such an area directly.

(c) *Reallocation based on need.* (1) In a limited number of circumstances, the Secretary may determine that the unobligated portion of a grantee's grant shall be reallocated to another area because the funds are not needed where they were originally allocated.

(2) Before reallocating funds as set forth in paragraph (c)(1) of this section, the Secretary shall determine that:

(i) The grantee's plan will be carried out without expending all the funds previously made available for that plan; and

(ii) The excess funds identified under paragraph (c)(2)(i) of this section cannot reasonably be expected to be needed in the following grant period.

(d) *Reallocation.* When the Secretary determines that funds should be reallocated based on the criteria in paragraph (c) of this section, the following actions shall be taken:

(1) *Notice of intent to reallocate funds.* When the Secretary determines that a reallocation is appropriate, the grantee shall be notified of the proposed action to remove funds from the grant. The notice shall include the basis for the proposed reallocation.

(2) *Comments by grantee.* The grantee shall be invited to submit comments on a proposed reallocation of funds out of its area. These comments shall be submitted to the Secretary within 30 days of receipt of the notice. The Secretary shall consider these comments before making a final determination to reallocate.

(3) *Notification of final determination.* The Secretary shall notify the grantee of the final determination after reviewing any comments submitted by the grantee. A final decision to reallocate funds of a grantee shall be published in the FEDERAL REGISTER, and a modification of the grant shall be made.

(4) *Reallocation procedures.* In reallocating such funds to supplement other grants, the Secretary shall first consider the need for additional funds by other grantees within the same State. A decision to increase a grant with reallocated funds shall not be made without prior consultation with the grantee as to how the funds will be expended. Such a decision shall be published in the FEDERAL REGISTER with an announcement to the grantee(s) receiving additional allocations and the amounts.

(5) *Reallocated funds.* Reallocated funds shall not be considered allocable funds for the purpose of paragraph (c) (2) of § 97.204, the "hold harmless" provision.

§ 97.255 Allowable Federal costs.

The requirements regarding allowable Federal costs set forth in § 98.12 of this Subtitle shall be superseded as follows:

(a) *General.* Except as modified in these regulations, Federal funds granted under the Act may be expended only for purposes permitted under the provisions of Subpart 1-15 of Title 41 of the Code of Federal Regulations. 41 CFR 1-15.2 applies to commercial and nonprofit organizations, 41 CFR 1-15.3 applies to educational institutions, and 41 CFR 1-15.7 applies to state and local governments. Allowable costs include both direct and indirect costs.

(1) *Direct and indirect costs.* Direct CETA costs are those which can be specifically identified as relating to the project. Indirect costs are those computed by application of an indirect cost rate. In determining the reasonableness of indirect costs, reliance will be placed on procedures established pursuant to 41 CFR Part 1-15, including reliance on determinations made in accordance with 41 CFR Part 1-15.

(2) *Policies and procedures.* Cost allocation plans and indirect cost proposals shall be developed and approved in ac-

cordance with applicable cost principles and procedures set forth in 41 CFR 1-3.7 and 41 CFR 1-15. DOL must approve in advance all grantees' indirect cost allocations used to determine charges to grants under the Act. Where DOL is the cognizant Federal agency, the reasonableness of indirect costs claimed by grantees will be determined in accordance with procedures established pursuant to 41 CFR 1-15.7 (FMC 74-4), including reliance on determination made by other Federal agencies.

(b) *Restrictions on use of funds.* No funds granted under the Act may be used, directly or indirectly, as a contribution for the purpose of obtaining Federal funds under any other law of the United States which requires a contribution from the grantee in order to receive such funds, except if authorized under that law. However, the use of funds granted under one title of the Act as a matching contribution in order to obtain additional funds under another title of the Act is permitted.

(c) *Expenditures for repairs, maintenance, and capital improvements and construction.* (1) Section 303 funds may not be expended for new construction (including additions to existing facilities) but may be expended for building repairs, maintenance, and capital improvements to existing facilities. These costs must be related to a facility or building which is used primarily for programs under the Act (sec. 702(b)).

(2) No funds for new construction (including additions to existing facilities) are allowable except as part of a training program in a construction occupation. Training costs may include such items as instructors' salaries, training tools and books, and allowances or wages to participants (if appropriate) but may not include materials used in construction or land acquisition. Construction costs for training programs shall be allowable only when such construction would not normally be performed by an outside contractor.

(d) *Allowable cost categories.* Allowable costs shall be reported against the following cost categories: Administration; wages; training; fringe benefits; allowances; and services (sec. 101).

(1) Costs are allocable to a particular cost category to the extent of benefits received by such category.

(2) All grantees are required to plan, control, and report expenditures against the aforementioned cost categories.

(e) *Classification of costs by category.* The following principles shall be followed in classifying costs by cost category:

(1) Participants' wages shall be charged to wages;

(2) Participants' fringe benefits shall be charged to fringe benefits; (Insurance with comparable coverage to worker's compensation for participants enrolled in classroom training and services to clients is considered to be an administrative cost).

(3) Allowances paid to program participants shall be charged to allowances;

(4) Training costs consisting of goods and services which directly and im-

mediately affect program participants shall be charged to training. Goods and services considered to have direct and immediate impact on participants are limited to those actually involved in the participant training process itself as opposed to those which are supportive of that process. For examples of training-related costs which may and may not be charged to training, see paragraph (f) (4) of this section.

(5) Supportive and manpower services costs consisting of goods and services which directly and immediately affect program participants shall be charged to services. Goods and services considered to have direct and immediate impact on participants are limited to those actually involved in the process of providing participants with supportive and manpower services as opposed to those which are ancillary to that process. For examples of services-related costs which may and may not be charged to services, see paragraph (f) (5) of this section.

(6) Allowable costs which do not fall into any of the above classifications shall be charged to administration.

(7) When contractors bill the grantee with a single unit charge containing costs which are chargeable to more than one cost category, the grantee will endeavor to obtain the detail necessary to charge these costs to the proper cost categories. If this cannot be done, an estimate of the breakdown of the single charge among cost categories will be obtained. Any profit (or loss) shall be prorated among all the affected cost categories.

(8) Classification of equipment costs present special problems since many items of equipment can be used for various purposes. In the case of multi-use equipment there must be a proration of cost, or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(9) Any single cost such as staff salaries and/or fringe benefits which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(f) *Costs allowable by each cost category.* Following are examples of costs properly chargeable to each of the cost categories.

(1) *Wages.* All wages paid to participants receiving on-the-job training in public or private nonprofit organizations, and all wages paid to participants in work experience will be allowed. Wages paid to participants while receiving on-the-job training from a private employer organized for profit cannot be supported by funds under the Act (sec. 101(5)).

(2) *Fringe benefits.* Allowable fringe benefits costs for participants include but are not limited to the following: annual, sick, court and military leave pursuant to an approved leave system; employer's contribution for social security, employees' life and health insurance plans; unemployment insurance, worker's compensation insurance; and retirement benefits provided such benefits are granted as

part of the approved Comprehensive Plan for Farmworkers.

(3) *Allowances.* All allowances paid to program participants pursuant to § 97.256(a) shall be charged to this cost category.

(4) *Training.* Training costs include but are not limited to the following: Salaries and fringe benefits of personnel engaged in providing training; books and other teaching aids; equipment and materials used in providing training to participants; and that part of entrance and tuition fees which represent instructional costs having a direct and immediate impact on participants. The following are examples of costs not properly chargeable to training: General and administrative costs of the training facility; supervision, clerical support, and training (skill maintenance and upgrading) of instructors; staff travel; rents, utilities, and other facilities costs; supplies and equipment not used directly in the course of participant training; transportation of participants to training sites; and costs of processing allowance payments. The compensation of individuals who both instruct participants and supervise other instructors must be prorated among the Training and Administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees and the costs of supplies used in the course of both participant instruction and other activities should be prorated among the benefiting uses.

(5) *Services.* (i) Services include but are not limited to supportive and manpower services as set forth in § 97.233(f).

(ii) Allowable services costs include but are not limited to salaries and fringe benefits of personnel engaged in providing services to participants; and that part of single unit charges for child care, health care, and other services which represent only the costs of services directly beneficial to participants. Transportation of participants is properly chargeable to Services only where it cannot reasonably be considered to be merely incidental to providing employment, training, and services which themselves directly benefit participants. For example, if rural participants have to be transported over long distances in order to reach work or training sites, particularly where no public transportation service is available, the cost of chartering or purchasing a bus may be charged to Services.

(iii) The following are examples of costs not properly chargeable to Services: General and administrative costs of the services provided, supervision, clerical support, staff training, staff travel, rent and other facilities costs, and costs of supplies, materials, and equipment not used directly in providing services to participants.

(6) *Administrative Costs.* (i) Administrative costs shall be limited to those necessary to effectively operate the program. They shall not exceed 20 percent of the total planned costs for the entire grant, unless such additional costs have been approved in writing by the

Secretary. Consultant services under contract must have the prior approval of the Secretary.

(ii) Administrative costs comprise general and administrative costs, overhead, and similar cost groupings representing the general management and support functions of an organization as well as secondary management and support functions. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, transportation, maintenance, and similar functions, related materials, supplies, equipment, office space costs, and staff training.

(iii) Direct program costs which are not an integral part of training and services provided participants are goods and services which neither contribute to the management and support functions of an organization nor directly and immediately affect participants. Included are direct program salaries and fringe benefits of supervisory and clerical personnel, program analysts, labor market analysts, and project directors. In addition, all costs of materials, supplies, and equipment which are not solely identifiable with the provision of training and services to participants are included here as are all costs of space and staff travel identifiable with direct program effort. Some examples of administrative costs included here are the salary of a clerical assistant to an instructor, that part of an instructor's salary representing the time (s)he spends supervising other instructors, desk-top supplies used in participant training and in general office administration, a job developer's travel costs, rent, depreciation, or maintenance of classroom training facility, services of consultants under contract, not involving direct training or services to participants, costs incurred in the establishment and maintenance of farmworker boards and advisory councils as provided in § 97.268, and costs of providing technical assistance to contractor and subgrantee staff.

(iv) Services normally chargeable to Administration may not be performed by program participants paid by section 303 funds unless this use of participants' services has been described in the approved Comprehensive Plan for Farmworkers.

(g) *Travel costs.* (1) The cost of participant travel and staff travel necessary for the operation or administration of programs under the Act is allowable as provided herein.

(2) Travel costs of the Governor of a State or of the chief executive of a political subdivision (and of their immediate staff that do not have continuing programmatic responsibilities) and of the board chairperson and Executive Director of multi-funded programs are allowable only if the travel specifically relates to programs under section 303 and is approved in advance by the Secretary. These costs shall be charged to administration.

(3) Travel costs of other grantee officials charged with overall grantee responsibilities are allowable if costs

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specifically relate to programs under the Act. Prior approval by the Secretary is not required. These costs shall be charged to administration.

(4) Travel costs for administrative staff, including participants in administrative positions, are allowable when the travel is specifically related to the operation of programs under the Act. These costs shall be charged to administration.

(5) Travel costs, based on mileage, for participants using their personal automobiles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this way. These costs shall be charged to fringe benefits.

(6) Travel costs to enable participants to obtain employment or to participate in programs under the Act are allowable as supportive services but shall be restricted to the grantee's jurisdiction or within daily commuting distance, unless part of an approved program component in the Comprehensive Plan for Farmworkers.

(7) Travel policies set forth in the Standardized Government Travel Regulations (SGTR) are required of all grantees, subgrantees and contractors. Where a grantee, subgrantee, or contractor, has a more restrictive travel policy than the SGTR, the more restrictive requirements shall be followed.

(8) Other travel requirements may be issued by the Secretary for private nonprofit grantees.

§ 97.256 Allowances, wages, general benefits, and working conditions for program participants.

(a) *Training allowances.* (1) The requirements for training allowances shall be as described in § 95.34 of this subtitle with the following special provisions:

(i) The term "prime sponsor" in § 95.34 of this subtitle for the purposes of section 303 shall mean grantee.

(ii) The requirements for eligibility for allowances described in § 95.34(c) of this subtitle for programs funded under section 303 shall read: "The payment of allowances is subject to the provision of § 95.34(j) of this subtitle and § 97.233. Allowances may be paid to participants for time spent in classroom training, other activities as specified in § 97.233(g) (3), or manpower services such as: assessment, orientation, counseling, and transportation. However, allowances for participation in manpower services or other activities may be provided only if such activities are a component of another activity described in § 97.233, or participation is on a regularly scheduled basis described in the approved Comprehensive Plan for Farmworkers. Furthermore, no allowances will be paid for any course having a duration in excess of 104 weeks (sec. 111(a))."

(b) *Wages, minimum duration of training, and reasonable expectation of employment.* The requirements of this section shall be as described in § 95.35 of this subtitle, except that the following special provisions shall apply.

(1) The reference to § 95.33(d) (4) (vi) in § 95.35(a) of this subtitle shall read § 97.233(e).

(2) Section 95.35(b) of this Subtitle shall read "An individual shall not be referred for training in an occupation which requires less than two weeks of training."

(3) The term "prime sponsor" in § 95.35(c) of this Subtitle for the purposes of section 303 programs shall mean grantee.

(c) *General benefits and working conditions for program participants.* (1) The requirements for general benefits and working conditions for program participants set forth in § 98.24 of this Subtitle shall be applicable except that all references to public service employment shall be deleted and prime sponsor shall read section 303 grantees.

(2) The requirements for participants' retirement benefits shall be as provided in § 98.25 of this subtitle.

§ 97.257 Allocation of Allowable Costs Among Program Activities.

The requirements regarding allocation of allowable costs among program activities set forth in § 98.13 of this subtitle shall be superseded as follows: The program activities against which program costs shall be planned, controlled and reported upon are: Classroom training; on-the-job training; work experience; services to participants; and other activities. The cost categories under each of these activities is defined in § 97.255 (e). The extent to which these cost categories are chargeable to specific program activities is set forth below. Administration includes all allowable administrative costs directly associated with the program activity and a pro rata share of the grantee's administrative costs under section 303 not directly associated with any program activity.

(a) *Classroom training.* Cost categories chargeable are: administration, allowances, training, and services.

(b) *On-the-job training.* Cost categories chargeable are: administration, wages (with public or private nonprofit employers only), fringe benefits, training, and services.

(c) *Work Experience.* Cost categories chargeable are: administration, wages, fringe benefits, training, and services.

(d) *Services to participants.* (1) *Manpower services.* Cost categories chargeable are:

(i) Administration.

(ii) Allowances. This includes all allowances paid for short periods of time to participants who are registered for training, but are waiting for startup of a component and includes additional allowances as described in § 97.233(f).

(iii) Services. This includes all manpower services including postplacement services which are not part of another program activity and which are provided to participants by a grantee, contractor, or subgrantee.

(2) *Supportive services.* These services include but are not limited to health and medical services, child care, emergency assistance, relocation assistance, resi-

dential support, nutritional services, and other supportive services. Cost categories chargeable are:

(i) Administration.

(ii) Services. This includes all supportive services, including postplacement services, which are not part of another program activity and which are provided to participants by a grantee, contractor, or subgrantee.

(e) *Other activities.* Cost categories chargeable are: administration, allowances, training and services.

§ 97.258 Bond coverage of officials.

(a) Prior to the release of funds to any grantee, public or private, DOL shall receive written assurance that arrangements have been made for appropriate bonding of grantee officials. This assurance may take the form of either a statement that no bond is needed because the conditions of paragraph (b) have been met, or of a letter from a bonding company or agent stating the type of bond, amount and period of coverage, positions covered, and the annual cost of the bond which has been obtained.

(b) A bond need not be provided by a public grantee if funds are to be deposited in a public treasury and disbursed and audited by local and state public officials who normally perform these duties. In this case, the financial role of the officials of the grantee agency shall be limited to making withdrawals from the Federal Reserve System for deposit in the public treasury and certifying appropriate expenditures for disbursement. A grantee which is a public agency need not provide a new bond if all employees who are authorized to sign or countersign checks on the grantee's commercial bank account or to disburse cash are already bonded in an amount consistent with local requirements and practices.

(c) Private grantees shall take steps to secure blanket fidelity bond coverage in accordance with the following provisions:

(1) Coverage shall be secured in an amount equal to the average of funds to be expended each month, up to the aggregate amount of \$25,000, whichever is less, for all persons authorized to sign or countersign checks or to disburse sizeable amounts of cash, such as for payrolls.

(2) Grantees shall assure that appropriate officials of subgrantees and contractors are bonded. Existing bond coverage on officials of subgrantees which are public agencies shall be considered acceptable. Coverage for officials of subgrantees and contractors which are private organizations shall be equal to the average of funds to be expended each month, up to an aggregate amount of \$25,000. If a subgrantee or contractor will expend less than \$1,000 per month in program funds, on the average, bond coverage shall not be required, but may be obtained and is an allowable cost.

§ 97.259 Basic personnel standards for grantees and subgrantees.

The basic personnel standards set forth in §§ 98.14, 98.21, 98.22, and § 98.23 of

this Subtitle shall be applicable to public grantees and to public subgrantees receiving section 303 funds. The following provisions shall be applicable only to private nonprofit grantees and to private nonprofit subgrantees receiving section 303 funds.

(a) *Personnel policies.* Each grantee and subgrantee shall maintain personnel policies and practices in accord with applicable laws and regulations, the provisions of §§ 98.21, 98.22, 98.23 of this Subtitle and the provisions of paragraphs (b) through (h) of this section. Such personnel policies must be in written form and available to the Secretary upon request.

(b) *Discrimination prohibited.* No grantee or subgrantee shall discriminate in its hiring and personnel procedures against any applicant for employment or any employee because of race, creed, color, national origin, sex, or age.

(c) *Opportunities for farmworkers.* Each grantee and subgrantee shall insure that its recruiting procedures afford adequate opportunity for the hiring and advancement of persons in the target population.

(d) *Prohibition against partisan political and sectarian activities.* In addition to the prohibitions described in § 98.23, of this Subtitle grantees and subgrantees shall assure that no program under section 303 involves sectarian activities and that neither section 303 funds nor the personnel employed in the program shall be engaged in the conduct of sectarian activities.

(e) *Nepotism.* The provisions of § 98.22 of this Subtitle shall apply to all grantees and subgrantees with the following special provision:

(1) The term "employed in an administrative capacity" in § 98.22(a) Subtitle for the purposes of section 303 shall mean employed in an administrative capacity or membership on a governing board.

(f) *Prohibition against acceptance of gifts and gratuities.* Employees of grantees and subgrantees shall not accept gifts, money, or gratuities from persons receiving benefits or services under the program, or performing services under contract, or otherwise in a position to benefit from an action of the grantee's employees.

(g) *Outside employment.* Grantees and subgrantees shall include the following provisions in their published personnel policies relating to outside employment of their employees: (1) Such employment shall not interfere with the efficient performance of the employee's duties in the DOL-assisted program;

(2) Such employment shall not involve a conflict of interest or conflict with the employee's duties in the DOL-assisted program;

(3) Such employment shall not involve the performance of duties which the employee should perform as part of employment in the DOL-assisted program; and

(4) Such employment shall not occur during the employee's regular or assigned working hours in the DOL-assisted program, unless the employee

during the entire day on which such employment occurs is on annual leave, compensatory leave, or leave without pay.

(h) *Salaries and wages.* (1) Minimum wage; Employees shall be paid at a rate no lower than the applicable minimum wage. Subject to this minimum, the salary for each position supported by DOL funds shall accord with prevailing local practice for comparable positions in local public or private nonprofit agencies.

(2) *Wage comparability.* (i) Persons employed in carrying out programs financed under section 303 shall not receive compensation at a rate which is (A) in excess of the average rate of compensation paid in the area where the program is carried out to persons providing substantially comparable services; (B) less than the applicable Federal or State minimum wage rate, whichever is higher.

(ii) Some grantees or subgrantees are part of long-established private agencies which have merit systems and will apply these systems to section 303-supported employees. In these instances, all positions covered under such merit systems shall be deemed comparable and no extensive organizational reviews, position analyses, or comparability determinations shall be necessary; provided that these employees are filling positions or types of positions in existence before the agency or institution received a section 303 grant and that the salary scale has not been changed as a result of the grant.

(iii) Those grantees for which paragraph (h) (2) (i) of this section is not applicable, shall establish wage rates for each section 303-supported position based upon a wage comparability study.

(3) *Salary and wage schedule.* Each grantee shall maintain an up-to-date salary and wage schedule. This schedule shall be based upon an up-to-date wage comparability study as described in paragraph (h) (2) of this section. Each position supported by section 303 funds shall:

(i) be part of a salary and wage schedule which assigns a specific salary or wage range incorporating periodic increases to each position;

(ii) be described in a written detailed job description identifying job functions and responsibilities;

(iii) have specific qualifications required of each person to be hired into the position; and

(iv) be distinguishable from every other position by reason of its responsibilities, and job functions; Positions requiring higher salaries or wages shall include higher levels of responsibilities commensurate with the salary. All such materials shall be incorporated into personnel policies, procedures, and practice manuals.

(4) *Promotions and salary increases.* Each grantee shall maintain as part of its personnel policies and procedures and practices manual detailed procedures for hiring new employees, promoting present employees and granting salary increases. Documentation shall be maintained for all such personnel actions to substantiate compliance with established procedures for all hires, promotions, and salary

increases. Such documentation shall include identification of the procedures used to select new employees or promote present employees, and substantiation of the concerned individual's eligibility for such a personnel action.

(5) *Salaries over \$20,000.* No employee engaged in carrying out program activities receiving financial assistance under section 303 shall be compensated from funds so provided at a rate in excess of \$20,000 per year, without approval from DOL. An employee subject to the provisions of salary proration in paragraph (h) (5) of this section shall not be compensated from funds so provided at a rate in excess of the prorated share of \$20,000, without approval from DOL. Exceptions shall be granted by DOL in cases where, because of the need for specialized or professional skills or prevailing local salary levels, application of the foregoing restrictions would greatly impair program effectiveness or otherwise be inconsistent with the purposes to be achieved by the program.

(6) *Prorating salaries.* In cases where an individual performs functions under several grants, their time shall be prorated among the different grants and the portion of the salary charged to the section 303 grant shall not exceed the percentage of time spent performing section 303 functions.

(7) *Employee benefits.* Shall be established in accord with prevailing practice in comparable public or private nonprofit agencies.

§ 97.260 Non-Federal status of participants.

The requirements for this section shall be as described in § 98.28 of this subtitle.

§ 97.261 Grantee contracts and subgrants.

A grantee funded under section 303 may enter into contracts or subgrants under the provisions described in § 98.27 of this subtitle, except that the following special provisions shall apply:

(a) The procurement of contracts shall be in conformance with the standards in § 97.267.

(b) The requirements for cancellation described in § 98.27(e) of this subtitle for programs funded under section 303 shall read as follows:

If a contractor or subgrantee does not comply with any requirement of the Act, the regulations promulgated under the Act, other applicable law, the grant agreement, grant conditions, or other grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the grant, the grantee shall cancel the contract or subgrant. Cancellations of subgrants are major modifications as described in § 97.221 and require approval by the Secretary.

(c) The reference in § 98.27(g) of this subtitle of the provisions of § 98.15 and § 98.16 shall read "the provisions of §§ 97.262, 97.263, and 97.264."

§ 97.262 Adjustments in payments.

The requirements for adjustments in payments shall be as described in § 98.15 of this Subtitle, except that the following special provisions shall apply:

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(a) The term "Comprehensive Manpower Plan" for the purposes of section 303 shall mean Comprehensive Plan for Farmworkers.

(b) The Secretary may also make adjustments in payments as described in § 97.264. The adjustments need not be based on a ground set forth in § 98.15(a) of this Subtitle.

§ 97.263 Termination of a grant.

The requirements for termination of a grant shall be as described in § 98.16 of this Subtitle, except that the following special provision shall apply:

(a) § 98.16(a) shall be superseded as follows: If a grantee violates or permits a subgrantee or contractor to violate the regulations, grant conditions, or grant terms or conditions which the Secretary has issued or shall subsequently issue during the period of the grant, the Secretary may terminate the grant in whole or in part, unless the grantee causes such violation to be corrected within a period of 30 days after receipt of notice specifying the violation.

§ 97.264 Grant closeout procedures.

The grant closeout procedures shall be as described in § 98.17, except that the following special provisions shall apply:

(a) Paragraphs (a), (b), and (c) of § 98.17 of this subtitle shall apply in their entirety, and in addition the following special provisions shall apply:

(1) Any contracts or subgrants which extend beyond the termination date or completion of the legal grant period, as permitted by § 98.27(g) of this subtitle shall not exceed six months, unless the grantee has been notified of its selection as a potential grantee for the succeeding fiscal year.

(2) The Secretary may make adjustments in payments of the unexpended funds committed under contracts and subgrants described in paragraph (a) (1) of this section at any time between the completion or termination date of the grant and the termination date or completion of the subgrant or contract.

(b) § 98.17(d) of this subtitle shall be superseded as follows: Upon closeout, the Secretary will insure that:

(1) Prompt payment is made to the grantee for reimbursement of costs under the grant being closed out.

(2) After the final reports are received, a settlement is made for any upward or downward adjustments which are made to the Federal share of the costs, including those described in paragraph (a) (2) of this section.

(3) The letter of credit is cancelled.

(4) Final program and fiscal audits are performed as soon as possible after the completion or termination date of the grant.

§ 97.265 Maintenance and retention of records.

The requirements for the maintenance and retention of records shall be as described in § 98-18 of this subtitle, except that the following special provisions shall apply.

(a) The requirement for maintaining information on the work history of par-

ticipants shall not apply to participants who are minor children.

(b) The term "State and local prime sponsors" for the purposes of section 303 shall mean grantees.

§ 97.266 Program income and limitations on program expenditures.

(a) *Program income.* Section 98.19 of this title prescribes the requirements relating to program income applicable to public grantees and subgrantees. The requirements for private grantees and subgrantees shall be as follows:

(1) Private organizations shall be required to return to the Federal Government interest earned on advances of grant-in-aid funds.

(2) Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds and royalties received from copyrights and patents during the grant period, shall be handled in accordance with grant conditions the Secretary has issued or shall subsequently issue during the period of the grant.

(3) Program income earned during the grant period which has been included in the Comprehensive Plan for Farmworkers shall be retained by the grantee and, in accordance with the grant agreement, shall be added to funds committed to the project and be used to further program objectives. All other program income earned by the grantee shall be returned to the Federal Government, except as provided by grant conditions the Secretary has issued or shall subsequently issue during the period of the grant.

(4) The grantee shall record the receipt and expenditure of revenues as a part of grant project transactions.

(b) *Limitations on program expenditures.* Program expenditures shall not be made prior to the effective date of the grant period as set forth in the grant agreement or as subsequently modified by DOL. Expenditures made before such date shall be disallowed unless approved by the Secretary in advance. If the grantee incurs expenditures in excess of the total amount of the approved program, the amount of the overexpenditure shall be absorbed by the grantee from nonsection 303 funds.

§ 97.267 Procurement standards.

(a) The standards to be used for the procurement of supplies, equipment, and other materials and services by State and local governments with Federal grant funds shall be those described in § 98.20 of this subtitle.

(b) The standards to be used for the procurement of supplies, equipment, and other materials and services by private grantees and subgrantees shall be those described in the Federal Procurement Regulations, the Property Handbook for MA Contractors issued by the Department, and 41 CFR 1-15.2 or 41 CFR 1-15.3. On-the-job training contracts are not subject to sole source approval requirements and the procurement of subgrants is exempt from procurement requirements. When on-the-job training contracts are made, the grantees shall maintain a record of the name of the contractor, the amount and the services

to be provided, and such record shall be available to the Secretary upon request. The foregoing standards are prescribed to assure that such materials and services are obtained in compliance with the provisions of applicable Federal laws and Executive Orders.

§ 97.268 Labor standards.

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings, and works which are federally assisted under a grant shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-5).

§ 97.269 Allowances and reimbursements for board and advisory council members.

(a) *General.* A reasonable allowance to members who attend meetings of any board, council, or committee, and reimbursement of actual expenses connected with those meetings are allowable costs; but grant funds shall not be used to pay such allowances to any individual who is a Federal, State, or local government employee, or to an employee of a grantee or subgrantee.

(b) *Allowances.* Any person who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council is eligible to be paid an allowance; provided (1) such person's family income falls within OMB Poverty Guidelines and (2) the person is not a Federal employee, an employee of a DOL-assisted organization, or an employee of a State or local public agency. Allowances shall not exceed five dollars per meeting, unless the grantee's chief elected official or governing board determines a higher payment more suitable. Allowances in excess of five dollars shall be approved in advance by DOL. No person shall be paid an allowance by any one DOL-assisted organization for attendance at more than two meetings per month, regardless of whether the meetings are for the same or different policymaking bodies.

(c) *Reimbursements.* (1) Any person, whose family income falls within OMB Poverty Guidelines and who is a member of a private nonprofit grantee or subgrantee policymaking body or of a public agency grantee or subgrantee farmworker advisory council shall be eligible for reimbursement of actual expenses, including actual wages lost up to \$18 a day. Receiving an allowance shall not preclude receiving reimbursement for actual expenses incurred in attending that meeting.

(2) Where the community served by the program covers a large geographic area, as in the case of a multi-county or a statewide grantee, reimbursements may also be made to those nonpoor members of a policymaking body who must travel a substantial distance from their home to attend meetings within the community. The grantee's principal repre-

sentative board shall determine what constitutes a "substantial distance" in its community.

(3) Persons may be reimbursed no more than two meetings per month. A grantee desiring to make reimbursement to an individual for more than two monthly meetings shall obtain the prior approval of DOL.

(4) The grantee shall define which expenses may be reimbursed, whether incurred as the result of actual attendance at meetings or in the performance of other official duties and responsibilities in connection with the program, and shall establish procedures for the reimbursement of such expenses. The grantee shall obtain the approval of the Secretary for such definitions and procedures prior to reimbursing any individuals under the provisions of paragraphs (c) (1) and (2) of this section.

(d) *Administrative cost:* Allowances and reimbursement as described in paragraphs (a), (b), and (c) of this section shall be charged to the cost category "Administration". Allowances and reimbursement cost for governing Boards and Advisory council should be prorated as administrative costs among all of the grants, from whatever source, administered by the grantee.

ASSESSMENT AND EVALUATION

§ 97.280 Assessment and evaluation.

Assessment and evaluation of section 303 programs shall be conducted in accordance with § 98.30 through § 98.33 of this subtitle. Moreover, the Secretary of Labor shall obtain the approval of the Secretary of Health, Education, and Welfare with respect to direct arrangements by the Secretary of Labor for the provision of basic education and vocational training. This approval shall focus on the legality and quality of such service arrangements as well as the relationships of such services to those being delivered under other applicable laws for which the

Secretary of Health, Education, and Welfare is responsible (section 306 of the Act).

ADMINISTRATIVE REVIEW

§ 97.290 Purpose and policy.

Sections 97.290 through 97.292 set forth the procedures established by the Secretary for (a) the receipt, investigation, and determination of formal allegations of denial of services by a grantee or subgrantee to participants in a section 303 program or to any individual who may have been eligible for services under section 303; and (b) the review of Petitions for Reconsideration arising out of the procedures for determining potential grantees for allocable funds.

§ 97.291 Procedure for complaints by eligible individuals and program participants.

(a) *Grantee administrative remedies.* An individual denied services who may have been eligible, or an aggrieved participant in a program under section 303, must exhaust the administrative remedies established by the grantee for resolving matters in dispute prior to utilizing the procedures under this section. An individual denied service who may have otherwise been eligible or an aggrieved participant may initiate an action under this review procedure within 30 days of any final decision by a grantee. The filing of a formal complaint under this section shall not automatically act as a stay of the decision rendered by the grantee, but such decision may be stayed at the discretion of the Secretary.

(b) *Complaints: Filing of formal allegations; dismissal; form; contents of formal allegations, amendment; investigations.* Procedures for complaints filed pursuant to this section shall be as provided in § 98.42 through § 98.45 of this subtitle except that all formal allegations shall be filed with the Secretary and the term "Comprehensive Manpower Plan"

for the purpose of section 303 shall mean Comprehensive Plan for Farmworkers.

§ 97.292 Procedure for complaints arising from the selection of potential grantees.

(a) *Administrative remedies.* Potential grantees shall be determined according to the procedures described in § 97.213 through § 97.215. An applicant which wishes to object formally to its nonselection as a potential grantee, after consideration by the Secretary as provided in § 97.214, may file a Petition for Reconsideration with the National Office within 14 days of the notification of the Department's decision not to award a grant.

(b) *Petition for Reconsideration.* A petition for Reconsideration shall be a written statement by a responsible official of the complainant requesting a review of the nonselection and may enumerate the factors which the applicant asserts should be reviewed in reconsidering its Funding Request, but such enumeration is not required.

(c) *Reconsideration.* (1) Upon receipt of the Petition for Reconsideration, the Secretary shall, within 14 days, make one of the following determinations:

(i) That the organization be designated a potential grantee.

(ii) That the Granting Officer's decision be sustained.

(2) The representative of the Secretary responsible for resolution of the Petition for Reconsideration shall be an official of the Manpower Administration not directly involved in the original determination. The determination described in paragraph (c) (1) of this section shall be final.

Signed at Washington, D.C. this 3rd day of July 1975.

JOHN T. DUNLOP,
Secretary of Labor.

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