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PART III



GENERAL SERVICES ADMINISTRATION

■

PUBLIC AND PRIVATE HIGHER EDUCATION INSTITUTIONS, HOSPITALS, AND NONPROFIT ORGANIZATIONS

**Proposed Uniform Administrative
Standards**

GENERAL SERVICES ADMINISTRATION

[34 CFR Part 258]

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

Notice of Proposed Rulemaking

This notice offers interested parties an opportunity to comment on a proposed regulation concerning standard administrative requirements for Federal grants, contracts, and other agreements with public and private institutions of higher education, public and private hospitals, and public and private nonprofit organizations (hereinafter referred to as recipients). It is issued in accordance with the provisions of the Federal Property and Administrative Services Act of 1949 and Executive Order 11717.

The proposed regulation is the product of an interagency task force, and its purpose is to provide one set of requirements in place of the multitude of varying and often conflicting requirements which have been burdensome to recipients.

Generally, the proposed regulation does not permit Federal agencies to impose additional requirements without the approval of the General Services Administration. However, there may be some grant recipients which may not have adequate management systems. For these recipients, it may be necessary to establish more rigid requirements until the management deficiencies are corrected. We invite interested parties to provide comments as to how these grant recipients which need help should be identified and to describe what additional requirements would be needed for these recipients.

Interested persons should submit their comments in duplicate to the General Services Administration (AMF), Washington, DC 20405. All relevant material should be received on or before March 12, 1975.

NOTE.—The forms mentioned in Appendix G are on file with the original document.

Dated: February 3, 1975.

R. E. ZECHMAN,
Associate Administrator.

This is a Federal Management Circular requiring all Federal agencies to adopt standard administrative requirements for certain grants, contracts, and other agreements with public and private institutions of higher education, public and private hospitals, and other public and private nonprofit organizations. Authority for issuance of such standards is provided under provisions of Executive Order 11717.

As proposed, 34 CFR Part 258 would read as follows:

PART 258—UNIFORM ADMINISTRATIVE STANDARDS FOR AGREEMENTS WITH PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION, PUBLIC AND PRIVATE HOSPITALS, AND OTHER PUBLIC AND PRIVATE NONPROFIT ORGANIZATIONS

- Sec.
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AUTHORITY: Executive Order 11717.

§ 258.1 Purpose.

This part promulgates standards for obtaining consistency and uniformity among Federal agencies in the administration of agreements including grants, contracts, and other agreements as defined in § 258.6c with public and private institutions of higher education, public and private hospitals, and other public and private nonprofit organizations (hereinafter referred to as recipients).

§ 258.2 Effective date.

The standards in the appendixes to this part will be applied for grants and certain other agreements as soon as practicable but not later than October 1, 1975. For contracts, the standards will be published in the Federal Procurement Regulations and Armed Services Procurement Regulations.

§ 258.3 Cancellation / rescission / supersession.

This part rescinds and replaces Parts III and IV of the Appendix to Part 253.

§ 258.4 Policy intent.

The uniform standards and requirements included in the appendixes to this part replace the varying and often conflicting and burdensome requirements which have been imposed by Federal agencies upon recipients as conditions of agreements with recipients.

§ 258.5 Applicability and scope.

Except as provided below, the standards promulgated by this part are applicable to agreements with recipients, as defined in § 258.6(b). If the enabling legislation for a specific project or program prescribes policies or requirements that differ from the standards provided herein, the provisions of the enabling legislation shall govern. Except as otherwise provided, the provisions of this part shall also supply to all subrecipients performing substantive work under the agreement.

§ 258.6 Definitions.

For the purposes of this part:

- (a) The term "grant" means money or property provided in lieu of money paid or furnished by the Federal Government to recipients under programs that pro-

vide financial assistance and support for basic research. The term does not include technical assistance programs which provide services instead of money or other assistance in the form of general revenue sharing, loans, loan guarantees, or insurance. Also the term does not apply to direct payments or direct loans to individuals.

(b) The term "recipient" includes the following types of organizations which are receiving Federal funds:

- (i) Public and private institutions of higher education,
(ii) Public and private hospitals, and
(iii) Other public and private nonprofit organizations, such as (but not limited to) community action agencies, Head Start agencies, research institutes, educational associations, and health centers.

The term does not include foreign or international organizations (such as agencies of the United Nations and Government-owned facilities (GOCO) or research centers providing continuing support for mission-oriented, large scale programs which are (usually) Government-owned or controlled, or are designed as federally-funded research and development centers.

(c) The term "agreement" means a cooperative agreement, grant, contract or other types of instruments used to reflect a relationship between the Federal Government and the recipient but does not include procurements for goods and services which are normally conducted through solicited competitive bidding or provide for a payment of a fee or profit to the recipient.

§ 258.7 Requests for exceptions.

The General Services Administration shall grant deviations from the requirements of this part when deviations are permissible under existing laws. However, in the interest of keeping maximum uniformity, deviations from the requirements of the part will be permitted only in exceptional cases.

§ 258.8 Responsibilities.

Agencies responsible for administering programs shall issue the appropriate regulations necessary to implement the provisions of the part and shall, upon request, furnish such regulations or implementing instructions to the Office of Federal Management Policy (AMF), GSA. They shall also designate an official to serve as the agency representative on matters relating to the implementation of this part. The name and title of such representative shall be furnished to the Office of Federal Management Policy (AMF), GSA, not later than 30 days after the date of final publication in the FEDERAL REGISTER.

§ 258.9 Inquiries.

Further information concerning this part may be obtained by contacting:

General Services Administration
Office of Federal Management Policy (AMF)
Washington, D.C. 20405

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APPENDIX

Cash Depositories. 1. This appendix sets forth standards governing the use of banks and other institutions as depositories of funds advanced under agreements.

2. Except for situations described in 2., 3., and 4., no Federal sponsoring agency shall:

(a) Require physical segregation of cash depositories for funds which are provided to a recipient.

(b) Establish any eligibility requirements for cash depositories in which funds are deposited by a recipient.

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

4. When no other method is feasible for providing the security required by Federal procurement statutes on advance payments under a contract, a special bank account with a lien in favor of the Government shall be required.

5. Any moneys advanced to a recipient which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

6. Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients shall be encouraged to use minority banks (a bank at least 50 per cent of which is owned by minority group members).

APPENDIX B

Bonding and insurance. 1. This appendix sets forth bonding and insurance requirements for agreements with recipients. No other bonding and insurance requirements shall be imposed other than those normally required by the recipient.

2. The Federal sponsoring agencies may impose special requirements for liability insurance for cost reimbursement contracts for supplies and services (including construction) and for awards in which the Government obligates itself to indemnify the recipient for liabilities to third persons for loss of or damage to property, or for death or bodily injury, not compensated by insurance or otherwise, arising out of performance under the contract.

3. Except as otherwise required by law, an agreement which requires the contracting (or subcontracting) for construction or facility improvement shall provide for the recipient to follow its own requirements relat-

ing to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For these contracts or subcontracts exceeding \$100,000, the minimum requirements shall be as follows:

a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

4. Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

5. The Federal sponsoring agency may require adequate fidelity bond coverage where the recipient has no coverage and the bond is needed to protect the Government's interest.

6. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

APPENDIX C

Retention and custodial requirements for records. 1. This appendix sets forth record retention requirements for agreements with recipients. Federal sponsoring agencies shall not impose any other record retention requirements upon recipients other than those described below.

2. Financial records, supporting documents, statistical records, and all other records pertinent to an agreement shall be retained for a period of three years, with the following qualifications:

a. The records shall be retained beyond the 3-year period if any audit findings, litigations or claims involving the records have not been resolved.

b. Records for nonexpendable property which was acquired with Federal funds shall be retained for 3 years after its final disposition.

c. When records are transferred to or maintained by the Federal sponsoring agency, the 3-year retention requirement is not applicable to the recipient.

3. The retention period for agreements, other than contracts, starts from the date of the submission of the final expenditure report or, for agreements which are renewed annually, from the date of the submission of the annual expenditure report.

4. The retention period for contracts starts from the date of final payment.

5. Recipient organizations should be authorized by the Federal sponsoring agency, if they so desire, to substitute microfilm copies in lieu of original records.

6. The Federal sponsoring agency shall request transfer of certain records to its custody from recipient organizations when

it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, a Federal sponsoring agency may make arrangements with recipient organizations to retain any records which are continuously needed for joint use.

7. The head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient organization and their subrecipients to make audits, examinations, excerpts and transcripts.

8. Unless otherwise required by law, no Federal sponsoring agency shall place restrictions on recipient organizations which will limit public access to the records of recipient organizations except when the agency can demonstrate that such records must be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal sponsoring agency.

APPENDIX D

Program income. 1. Federal sponsoring agencies shall apply the standards set forth in this appendix in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds. Program income is defined in Appendix G, paragraph 2g.

2. Except as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), for recipient organizations which are agencies or instrumentalities of a State, interest earned by a recipient organization on advances of Federal funds shall be remitted to the Federal agency.

3. Proceeds from the sale of real and personal property either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with Appendix N to this part pertaining to property management.

4. Royalties received as a result of copyrights or patents will normally be retained by the recipient unless the terms of the agreement provide otherwise.

5. All other program income earned during the project period shall be retained by the recipient and, in accordance with the agreement, shall be:

a. Added to funds committed to the project by the Federal sponsoring agency and recipient organization and be used to further eligible program objectives, or

b. Deducted from the total project costs in determining the net costs on which the Federal share of costs will be based.

APPENDIX E

Cost sharing and matching. 1. This appendix sets forth criteria and procedures for the allowability of cash and in-kind contributions made by recipients or third parties in satisfying cost sharing and matching requirements of Federal sponsoring agencies. This appendix also establishes criteria for the evaluation of in-kind contributions made by third parties, and supplements the guidance found in FMC 73-3 (34 CFR Part 211) with respect to cost sharing on federally-sponsored research.

2. The following definitions apply for the purpose of this appendix:

a. **Project costs.** Project costs are all allowable costs incurred by a recipient (as set forth in the applicable Federal cost principles) and the value of in-kind contributions made by third parties in accomplishing the objectives of the agreement during the project or program period.

PROPOSED RULES

b. *Cost sharing and matching.* In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government.

c. *Cash contributions.* Cash contributions represent the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties.

d. *In-kind contributions.* In-kind contributions represent the value of noncash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

3. General guidelines for computing cost sharing or matching are as follows:

a. Cost sharing or matching may consist of:

(1) Charges incurred by the recipient as project costs. (Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.)

(2) Project costs financed with cash contributed or donated to the recipient by other public agencies and institutions, and private organizations and individuals, and

(3) Project costs represented by services and real and personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All contributions, both cash and in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all the following criteria:

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

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

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

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

(5) Are not paid by the Federal Government directly or indirectly under another agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching); and

(6) Conform to other provisions of this appendix.

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

5. Specific procedures for the recipients in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

a. *Valuation of volunteer services.* Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer service may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) *Rates for volunteer services.* Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.

(2) *Volunteers employed by other organizations.* When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of

fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. *Valuation of donated expendable personal property.* Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

c. *Valuation of donated, nonexpendable personal property, buildings and land or use thereof.* (1) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings, and land may differ according to the purpose of the grant or contract as follows:

(a) If the purpose of the agreement is to assist the recipient in the acquisition of equipment, buildings, or land, the total value of the donated property may be claimed as cost sharing or matching.

(b) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the Federal agency has approved the charges.

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

(a) *Land and buildings.* The value of donated land and buildings may not exceed its fair market value, at the time of donation, as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the recipient.

(b) *Nonexpendable personal property.* The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(c) *Use of space.* The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraiser of comparable space and facilities in a privately-owned building in the same locality.

(d) *Loaned equipment.* The value of loaned equipment shall not exceed its fair rental value.

6. The following requirements pertain to the recipient's supporting records for in-kind contributions from non-Federal third parties.

a. *Volunteer services* must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.

b. The basis for determining the valuation for personal services, material, equipment, buildings, and land must be documented.

APPENDIX F

Standards for financial management systems. 1. This appendix prescribes standards for financial management systems of recipients. Federal sponsoring agencies shall not impose additional standards on recipients unless specifically provided for in the applicable statutes or other attachments to this part. However, Federal sponsoring agencies are encouraged to make suggestions and assist recipients in establishing or improving financial management systems when such assistance is needed or requested.

2. Recipients' financial management systems shall provide for:

a. Accurate, current and complete disclosure of the financial results of each federally sponsored project or program in accordance with the reporting requirements set forth in appendix G to this part. When a Federal sponsoring agency requires reporting on an accrual basis, the recipient shall not be required to establish an accrual accounting system (except to the extent prescribed by the Cost Accounting Standards Board for awards subject to the Board's requirements), but should develop its reports on the basis of best estimates through an analysis of the documentation on hand.

b. Records which identify adequately the source and application of funds for federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

c. Effective control over and accountability for all funds, property, and other assets. Recipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparison of actual outlays with budget amounts for each agreement. Whenever appropriate or required by the Federal sponsoring agency, financial information should be related to performance and unit cost data.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the recipient shall make drawdowns from the U.S. Treasury through his commercial bank as close as possible to the time of making disbursements.

f. Procedures for determining the allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the agreement.

g. Accounting records which are supported by source documentation.

h. Examinations in the form of audits or internal audits, of the recipient's financial transactions made by individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreement. It is not intended that each agreement awarded to the institution be examined. Generally, examinations should be conducted on an organizationwide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every two years. The frequency of these examinations shall depend upon the nature, size, and the complexity of the activity.

1. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Primary recipients shall require secondary recipients (recipients of grants and cost type contracts which are passed through or awarded by the primary recipient) to adopt the standards in paragraph 2, above, except for the requirement in paragraph 2.e. regarding the use of letter-of-credit method.

APPENDIX G

Financial reporting requirements. 1. This appendix prescribes uniform reporting procedures for recipients to summarize expenditures made and Federal funds unexpended for each award; report the status of Federal cash advanced; request advances and reimbursement when the letter-of-credit method is not used; and promulgates standard forms incident thereto.

2. The following definitions apply for purposes of this appendix.

a. **Accrued expenditures.** Accrued expenditures are the charges incurred by the recipient during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees, and (3) other amounts becoming owed under programs for which no current services or performance are required.

b. **Accrued income.** Accrued income is the earnings during a given period which are a source of funds resulting from: (1) services performed by the recipient; (2) goods and other tangible property delivered to purchasers; and (3) amounts becoming owed to the recipient for which no current services or performance are required by the recipient.

c. **Federal funds authorized.** Federal funds authorized represent the total amount of Federal funds authorized for obligation by the recipient. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

d. **In-kind contributions.** In-kind contributions represent the value of noncash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property, and value of goods and services directly benefiting and specifically identifiable to the project or program.

e. **Obligations.** Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

f. **Outlays.** Outlays or expenditures represent charges made to the project or program. They may be reported on a cash or accrual basis. For reports which are prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performances are required.

g. **Program income.** Program income represents earnings by the recipient realized from the federally supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

h. **Unobligated balance.** The unobligated balance is the portion of the funds authorized

by the Federal sponsoring agency which has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

1. **Unliquidated obligations.** For reports prepared on a cash basis, unliquidated obligations represent the amount of obligations incurred by the recipient which have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

3. Only the following forms will be authorized for obtaining financial information from recipients. The forms mentioned below are filed as part of the original document.

a. **Financial Status Report (Exhibit 1)** (1) Each Federal sponsoring agency shall require recipients to use the standardized Financial Status Report to report the status of funds for all nonconstruction, projects or programs. The Federal sponsoring agencies may, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (paragraph 4a.) or Report of Federal Cash Transactions (paragraph 3b.) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the project when the Request for Advance or Reimbursement form is used only for advances.

(2) The Federal sponsoring agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal sponsoring agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert his accounting system, but should develop such information through best estimates based on an analysis of the documentation on hand.

(3) The Federal sponsoring agency shall determine the frequency of the Financial Status Report for each project or program considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. When necessary to meet program needs, monthly reports may be authorized if approved by the General Services Administration. A final report shall be required at the completion of the agreement.

(4) Federal sponsoring agencies shall require recipients to submit the Financial Status Report (original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 days for annual and final reports. Extensions to reporting due dates may be granted upon request of the recipient.

b. **Report of Federal Cash Transactions (Exhibit 2).**

(1) When funds are advanced to recipients through letters of credit or with Treasury checks, the Federal sponsoring agencies shall require each recipient to submit a Report of Federal Cash Transactions. The Federal sponsoring agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement from the recipients.

(2) Federal sponsoring agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(3) When practical and deemed necessary, the Federal sponsoring agencies may require recipients to report in the "Remarks" section the amount of cash advances in excess of three days' requirements in the hands of subgrantees or subcontractors and to provide short narrative explanations of actions taken

by the recipients to reduce the excess balances.

(4) Recipients shall be required to submit not more than the original and two copies of the Report of Federal Cash Transactions 15 working days following the end of each quarter. The Federal sponsoring agencies may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(5) Federal sponsoring agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed \$10,000 per recipient, provided that such advances are monitored through other forms contained in this appendix, or the recipient's accounting controls are adequate to minimize excessive Federal advances.

4. Except as noted below, only the following forms will be authorized for the recipients in requesting advances and reimbursements.

a. **Request for Advance or Reimbursement (Exhibit 3).** (1) Each Federal sponsoring agency shall adopt the Request for Advance or Reimbursement as a standardized form for all nonconstruction programs when letters of credit or predetermined advance methods are not used. Federal sponsoring agencies, however, have the option of using this form for construction programs in lieu of the Outlay Report and Request for Reimbursement for Construction Programs (paragraph 5b.).

(2) Recipients shall be authorized to submit requests for advances and reimbursement at least monthly when letters of credit are not used. Federal sponsoring agencies shall not require the submission of more than the original and two copies of the Request for Advance or Reimbursement.

b. **Outlay Report and Request for Reimbursement for Construction Programs (Exhibit 4).** (1) Each Federal sponsoring agency shall adopt the Outlay Report and Request for Reimbursement for Construction Programs as the standardized format to be used for requesting reimbursement for construction programs. The Federal sponsoring agencies may, however, have the option of substituting the Request for Advance or Reimbursement Form (paragraph 4a.) when the Federal agencies determine that it provides adequate information to meet their needs.

(2) Recipients shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Federal sponsoring agencies shall not require more than the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

5. When the Federal sponsoring agencies need additional information in using these forms, the following shall be observed:

a. When necessary to comply with legislative requirements, Federal sponsoring agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

b. When necessary to meet specific program needs, Federal sponsoring agencies shall submit the proposed reporting requirements to the General Services Administration for approval under the exception provision of this part.

c. When a Federal sponsoring agency has determined that a nonprofit organization's accounting system does not meet the Standards for Financial Management contained in appendix F to this part, additional information to further monitor agreements may be obtained until such time as the system is brought up to standard.

d. The Federal sponsoring agency, in obtaining information as in paragraphs a. and

b. above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

6. Federal sponsoring agencies have the option of shading out any line item on any report that is unnecessary for decision-making purposes.

7. Federal sponsoring agencies should accept the identical information from the recipients in machine usable format or computer printouts in lieu of prescribed formats.

8. Federal sponsoring agencies may provide computer outputs to recipients when it will expedite or contribute to the accuracy of reporting.

9. Federal sponsoring agencies are authorized to reproduce these forms. The forms for reproduction purposes can be obtained from the General Services Administration.

APPENDIX H

MONITORING AND REPORTING PROGRAM PERFORMANCE

1. This appendix sets forth the procedures for monitoring and reporting program performance of recipients.

2. Recipients shall monitor the performance under agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each agreement as set forth in the approved application or award document.

3. Recipients shall submit a performance report (technical report) for each agreement that briefly presents the following information for each program, function, or activity involved as prescribed by the Federal sponsoring agency:

a. A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons why established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Except as provided in a. and b. below, recipients shall submit the performance or technical reports to Federal sponsoring agencies with the Financial Status Reports in the frequency established by Appendix G of this part and, where appropriate, a final technical or performance report after completion of the project on a date specified by the Federal sponsoring agency. The Federal sponsoring agency shall prescribe the frequency with which the performance reports will be submitted with the request for advance or reimbursement when that form is used in lieu of the Financial Status Report. Except as provided for in paragraph 5. below, performance reports shall not be required more frequently than quarterly or less frequently than annually. Federal sponsoring agencies may waive the requirement for recipients to submit performance reports with the financial reports under the following circumstances:

a. When the recipient is required to submit a performance report with a continuation or renewal application.

b. When the Federal sponsoring agency determines that on-site technical inspections and certified completion data will be sufficient to evaluate construction projects.

c. When the Federal sponsoring agency requests annual financial reports on a fiscal

year basis but it is necessary to get annual progress reports on a calendar year basis.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such instances, the recipient shall inform the Federal sponsoring agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.

6. If any performance review conducted by the recipient discloses the need for change in the budget estimates in accordance with the criteria established in Appendix J to this circular, the recipient shall submit a request for budget revision.

7. The Federal sponsoring agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems, and

b. Provide such technical assistance as may be required.

APPENDIX I

Payment requirements. 1. This appendix establishes the required methods of making payments to recipients. These methods will minimize the time elapsing between the disbursement by these recipients and the transfer of funds from the United States Treasury to these recipients whether such disbursement occurs prior to or subsequent to the transfer of funds.

2. Payments can be made to recipients through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this appendix:

a. **Letter of credit.** A letter of credit is an instrument certified by an authorized official of a Federal sponsoring agency which authorizes a recipient to draw funds when needed from the Treasury, through a Federal Reserve bank and the recipient's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

b. **Advance by Treasury check.** An advance by Treasury check is a payment made by a Treasury check to a recipient upon its request before outlays are made by the recipient, or through the use of predetermined payment schedules.

c. **Reimbursement by Treasury check.** A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient.

3. Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph 5, the letter-of-credit method shall be used by Federal sponsoring agencies if all of the following conditions exist:

a. If there is or will be a continuing relationship between a recipient and a Federal sponsoring agency for at least a 12-month period and the total amount of advance payments expected to be received within that period from the Federal sponsoring agency is \$250,000 or more, as prescribed by Treasury Circular No. 1075.

b. If the recipient has established or demonstrated to the Federal sponsoring

agency the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient.

c. If the recipient's financial management system meets the standards for fund control and accountability prescribed in Appendix F to this part, "Standards for Financial Management Systems."

4. The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the recipient meets all of the requirements specified in paragraph 3, above, except those in subparagraph 3a.

5. The reimbursement by Treasury check method shall be the preferred method if the recipient does not meet the requirements specified in either or both of subparagraphs 3b. and 3c. At the option of the Federal sponsoring agency, this method may also be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, the Federal sponsoring agency shall make payment within thirty days after receipt of the billing, unless the billing is improper.

6. When the letter-of-credit procedure is used, the recipient shall be issued one consolidated letter of credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by the sponsoring agency. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all grants and other agreements made by the sponsoring agency to that recipient.

7. The preferred form of security for advance payments under contracts shall be a paramount lien in favor of the Government upon personal property acquired for or allocated to contract performance.

8. Unless otherwise required by law, Federal sponsoring agencies shall not withhold payments for proper charges made by recipients at any time during the project or program period unless (a) a recipient has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or (b) the recipient is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States.

Under such conditions, the sponsoring agency may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

APPENDIX J

Revision of financial plans. 1. This appendix sets forth criteria and procedures to be followed by Federal sponsoring agencies in requiring recipients to report deviations from financial plans and to request approvals for financial plan revisions.

2. The financial plan is the financial expression of the project or program as approved during the application and/or award process. It may include both the Federal and non-Federal share or only the Federal share, depending upon sponsoring agency requirements. It should be related to performance for program evaluation purposes whenever appropriate and required by the Federal sponsoring agency.

3. For nonconstruction awards, recipients shall request prior approvals promptly from Federal sponsoring agencies whenever deviations from approved financial plans are necessary for the following reasons:

a. The revision results from changes in the scope or the objective of the project or program.

b. The revision indicates the need for additional Federal funding.

c. The revision involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa, if approval is required by the Federal sponsoring agency.

d. The revisions pertain to expenditures which require approval in accordance with FMC 73-8 (34 CFR Part 254) (Cost Principles for Educational Institutions). No other requirements for specific items may be imposed unless a deviation has been approved by the General Services Administration.

e. When recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

4. The Federal sponsoring agency may also, at its option, restrict transfers of funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed 5 percent of the total budget. The same criteria shall apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for an award, except that the Federal sponsoring agency shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

5. All other changes to nonconstruction budgets, except for the changes described in paragraph 7., do not require approval. This includes the use of recipient funds in furtherance of program objectives over and above the recipient minimum share included in the approved budget.

6. For construction awards, recipients shall request prior approvals promptly from Federal sponsoring agencies for budget revisions wherever:

a. The revision results from changes in the scope or the objective of the project or program, and

b. The revision increases the budget amounts of Federal funds needed to complete the project.

7. When a Federal sponsoring agency makes an award which provides support for both construction and nonconstruction work, the Federal sponsoring agency may require the recipient to request prior approval from the Federal sponsoring agency before making any fund or budget transfers between the two types of work supported.

8. For both construction and nonconstruction awards, Federal sponsoring agencies shall require recipients to notify the Federal sponsoring agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than \$5,000 or 5 percent of the Federal award, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants or contracts.

9. When requesting approval for budget revisions which require forms, recipients shall use the budget forms which were used in the application.

10. Within 30 calendar days from the date of receipt of the request for budget revisions, Federal sponsoring agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal sponsoring agency shall inform the recipient in writing of the date when the recipient may expect the decision.

APPENDIX K

Closeout procedures. 1. This appendix prescribes uniform closeout procedures for Federal agreements with recipients.

2. The following definitions shall apply for the purpose of this attachment:

a. *Closeout.* The closeout of an agreement is the process by which a Federal sponsoring agency determines that all applicable administrative actions and all required work of the agreement have been completed by the recipient and the Federal sponsoring agency.

b. *Date of completion.* The date of completion means when all work under an agreement is completed or the date in the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

c. *Disallowed costs.* Disallowed costs are those charges to an agreement which the Federal sponsoring agency or its representative determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the agreements.

3. All Federal sponsoring agencies shall establish closeout procedures which include the following requirements:

a. Upon request, the Federal sponsoring agency shall make prompt payments to a recipient for allowable reimbursable costs under the agreement being closed out.

b. The recipient shall immediately refund any balance of unencumbered cash which the Federal sponsoring agency has advanced or paid and which is not authorized to be retained by the recipient for use in other agreements.

c. The Federal sponsoring agency shall obtain from the recipient within 90 calendar days after the date of completion of the agreement all financial, performance, and other reports required as the condition of the agreement. The agency may grant extensions when requested by the recipient.

d. When authorized by the agreement, the Federal sponsoring agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

e. The recipient shall account for any property acquired with Federal funds, or received from the Government in accordance with the provisions of Appendix N to this part, Property Management Standards.

f. In the event a final audit is required and has not been performed prior to the closeout of the agreement, the Federal sponsoring agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. Suspension and termination procedures are contained in Appendix L to this part.

APPENDIX L

Suspension and termination procedures.

1. This appendix prescribes uniform suspension and termination procedures for Federal agreements with recipients.

2. The following definitions shall apply for the purpose of this appendix:

a. *Termination.* The termination of an agreement means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

b. *Suspension.* The suspension of an agreement is an action by a Federal sponsoring agency which temporarily suspends Federal sponsorship under the agreement pending corrective action by the recipient or pending a decision to terminate the agreement by the Federal sponsoring agency.

3. All Federal sponsoring agencies shall provide procedures to be followed when a recipient has failed to comply with the terms of

the agreement and conditions or standards. When that occurs, the Federal sponsoring agency may, on reasonable notice to the recipient, suspend the agreement, and withhold further payments, or prohibit the recipient from incurring additional obligations of funds, pending corrective action by the recipient or a decision to terminate in accordance with paragraph 4. The Federal sponsoring agency shall allow all necessary and proper costs which the recipient could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable Federal cost principles.

4. Federal sponsoring agencies shall provide for the systematic settlement of terminated agreements including the following:

a. *Termination for cause.* The Federal sponsoring agency may reserve the right to terminate any agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The Federal sponsoring agency shall promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Federal sponsoring agencies under agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

b. *Termination for convenience.* (1) *Grants and other cooperative agreements.* The sponsoring agency or recipient may terminate grants and other cooperative agreements in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal sponsoring agency shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

(2) *Contracts.* The Federal contracting agency may terminate contracts, in whole, or in part, whenever for any reason the contracting officer shall determine that such termination is in the best interest of the Government.

APPENDIX M

[RESERVED FOR—APPLICATION FORMS]

APPENDIX N

Property management standards. 1. This appendix prescribes uniform standards governing management of property furnished by the Federal Government or acquired in whole or in part with Federal funds by recipients. Federal sponsoring agencies shall require recipients to observe these standards under agreements and shall not impose additional requirements unless specifically required by Federal law. The recipient may use his own property management standards and procedures provided he observes the provisions of this appendix.

2. The following definitions apply for the purpose of this appendix:

a. *Real property.* Real property means land, including land improvements, structures, and appurtenances thereto, but excluding movable machinery and equipment.

b. *Personal property.* Personal property means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical

existence, such as patents, inventions, and copyrights.

c. *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit except that recipients subject to Cost Accounting Standards Board regulations may use the CASB standard of \$500 per unit and useful life of two years. A recipient may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

d. *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. *Excess property.* Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs.

f. *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

g. *Exempt property.* Exempt property means tangible personal property which is acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in 4d. below. Such unconditional vesting of title will be pursuant to any Federal legislation which provides the Federal sponsoring agency with adequate authority.

h. *Real property.* Agencies shall follow existing regulations for acquisition and use of real property acquired under contracts. Each Federal sponsoring agency shall prescribe requirements for recipients concerning the use and disposition for real property acquired partly or wholly under agreements except contracts. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the assistance, as long as it is needed.

b. The recipient shall obtain approval by the Federal sponsoring agency for the use of real property in other projects when the recipient determines that the property is no longer needed for the purpose of the original assistance project. Use in other projects shall be limited to those under other federally assisted projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by the Federal sponsoring agency.

c. When the real property is no longer needed as provided in a. and b. above, the recipient shall request disposition instructions from the Federal sponsoring agency or its successor Federal sponsoring agency in interest. The Federal sponsoring agency shall observe the following rules in the disposition instructions.

(1) The recipient may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal sponsoring agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government provided that in such cases the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property.

4. *Nonexpendable personal property.* Standards and procedures governing management of nonexpendable personal property acquired with Federal assistance funds or furnished by the Federal Government, are set forth below.

a. *Exempt property.* When statutory authority exists, (e.g., Pub. L. 85-934, (42 U.S.C. 1892)), nonexpendable personal property acquired with Federal funds, title shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 4d. below.

b. *Nonexempt, nonexpendable personal property acquired with contract funds.* Title to nonexempt, nonexpendable personal property acquired with contract funds shall vest in the Federal Government upon acquisition. The contractor shall (subject to the shared use rule in 4f. below) use the property for the contract under which it was acquired as long as needed. Upon completion or termination of the contract, the contractor and the Federal sponsoring agency will act in accordance with 4e. below.

c. *Nonexempt, nonexpendable personal property acquired with other than contract funds.* When nonexempt, nonexpendable personal property is acquired by a recipient wholly or in part with other than contract funds, title shall not be taken by the Federal Government except as provided in 4d., below, but shall vest in the recipient subject to the following conditions governing use and disposition of the property:

(1) The recipient shall (subject to 4f. below) use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other federally assisted activities, in the following order of priority:

(a) Activities sponsored by the same Federal agency.

(b) Activities sponsored by other Federal agencies.

(2) When the recipient no longer needs the property as provided in (1) above, the property may be used for other activities in accordance with the following standards:

(a) *Nonexpendable property with a unit acquisition cost of less than \$1,000.* The recipient may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) *Nonexpendable personal property with a unit acquisition cost of \$1,000 or more.* The recipient may retain the property for other uses provided that compensation is made to the original Federal sponsoring agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from the original sponsoring agency. The Federal sponsoring agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal sponsoring agency shall issue instructions to the recipient not later than 120 days after the recipient's request, and the following procedures shall govern:

(i) If the recipient is instructed to ship the property elsewhere, the recipient shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the recipient's participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(ii) If the recipient is instructed to otherwise dispose of the property, the recipient shall be reimbursed by the Federal sponsoring agency for such costs incurred in its disposition. If the recipient is instructed to sell the property, he shall reimburse the Federal sponsoring agency in accordance with subparagraph 4b(III) below.

(iii) If disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the property and reimburse the Federal sponsoring agency an amount which is computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$100 or 10 percent of the proceeds, whichever is greater, for the recipient's selling and handling expenses.

d. *Transfer of title of recipient-owned, nonexpendable property with a unit acquisition cost of \$1,000 or more.* With respect to items of nonexpendable personal property owned by recipients and acquired with Federal funds having a unit acquisition cost of \$1,000 or more, the Federal sponsoring agency may reserve the right to require the recipient to transfer the title to the Federal Government or directly to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the agreement or otherwise made known to the recipient.

(2) The Federal sponsoring agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal sponsoring agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of subparagraphs 4c. and 4e. as appropriate.

(3) When the Federal sponsoring agency exercises its right to take title, it shall notify the recipient; the personal property shall be subject to the provisions of subparagraph 4e. below.

(4) When title is transferred either to the Federal Government or to a third party, the provisions of 4c(b)(1) should be followed.

e. *Federally owned nonexpendable personal property.* Title to Federally owned property remains vested in the Federal Government. The Federal sponsoring agency may require property acquired under a contract to be reported to it upon acquisition. Recipients shall submit annually an inventory listing of federally owned property in their custody to the Federal sponsoring agency. Upon completion of the agreement or when the property is no longer needed, the recipient shall report the property to the Federal sponsoring agency for further agency utilization.

If the Federal sponsoring agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

f. *Shared use.* During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal agency which financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal agency. User charges should be considered if appropriate.

5. The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

a. Property records shall be maintained accurately and shall include:

- (1) A description of the property.
- (2) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (3) Source of the property, including contract or grant number.
- (4) Whether title vests in the recipient or the Federal Government.
- (5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.
- (6) Percentage of Federal participation in the cost of the project or program for which the property was acquired (not applicable to property furnished by the Federal Government).
- (7) Location, use and condition of the property and the date the information was reported.
- (8) Unit acquisition cost.
- (9) Ultimate disposition data, including sales price or the method used to determine current fair market value where a recipient compensates the Federal sponsoring agency for its share in accordance with 4c. above, and the date of disposal.

b. Property owned by the Federal Government must be marked to indicate Federal ownership. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference.

c. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

d. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the sponsoring Federal agency.

e. Adequate maintenance procedures shall be implemented to keep the property in good condition.

f. Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

6. Standards for nonexempt, expendable personal property are as follows:

a. *Nonexempt, expendable personal property acquired with contract funds.* Title to nonexempt, expendable personal property acquired with contract funds shall vest in the Federal Government upon acquisition. Any residual inventory of such property, upon completion or termination of the contract, shall be reported to the Federal sponsoring agency, and shall be disposed of in accordance with instructions issued by the Federal sponsoring agency.

b. *Nonexempt, expendable personal property acquired with other than contract funds.* Title to nonexempt, expendable personal property acquired with other than contract funds shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant, and the property is not needed for any other federally sponsored project or program, the recipient shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with 4c(2)(b) or, if sold, in accordance with 4c(2)(b)(III), above.

7. Standards for control of intangible property are set forth below:

a. *Inventions and patents.* If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to the Federal sponsoring agency. Unless there is a prior agreement between the recipient and the Federal sponsoring agency on disposition of such items, the Federal sponsoring agency shall determine whether protection on the invention or discovery shall be sought. The Federal sponsoring agency will also determine how the rights in the invention or discovery—including rights under any patent issued thereon—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

b. *Copyrights.* Except as otherwise provided in the terms and conditions of the agreement, the author or the recipient organization is free to copyright any books, publications or other copyrightable materials developed in the course of or under a Federal agreement, but the Federal sponsoring agency shall reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

APPENDIX O

Procurement standards. 1. This appendix provides standards for use by recipients in

establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. The recipient shall rely on the private sector to provide goods and services to the maximum feasible extent. No additional procurement standards or requirements shall be imposed by the Federal sponsoring agencies upon recipients unless specifically required by Federal statute or executive orders.

2. The standards contained in this appendix do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to the Federal sponsoring agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of an agreement. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

3. Recipients may use their own procurement policies and procedures. However, all recipients shall adhere to the standards set forth in paragraphs 3 and 4.

a. The recipient shall maintain a code of standards of conduct which shall govern the performance of its officers, employees, or agents in the awarding and administration of contracts using Federal funds. The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the recipients' officers, employees, or agents.

b. All procurement transactions shall be conducted in a manner to provide to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. Awards shall be made to the bidder/offeree with the lowest bid provided the bid/offeree is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements which the bidder/offeree must fulfill in order for his bid/offeree to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipients' interest to do so.

c. All recipients shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

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

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

PROPOSED RULES

(3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

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

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

(6) All proposed sole source contracts in which the aggregate expenditure is expected to exceed \$5,000 shall be subject to prior approval at the discretion of the Federal sponsoring agency.

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

(a) Basis for contractor selection.

(b) Justification for lack of competition when competitive bids or offers are not obtained.

(c) Basis for award cost or price.

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

4. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

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

b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which

the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. In all contracts for construction or facility improvement awarded for more than \$100,000, recipients shall observe the bonding requirements provided in Appendix B to this part.

d. All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

e. All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal sponsoring agency.

f. When required by the Federal program legislation, all construction contracts awarded by recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal sponsoring agency.

g. Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.

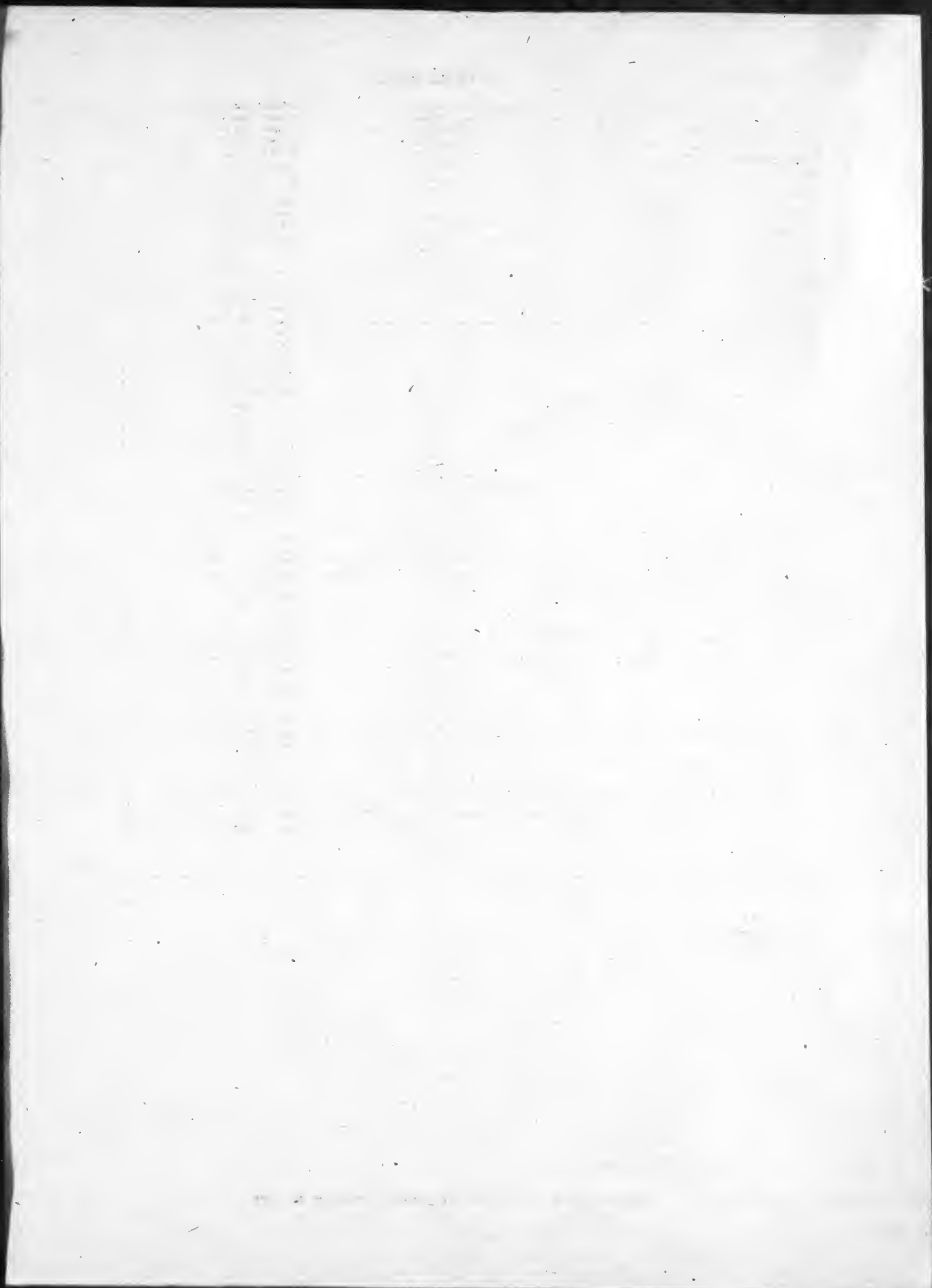
327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

h. Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Federal sponsoring agency and the recipient. The contractor shall be advised as to the source of additional information regarding these matters.

i. All negotiated contracts (except those of \$2,500 or less) awarded by recipients shall include a provision to the effect that the recipient, the Federal sponsoring agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts, and transcriptions.

j. Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the Federal sponsoring agency and the Regional Office of the Environmental Protection Agency.

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