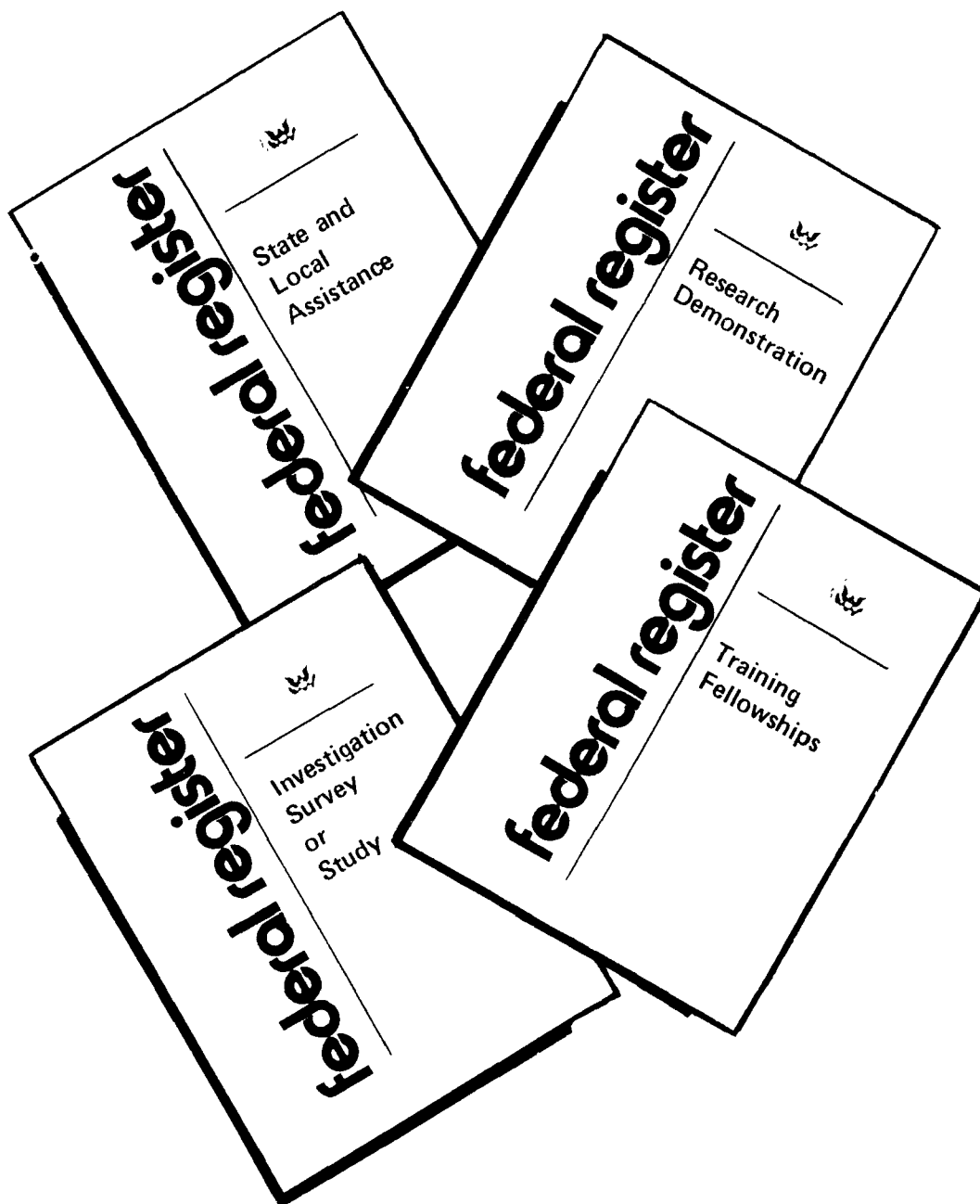




General Grant Regulations and Procedures Applicable To



Reprinted from Environment Reporter, Sept. 22, 1978

Second Printing June 1979

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ENVIRONMENTAL PROTECTION AGENCY

(40 CFR 30, Revised as of June 30, 1978)

PART 30—GENERAL GRANT REGULATIONS AND PROCEDURES

(Editor's note: 40 CFR 30 was replaced in its entirety by a new 40 CFR 30 on May 8, 1975, in 40 FR 20231.)

AUTHORITY: Sec. 20 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135); (33 U.S.C. 1251; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3; 1857, 1891, and 3251) et seq.

§ 30.100 Purpose.

This Subchapter establishes and codifies uniform policies and procedures for all grants awarded by the U.S. Environmental Protection Agency (EPA).

§ 30.101 Authority.

This Subchapter is promulgated by the Administrator of the Environmental Protection Agency pursuant to the authority conferred by Reorganization Plan No. 3 of 1970 and pursuant to the following statutes which authorize the award of assistance by the Environmental Protection Agency:

(a) Clean Water Act, as amended (33 U.S.C. §§ 1251 et seq.).

[43 FR 28484, June 30, 1978]

(b) The Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(c) The Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

[42 FR 56050, October 20, 1977]

(d) The Safe Drinking Water Act (42 U.S.C. 300j-1, 300j-2, 300j-3);

(e) Section 301 et seq. of the Public Health Service Act, as amended (42 U.S.C. 241, 242b, 243, and 246);

(f) Sections 20 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135); and

(g) Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501); and

(h) Toxic Substances Control Act (15 U.S.C. 2601).

[43 FR 28484, June 30, 1978]

§ 30.105 Applicability and scope

(a) Parts 30 through 34 of this Subchapter contain policies and procedures which apply to all grants made by the Environmental Protection Agency and are designed to achieve maximum uniformity throughout the various grant programs of the Environmental Protection Agency and, where possible, consistency with other Federal agencies. These policies and procedures are mandatory with

respect to all Environmental Protection Agency grants and apply to grants awarded or administered within and outside the United States, unless otherwise specified. Supplementary policies and procedures applicable to only certain grant programs are issued in regulations specifically pertaining to those programs under Part 35 (State and Local Assistance), Part 40 (Research and Demonstration), Part 45 (Training) and Part 46 (Fellowships). Grants or agreements entered into with funds under the Scientific Activities Overseas Program which utilize U.S.-owned excess foreign currencies shall not be subject to this Subchapter.

(b) Assistance agreements designated as grants or cooperative agreements under the Federal Grant and Cooperative Agreement Act shall be subject to part 30 and other provisions of this subchapter which are applicable to grants.

[43 FR 28484, June 30, 1978]

§ 30.110 Publication.

This Subchapter is published (in Title 40) in the daily issue of the FEDERAL REGISTER and in cumulated form in the Code of Federal Regulations.

§ 30.115 Copies.

Copies of this Subchapter in FEDERAL REGISTER and Code of Federal Regula-

tions form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 30.120 Citation

This Subchapter will be cited in accordance with FEDERAL REGISTER standards. For example, this section, when referred to in divisions of this Subchapter, should be cited as "40 CFR 30.120."

§ 30.125 Public comment.

This Subchapter will be amended from time to time to establish new or improved grant policies and procedures, to simplify and abbreviate grant application procedures, to simplify and standardize grant conditions and related requirements, to

include or provide for statutory changes, and to improve Agency and grantee administration of grants. Therefore, public comment is solicited on a continuous basis and may be addressed to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460.

§ 30.130 Grant information.

Application forms and information concerning Agency grants may be obtained through the Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460, or any EPA regional grants administration office. Addresses of EPA Regional Offices are as follows:

Region	Address	States
I	John F. Kennedy Federal Bldg., Boston, Mass. 02203	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II	26 Federal Plaza, New York, N.Y. 10007	New Jersey, New York, Puerto Rico, Virgin Islands.
III	6th and Walnut, Curtis Bldg., Philadelphia, Pa. 19106	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV	345 Courtland St., N.E., Atlanta, Ga. 30308	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V	230 South Dearborn St., Chicago, Ill. 60604	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI	1201 Elm St., Dallas, Tex. 75270	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII	1735 Baltimore Ave., Kansas City, Mo. 64108	Iowa, Kansas, Missouri, Nebraska.
VIII	Lincoln Tower, 1860 Lincoln St., Denver, Colo. 80203	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX	215 Fremont St., San Francisco, Calif. 94105	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, Wake Island.
X	1200 6th Ave., Seattle, Wash. 98101	Alaska, Idaho, Oregon, Washington.

§ 30.135 Definitions.

All terms used in this Subchapter which are defined in the statutes cited in § 30.101 and which are not defined in this Section, shall have the meaning given to them in the relevant statutes. As used throughout this Subchapter, the words and terms defined in this Section shall have the meanings set forth below, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion thereof. The words and terms defined in this Section shall have the meanings set forth herein whenever used in any correspondence, directives, orders, or other documents of the Environmental Protection Agency relating to grants, unless the context clearly requires a different meaning.

§ 30.135-1 Administrator.

The Administrator of the Environmental Protection Agency, or any person authorized to act for him.

§ 30.135-2 Agency.

The United States Environmental Protection Agency (EPA).

§ 30.135-3 Allowable costs.

Those eligible, reasonable, necessary, and allocable costs which are permitted under the appropriate Federal cost principles, in accordance with EPA policy, within the scope of the project and authorized for EPA participation.

[41 FR 20656, May 20, 1976]

§ 30.135-4 Applicant.

Any individual, agency, or entity which has filed a preapplication or an application for a grant pursuant to this Subchapter.

§ 30.135-5 Budget.

The financial plan for expenditure of all Federal and non-Federal funds for a project, including other Federal assistance, developed by cost components in the grant application.

§ 30.135-6 Budget period.

The period specified in the grant agreement during which granted Federal funds are authorized to be expended, obligated, or firmly committed by the grantee for the purposes specified in the grant agreement.

§ 30.135-7 Educational institution.

Any institution which (a) has a faculty, (b) offers courses of instruction, and (c) is authorized to award a degree or certificate upon completion of a specific course of study.

§ 30.135-8 Eligible costs.

Those costs in which Federal participation is authorized pursuant to applicable statute.

[41 FR 20656, May 20, 1976]

§ 30.135-9 Federal assistance.

The entire Federal contribution for a project including, but not limited to, the EPA grant amount.

§ 30.135-10 Grant.

An award of funds or other assistance by a written grant agreement pursuant to this Subchapter, except fellowships.

§ 30.135-11 Grant agreement.

The written agreement and amendments thereto between EPA and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties pursuant to § 30.345.

§ 30.135-12 Grant approving official.

The EPA official designated to approve grants and take other grant related actions authorized by Environmental Protection Agency Orders or this Subchapter (sometimes referred to as the Decision Official).

§ 30.135-13 Grant award official.

The EPA official authorized to execute a grant agreement on behalf of the Government.

§ 30.135-14 Grantee.

Any individual, agency, or entity which has been awarded a grant pursuant to § 30.345.

§ 30.135-15 In-kind contribution.

The value of a non-cash contribution provided by (a) the grantee, (b) other public agencies and institutions, (c) private organizations and individuals, or (d) EPA. An in-kind contribution may consist of charges for real property and equipment and value of goods and services directly benefiting and specifically identifiable to the grant program.

§ 30.135-16 Nonprofit organization.

Any corporation, trust, foundation, or institution (a) which is entitled to ex-

emption under section 501(c)(3) of the Internal Revenue Code, or (b) which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

§ 30.135-17 Project.

The undertaking identified in the grant agreement which will receive EPA assistance. The term project may refer to a program (e.g., State water pollution control program, air pollution control program) for the budget period for which EPA assistance is provided.

§ 30.135-18 Project costs.

All costs incurred by a grantee in accomplishing the objectives of a grant project, not limited to those costs which are allowable in computing the final EPA grant amount or total Federal assistance.

§ 30.135-19 Project Officer.

The EPA official designated in the grant agreement as the Agency's principal contact with the grantee on a particular grant. This person is the individual responsible for the performance and/or coordination of project monitoring.

§ 30.135-20 Project period.

The period of time specified in the grant agreement as estimated to be required for completion of the project for which Federal grant support has been requested. It is composed of one or more budget periods.

§ 30.135-21 Regional Administrator.

The Regional Administrator of one of the 10 EPA Regional Offices, or any person authorized to act for him

§ 30.135-22 Subagreement.

A written agreement between an EPA grantee and another party (other than another public agency) and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded. These agreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

[43 FR 28484, June 30, 1978]

Subpart A—Basic Policies

§ 30.200 Grant simplification goals and policy.

It is EPA policy that, consistent with protection of the public interest, procedures used in administering and implementing grant programs shall encourage

the minimization of paperwork and intraagency decision procedures, and the best use of available manpower and funds, to prevent needless duplication and unnecessary delays.

§ 30.205 Role of EPA.

The Environmental Protection Agency has a mandate to protect and enhance the environment. Grants and fellowships are among EPA's principal means of achieving its objectives. EPA financial assistance may be awarded to support State and local governments, research, demonstration, or training projects, fellowships and such other programs that advance the Agency's mission.

§ 30.210 Role of the grantee.

An award of a grant shall be deemed to constitute a public trust. It is the responsibility of the grantee to comply with this Subchapter and all terms and conditions of the grant agreement, efficiently and effectively manage grant funds within the approved budget, complete the undertaking in a diligent and professional manner, and monitor and report performance. This responsibility may be neither delegated nor transferred by the grantee.

§ 30.215 Records of grant actions.

(a) An official EPA file shall be established for each EPA grant. To the extent that retained copies of documents do not represent all significant actions taken, suitable memoranda or summary statements of such undocumented actions must be prepared promptly and retained in the grant file.

(b) The grantee shall establish an official file for each grant received from EPA. The file should contain documentation of all actions taken with respect to the grant (see § 30.805).

§ 30.220 Consolidated grants.

A consolidated grant is a grant funded under more than one grant authority by EPA or a grant awarded in conjunction with one or more Federal agencies (e.g., Joint Funded Assistance). Application for and award and administration of a consolidated grant must conform to this Subchapter, except as the Director, Grants Administration Division, may otherwise direct with respect to substantutory requirements. Those conditions and procedures will conform to this Subchapter to the greatest extent practicable.

[43 FR 28484, June 30, 1978]

§ 30.225 Foreign grants.

(a) A foreign grant, as used in this Part, means an EPA award for such project, all or any part of which will be performed in a foreign country by (1) a

U.S. grantee, (2) a foreign grantee, or (3) an international organization.

(b) Grant applications for work performed in the United States shall generally be given preference over applications for similar work to be performed in a foreign country.

(c) Foreign grants shall comply with this Subchapter and shall be awarded and administered pursuant to such additional conditions and procedures as may be established by EPA. Grants or agreements entered into with funds under the Scientific Activities Overseas Program which utilize U.S.-owned excess foreign currencies shall not be subject to this Subchapter.

§ 30.225-1 Clearance requirements.

The total amount of foreign awards financed by EPA during a fiscal year may not exceed any ceilings on foreign obligations which may be established for that fiscal year by the Office of Management and Budget. Department of State clearance must be obtained by EPA through the EPA Office of International Activities prior to the award of a foreign grant.

§ 30.225-2 Criteria for award.

All of the following criteria must be met before a foreign grant may be awarded:

(a) The foreign proposal is outstanding or original in concept and important to the achievement of EPA program objectives;

(b) The proposed work must be performed outside the United States because of unusual personnel or material resources available, or other existing conditions;

(c) The proposed work is urgently needed by the sponsoring program office and constitutes a timely opportunity which would be lost if not supported at this time; and

(d) An adequate level of funding cannot be obtained for the foreign work by the applicant without financial support from EPA.

§ 30.225-3 Allowability of costs.

(a) Travel costs are allowable for foreign grants if itemized in the application and approved by EPA as part of the grant agreement or if approved in writing by EPA in advance of each trip.

(b) Indirect costs are not allowable for foreign grants unless an established or provisional indirect cost rate is in effect at the time of grant award. In the case of a U.S. grantee performing only a part of a project in a foreign country, indirect costs are al-

lowed for that part of the work performed in the United States.

[43 FR 28484, June 30, 1978]

(c) [Revoked, 41 FR 20656, May 20, 1976]

§ 30.225-4 Payments.

(a) All payments will be made in U.S. currency unless otherwise specified in the grant agreement. If payment is made in foreign currency, payments will be in an amount equal at the time of payment to the United States dollars awarded.

(b) Refunds and rebates should be made in the currency of the original payment and shall be in an amount equal, at the time of payment, to United States dollars awarded.

§ 30.230 Grants administration review.

The Director, Grants Administration Division, shall conduct such review, as he deems appropriate, of the administration of each EPA grant program or of grants awarded by a particular EPA office to determine compliance with the policies and procedures of this Subchapter and to determine further steps necessary to implement § 30.200.

§ 30.235 Disclosure of information.

(a) EPA policy concerning release of information under the Freedom of Information Act, 5 U.S.C. 552, is stated in Part 2 of this Chapter. Applicants for grants, grantees, and their contractors should be aware that information provided to EPA is subject to disclosure to others pursuant to the Freedom of Information Act. In addition EPA acquires the right, unless otherwise provided in a grant agreement, to use and disclose project data, pursuant to Appendix C to this Part.

(b) Any person who submits to EPA any information under this Part, and who desires that EPA not disclose any or all of the information, may place on (or attach to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "business confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. Applicants should also comply with further instructions in application forms concerning the assertion of confidentiality claims. See §§ 2.203 and 2.204 of this chapter.

[41 FR 36918, September 1, 1976]

(c) Unless a specific provision (special condition) in the grant otherwise provides, information submitted in an application or other submission with a restrictive marking will nevertheless be subject to the Government's duty to disclose information pursuant to the Freedom of Information Act and the Government's rights to utilize data pursuant to Appendix C of this Part.

§ 30.245 Fraud and other unlawful or corrupt practices.

(a) The award and administration of EPA grants, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct; Federal administrative or other legally available remedies will be pursued, however, to the extent appropriate.

(b) The grantee must effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee must advise the Project Officer immediately when such allegation or evidence comes to its attention, and must periodically advise the Project Officer of the status and ultimate disposition of any matter, including those referred pursuant to Paragraph (c) of this section.

(c) If any allegations, evidence or even appearance of such illegality or corrupt practices comes to the attention of the EPA Project Officer, he must promptly report briefly in writing the substance of the allegations or evidence to the Director, EPA Security and Inspection Division. When so advised by the Director, EPA Security and Inspection Division, he must bring the matter to the attention of the grantee for action.

(d) If any allegations, evidence or even appearance of such illegality or corrupt practices comes to the attention of any other EPA employee, he must promptly report briefly in writing the substance of the allegation or evidence to the Director, EPA Security and Inspection Division.

(e) A person, firm, or organization which is demonstrated upon adequate evidence to have been involved in bribery or other unlawful or corrupt practices on a Federally-assisted project may be determined nonresponsible and ineligible by the Director, Grant Administration Division, or an EPA grant award or for the award of a contract under an EPA grant, pursuant to § 30.340-2(c). The Director, Grants Administration Division, shall

make such determination whenever he determines there is adequate evidence of such involvement, after opportunity for conference (with right of counsel) has been afforded to the affected person, firm, or organization. Such determination shall be binding upon EPA grant personnel. The Director, Grants Administration Division, shall notify EPA grant personnel and other appropriate persons of such determination or of any termination, modification, or suspension of the determination. The grantee may appeal a determination of the Director, Grants Administration Division, made pursuant to this section (see Subpart J of this part).

Subpart B—Application and Award

§ 30.300 Preapplication procedures.

(a) Informal inquiries by potential grant applicants prior to application submission are encouraged to expedite preparation and evaluation of the grant application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged briefings of individuals or classes of potential applicants. Questions should be directed to the appropriate Environmental Protection Agency program office from which funding is being sought or to the grants administration office in Headquarters or in the region in which the applicant is located. Inquiries may be directed to State officials for applications which include State participation in the review process (e.g., grants for construction of treatment works.)

(b) Submission of preapplications to EPA is encouraged for all research, demonstration, and training grant programs to (1) establish communication between EPA and the applicant; (2) determine applicant's eligibility; (3) determine how well the project can compete with similar applications; and (4) eliminate any proposal which has no chance for funding.

(c) An applicant submitting a preapplication to the grants administration office shall be promptly notified that (1) the preapplication has been received; (2) it has been forwarded to the appropriate program for an expression of interest, and (3) the program office will contact the applicant directly regarding possible followup action.

(d) Generally, preapplication processing requires 45 days and is not part of the 90 day review period for formal grant applications.

§ 30.305 A-95 procedures.

[41 FR 20656, May 20, 1976]

(a) Office of Management and Budget Circular A-95 (revised) (41 FR 2052, January 13, 1976) provides for State and

areawide clearinghouse evaluation, review, and coordination of Federally-assisted programs and projects. Therefore, applicants applying for a planning, program, survey, demonstration, or construction grant must comply with appropriate coordination procedures outlined in the A-95 Circular. Generally, coordination is required prior to submitting an application. However, in certain cases clearinghouses will be afforded the opportunity to comment during the initial phases of project work in conjunction with the development of plans and application materials.

(b) A-95 procedures include but are not limited to the provisions set forth below in § 30.305-1 through § 30.305-8.

§ 30.305-1 Specific areas of clearinghouse evaluation.

[41 FR 20656, May 20, 1976]

The following specific areas are normally considered during clearinghouse evaluation. It should be recognized, however, that clearinghouses are responsible for the comprehensive planning needs of their jurisdictional area and may, therefore, consider areas other than those listed.

(a) The extent to which the project is consistent with or contributes to the fulfillment of the State, areawide, and local comprehensive plans.

(b) The extent to which the proposed project:

(1) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(2) Might be revised to increase its effectiveness or efficiency.

(c) The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development as specified in Section 401 of the Intergovernmental Cooperation Act of 1968, including:

(1) Appropriate land uses for housing, commercial, industrial, government, institutional, and other purposes;

(2) Wise development and consideration of natural resources, including land, water, mineral, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical, archeological, architectural, and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of

power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

(d) The extent to which the project significantly affects the environment including:

(1) The environmental impact of the proposed project;

(2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;

(3) Alternatives to the proposed project;

(4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and

(5) Any irreversible or irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

(e) The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

(f) In the case of a project for which assistance is being sought by a special purpose unit of government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied for or plans to apply for assistance for the same or a similar type project.

§ 30.305-2 Notification of intent (A-95, Part I).

[41 FR 20656, May 20, 1976]

(a) General (for specific requirements for the construction grants program see § 30.305-8). Applicants or potential applicants for assistance under an EPA grant are required to notify both State and areawide planning and development clearinghouses, in the jurisdiction in which the project is to be located, of their intent to apply for EPA assistance. In the case of an application in any State for an activity that is Statewide or broader in nature (such as for various types of research) and does not affect nor have specific applicability to areawide or local planning and programs, the notification need be sent only to the State clearinghouse. Involvement of areawide clearinghouses in the review in such cases will be at the initiative of the State clearinghouse. If notification of intent to apply for EPA assistance was not furnished the clearinghouse(s), the completed application must be submitted to the clearinghouse(s) prior to submission to EPA. However, prior notification of intent to apply is preferable to submitting the final completed application. In addition, grantees must notify State and areawide clearinghouse(s) of any major modifica-

tions in a project. The current list of EPA grant programs which must comply with the A-95 procedures are listed below. Any additions to this listing will be indicated in the Catalog of Federal Domestic Assistance (see § 30.305-2.c.(5)).

(1) 66.001-Air Pollution Control Program Grants;

(2) 66.005-Air Pollution Control Survey and Demonstration Grants;

(3) 66.451 Solid and Hazardous Waste Management Program Support Grants;

(4) 66.452 Solid Waste Management Demonstration Grants;

[42 FR 56050, October 20, 1977]

(5) 66.418-Construction Grants for Wastewater Treatment Works;

(6) 66.419-Water Pollution Control-State and Interstate Program Grants;

(7) 66.420-Water Pollution Control-State and Local Manpower Program Development;

(8) 66.426-Water Pollution Control State and Areawide Waste Treatment Management Planning Grants;

(9) 66.432-State Public Water System Supervision Program Grants;

(10) 66.433-State Underground Water Source Protection Program Grants;

(11) 66.505-Water Pollution Control-Research, Developmental, and Demonstration Grants (Demonstration only);

(12) 66.506-Safe Drinking Water Research and Demonstration Grants (Demonstration Only);

(13) 66.600-Environmental Protection Consolidated Grants-Program Support;

(14) 66.602 Environmental Protection Consolidated Grants-Special Purpose;

(15) 66.453 Solid Waste Management Training Grants;

(16) 66.504 Solid Waste Disposal Research Grants.

(17) 66.700 Pesticides enforcement and applicator training and certification grant program.

(18) 66.438 Water pollution control State management assistance grants.

[43 FR 28484, June 30, 1978]

Applications from Federally recognized Indian Tribes are excluded from this requirement. However, they may voluntarily participate in the procedures of this section and are encouraged to do so. EPA will notify the appropriate State and areawide clearinghouse(s) of any applications from Federally recognized Indian tribes upon their receipt.

(b) Notification will normally precede the preparation of the application. It will be mailed to the clearinghouse at the earliest feasible time to assure maximum time for effective coordination and to avoid delay in the timely submission of

the completed application to EPA. Earliest feasible time means at such time as the applicant determines it will develop an application.

(c) The notification to each clearinghouse will be accompanied by a summary description which should include the following:

(1) Identity of the applicant agency organization, or individual.

(2) The geographic location of the project to be assisted. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed projects.

(4) A statement as to whether or not the applicant has been advised by EPA that he will be required to submit environmental impact information in connection with the proposed project.

(5) The EPA program title and number under which assistance will be sought as indicated in the latest Catalog of Federal Domestic Assistance (The Catalog is issued annually in the spring and is updated during the year). In the case of programs not listed therein, programs will be identified by Public Law number or U.S. Code citation. Applicants uncertain as to appropriate program identification should contact the EPA program or grants administration office.

(6) The estimated date the applicant expects to formally file an application.

(7) When available any more detailed documentation describing the proposed project (e.g., plans and preapplication material).

§ 30.305-3 Time Limitations.

[41 FR 20656, May 20, 1976]

(a) *Time limitations.* (1) State and areawide clearinghouse(s) may have a period of 30 calendar days after receipt of a project notification of intent to apply for assistance in which to inform State and multistate agencies and local or regional governments or agencies that may be affected by the project, to arrange, as may be necessary, to consult with the applicant thereon and to complete review and submit comments to the applicant. If the review cannot be completed during this period, however, the clearinghouse(s) may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed. Clearinghouses are strongly urged to notify applicants if they cannot complete their review within the 30 day comment period.

(2) When no notification of intent to apply for assistance has been submitted and the clearinghouse has received instead a completed application, it may have 60 calendar days from date of receipt to review the completed application. However, if clearinghouses cannot complete their reviews within a 30 calendar day period they are strongly urged to give the applicant formal notice to that effect at the beginning of the comment period. Where reviews have been completed prior to completion of an application, a copy of the completed application will be supplied to the clearinghouse, upon request, when the application is submitted to EPA.

(b) *Submission of Comments.* (1) Areawide clearinghouses will include, as attachments to their comments: (i) all written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties, when they are at variance with the clearinghouse comments; and (ii) a list of parties from whom comments were solicited.

(2) Applicants will include with the completed application all comments and recommendations made by or through clearinghouse(s), with a statement that such comments have been considered prior to submission of the application. Where no comments have been received from a clearinghouse(s) a statement must be included with the application that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

§ 30.305-4 EPA processing.

[41 FR 20656, May 20, 1976]

(a) Applications that do not evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant with instruction to fulfill the requirements of Part I of OMB Circular A-95.

(b) Any comments accompanying applications must be utilized in evaluating the applications.

(c) EPA will notify clearinghouse(s) within seven (7) working days of any major action taken on applications reviewed by the clearinghouse(s). Major actions will include awards (including subsequent Step 2 and Step 3 awards for wastewater treatment projects), rejections, returns for amendments, deferrals, or withdrawals. The standard multipurpose form, Standard Form 424, as prescribed by Federal Management Circular 74-7, will be used for this purpose.

(d) Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and EPA

approves the project without incorporating the recommendations of the clearinghouse, EPA will provide the clearinghouse, in writing, with an explanation therefor along with the notice of action under subsection 30.305-4c.

(e) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or Federally-assisted project, the EPA program office reviewing the application will consult with the agency or agencies assisting the referenced projects prior to approving the application.

(f) If comments accompanying an application from a special purpose unit of government indicate that a similar application is forthcoming from the general purpose unit of government in the areas in which the applicant and/or the proposed project is located, preference will be given to the general purpose unit as specified in Section 402 of the Intergovernmental Cooperation Act of 1968. Where such preference cannot be so accorded, EPA will notify in writing, the unit of general local government and the Office of Management and Budget of the reasons therefor.

§ 30.305-5 Programs requiring state plans and jointly funded projects (A-95 Part III).

[41 FR 20656, May 20, 1976]

(a) *Applicability.* This section applies to air pollution control program grants, water pollution control State and interstate program grants, solid and hazardous waste management program support grants, State public water system supervision program grants, State underground water source protection program grants, safe drinking water State and local program development grants, and environmental protection consolidated grants-program support to the extent they involve State plans.

[43 FR 28484, June 30, 1978]

(b) *Definitions.* (1) *State Plan.* A State plan is a plan prepared by a State agency that includes any required supporting planning reports or documentation that indicates the programs, projects, and activities for which EPA funds will be used.

(2) *Jointly Funded Projects.* A jointly funded project is a project for which assistance is sought, on a combined or coordinated basis, involving two or more Federal programs or funding authorities.

(c) *Review.* (1) Prior to funding any grant requiring, by statute or EPA administrative regulations, a State plan as a condition of assistance, the EPA program office must insure that the Gov-

ernor, or his designated agency, has been given the opportunity to comment on the relationship of the program to be funded to the State plan. EPA encourages the Governor to include the appropriate areawide clearinghouse in State plan review.

(2) Prior to funding a jointly funded project, the EPA program office must insure that the State and areawide clearinghouse(s) have been given the opportunity to comment on the relationship of the proposed jointly funded project to State or areawide comprehensive plans and programs.

(d) *Time Limitations and Submission of Comments.* (1) The Governor or his designated agency may have a period of 45 calendar days for review and comment.

(2) Applicants must secure and submit with the application comments received pursuant to § 30.305-5c. If the applicant fails to receive comments within the prescribed 45 calendar day period, a statement must be included with the application that the procedures outlined in this section have been followed and no comments or recommendations have been received.

§ 30.305-6 Coordination of planning in multijurisdictional areas (A-95, Part IV).

[41 FR 20656, May 20, 1976]

(a) *Applicability.* This section applies only to Water Pollution Control State and Areawide Waste Treatment Management Planning Grants.

(b) *Requirements of Applicants.* (1) Applicants for State and Areawide Waste Treatment Management Planning grants must demonstrate in the application that the proposed activity is consistent and takes into account the relationship with affected State, local and Federal programs, and with other applicable resource and developmental planning programs in the multijurisdictional areas.

(i) For areawide designated planning agencies, the application must adequately:

(A) Certify that affected general purpose units of local governments within the boundaries of the designated planning area have submitted or intend to submit resolutions of intent to have in operation a coordinated waste treatment management system and that such affected units of local government have the legal authority to enter into agreements for coordinated wastewater management.

(B) Provide a certification document submitted by the State designated planning agency which states that the State has reviewed the application pursuant to 40 CFR 35.208-2(b).

(ii) For State designated planning agencies, the application must show evidence that adequate communication was made with chief elected officials of local units of governments in the designation of local multijurisdictional areas.

(iii) For intrastate and interstate areawide planning agencies, the application must provide a certification document submitted by the State planning agency in the State which includes the largest portion of the area's population pursuant to 40 CFR 35.210-1(d).

(2) The completed application will be submitted to the Office of the Governor(s) of the State(s) before it is submitted to EPA. The Governor(s) shall have 45 calendar days in which to certify that the proposed work complies or does not comply with all State requirements; that the proposed planning work program is or is not adequate and necessary to accomplish the development of a plan; that the planning will or will not duplicate any work which has been done or is being done to meet the facilities planning requirements of 40 CFR 35.917 through 35.917-9; and that the State(s) either recommends or does not recommend that the grant application should be approved by EPA.

§ 30.305-7 Confidential information.

[41 FR 20656, May 20, 1976]

Under some programs, applicants are required to submit confidential information to EPA. Such information may relate to the applicant's financial status or structure, personnel, or may involve proprietary information and need not be included with applications submitted to clearinghouse(s) for review. EPA's policy concerning disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, is stated in 40 CFR Chapter 1, Part 2.

§ 30.305-8 Specific requirements for the Construction Grant Program.

[41 FR 20656, May 20, 1976]

(a) *General.* Applicants for grants for the planning or construction of a wastewater treatment facility (P.L. 92-500, 40 CFR Part 35) must comply with the following specific requirements. Where provisions of this section differ from the general A-95 procedures set forth in other sections of Part 30 the requirements of this section shall prevail.

(b) *Specific Procedures.* (1) Plans of Study (POS) for facilities planning and any related Step 1 application materials should be submitted to the appropriate A-95 clearinghouse prior to the time for formal submission to the State and EPA of application for Step 1 assistance. The

submission of the POS and related materials shall constitute a notification of intent to apply for assistance as provided in § 30.305-2 and § 30.305-3 above. The clearinghouse shall have 30 calendar days to review the POS and related materials. The comments of the clearinghouse on the POS should then accompany the application through the review process. The POS should be sent to the clearinghouse sufficiently early to avoid delays in the later submission of the Step 1 application.

(2) Thirty (30) calendar or more days prior to the public hearing on the draft facility plan, or, if no public hearing is held, a reasonable time before submittal of a facility plan to the State and EPA for approval, the draft facility plan, and any associated grant application materials, should be submitted to the A-95 clearinghouse for a second review. The submission of the draft facility plan and related materials shall constitute a notification of intent to apply for assistance as provided in § 30.305-2 and § 30.305-3 above. The clearinghouse shall have 30 calendar days to review the draft facility plan.

(3) Any prior clearinghouse comments on the facility plan will be considered as part of the application for any subsequent Step 2 or Step 3 grant. EPA will notify the clearinghouse of subsequent Step 2 or Step 3 awards within 7 work days after grant award. Where an application is approved over clearinghouse objections, an explanation must be furnished to the clearinghouse as to why any specific recommendation was not followed.

(4) Once A-95 review has been obtained on a POS and a Step 1 facility plan, no further A-95 review of the Step 2 and Step 3 applications, which implement the plan, will be required except (i) when there are significant departures from or additions to what was covered in the Step 1 facility, (ii) when the clearinghouse requests opportunity for additional review on a specific project, or (iii) when State policy requires additional A-95 review of Step 2 or 3 grant applications. The clearinghouse shall have 30 calendar days to make these additional reviews, when required."

§ 30.310 Unsolicited proposal.

(a) For purposes of this Subchapter, an unsolicited proposal is a written offer to perform work which (1) does not result from (i) a formal written EPA request for contract proposals or quotations, or (ii) an oral quotation solicited under EPA small purchase procedures, (2) is not submitted on a grant preapplication or application form, and (3) is in-

tended to result in award of an EPA grant or contract.

(b) Unsolicited proposals received by any organizational element of EPA shall be forwarded immediately to the Grants Administration Division for official receipt and processing. The Grants Administration Division will acknowledge receipt to the person or organization submitting the proposal and transmit the proposal to the appropriate program office for evaluation. If the program office decides to consider the proposal for a grant award, a grant application pursuant to § 30.315 will be required. If the proposal is to be recommended for funding under the contract mechanism, appropriate notification will be forwarded from the program office to the Grants Administration Division for closeout of the file.

§ 30.315 Application requirements.

Submittals which substantially comply with this Subchapter shall be deemed to be applications. An application shall include the completed application form, technical documents and supplementary materials furnished by the applicant. Submittals which do not substantially comply with this Subchapter shall be returned to the applicant.

§ 30.315-1 Signature.

(a) Applications must be signed by the applicant or a person authorized to obligate the applicant to the terms and conditions of the grant, if approved. At least one copy of the application must have an original signature.

(b) Each grant application shall constitute an offer to accept the requirements of this Subchapter and the terms and conditions of the grant agreement.

(c) An applicant may be prosecuted under Federal, State, or local statutes for any false statement, misrepresentation, or concealment made as part of an application for EPA grant funds.

[43 FR 28484, June 30, 1978]

§ 30.315-2 Forms.

The following forms shall be used in applying for an EPA grant.

Type of application	Type of applicant	
	Other than State and local	State and local governmental agencies
Preapplication (optional).	EPA Form 5700-12 (optional).	EPA Form 5700-30.
Research, demonstration, and training grants.	EPA Form 5700-12.	EPA Form 5700-12 (or EPA Form 5700-33).

Program and planning grants.	Not applicable....	EPA Form 5700-33.
Consolidated grants.	EPA Form 5700-12.	Do.
Wastewater treatment construction grants.	Not applicable....	EPA Form 5700-32.
Water pollution control State management assistance grants.	Not applicable.	EPA Form 5700-31.

[43 FR 28484, June 30, 1978]

§ 30.315-3 Time of submission.

Applications should be submitted well in advance of the desired grant award date. Generally, processing of a complete grant application requires 90 days after receipt of the application by EPA.

§ 30.315-4 Place of submission.

Place of submission varies with type of grant for which application is being made. Therefore, instructions regarding place of submission are included in each grant application kit.

§ 30.320 Use and disclosure of information.

(a) All grant applications, preapplications, and unsolicited proposals, when received by EPA, constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and must be disclosed to the requester unless exempt from disclosure under 5 U.S.C. 552(b). EPA regulations implementing 5 U.S.C. 552 are published in Part 2 of this Chapter.

(b) An assertion of entitlement to confidential treatment of part or all of the information in an application may be made using the procedure described in § 30.235(b). See also §§ 2.203 and 2.204 of this chapter.

[41 FR 36918, September 1, 1976]

(c) Any person who submits a grant application, preapplication or unsolicited proposal to EPA shall be deemed by EPA to have thereby consented to review of that application, preapplication or proposal by extramural reviewers, as appropriate under § 40.150(a) of this Chapter, unless a specific and conspicuous statement to the contrary appears on the

face of the document. Extramural reviewers' recommendations shall not be disclosed.

(d) If a grant or subagreement is awarded to a submitter in response to his application, preapplication or unsolicited proposal, EPA shall treat the information in the application, preapplication, unsolicited proposal or resulting grant or contract as available to the public and free from any limitation on use or disclosure, notwithstanding any legend asserting a claim for nondisclosure except to the extent otherwise expressly provided by special condition in the grant.

§ 30.325 Evaluation of application.

Each applicant shall be notified that the application has been received and is in the process of evaluation pursuant to this Subchapter. Each application shall be subjected to a (a) preliminary administrative review to determine the completeness of the application, (b) program, technical, and scientific evaluation to determine the merit and relevance of the project to EPA program objectives, (c) budget evaluation to determine whether proposed project costs are eligible, reasonable, applicable, and allowable, and (d) final administrative evaluation. Recommendations and comments received as a result of extramural review pursuant to § 40.150(a) of this Subchapter shall be considered in the evaluation process.

§ 30.330 Supplemental information.

The applicant may, at any stage during the evaluation process, be requested to furnish documents or information required by this Subchapter and necessary to complete the application. The evaluation may be suspended until such additional information or documents have been received.

§ 30.335 Criteria for award of grant.

Each application shall be evaluated in accordance with the requirements and criteria established pursuant to this Subchapter and promulgated herein. Program award criteria may be found in Parts 35, 40, 45, and 46 of this Subchapter. Grants may be awarded without regard to statutory criteria in exceptional cases if a deviation pursuant to Subpart I of this Subchapter has been approved.

§ 30.340 Responsible grantee.

The policy and procedures established by this section shall be followed to deter-

mine, prior to award of any grant, whether an applicant will qualify as a responsible grantee. A responsible grantee is one which meets, and will maintain for the life of the grant, the minimum standards set forth in § 30.340-2 and such additional standards as may be prescribed and promulgated for a specific purpose.

§ 30.340-1 General policy.

The award of grants to applicants who are not responsible is a disservice to the public, which is entitled to receive full benefit from the award of grants for the protection and enhancement of the environment. It frequently is inequitable to the applicants themselves, who may suffer hardship, sometimes even financial failure, as a result of inability to meet grant or project requirements. Moreover, such awards are unfair to other competing applicants capable of performance, and may discourage them from applying for future grants. It is essential, therefore, that precautions be taken to award grants only to reliable and capable applicants who can reasonably be expected to comply with grant and project requirements.

§ 30.340-2 Standards.

To qualify as responsible, an applicant must meet and maintain for the life of the proposed grant the following standards as they relate to a particular project:

(a) Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(b) Be able to comply with the proposed or required completion schedule for the project;

(c) Have a satisfactory record of integrity, judgment, and performance, including in particular, any prior performance upon grants and contracts from the Federal Government;

(d) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and assets. Applicable standards are further defined in § 30.800;

(e) Maintain a standard of procurement which will comply with Part 33 of this Subchapter;

(f) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property. Applicable standards are further defined in § 30.810;

(g) Conform with the civil rights, equal employment opportunity, and labor law requirements of this Chapter;

(h) Be otherwise qualified and eligible to receive a grant award under applicable laws and regulations.

§ 30.340-3 Determination of responsibility.

Submission of a grant application shall constitute an applicant's assurance that he can and will meet the standards set forth in § 30.340-2. An applicant may be presumed to be responsible in the absence of any question as to his ability to meet the standards. This presumption of responsibility, however, shall not preclude EPA from performing a preaward audit or other review of an applicant's ability to comply with any or all of the above standards. Any applicant who is determined to be not responsible will be notified in writing of such finding and the basis therefor. A copy of such written notification shall be included in the official EPA file.

§ 30.345 Award of grant.

Generally, within 90 days after receipt of a completed application (excluding suspension periods for submission of supplemental information), the EPA Grant Approving Official will take one of the following actions: (a) Approve for grant award, (b) defer due to lack of funding, or (c) disapprove the application. The applicant shall be promptly notified in writing of any deferral or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or a reapplication. The applicant shall not be notified by EPA of an approval or grant award prior to transmittal of the grant agreement for execution by the applicant pursuant to § 30.345-3.

§ 30.345-1 Amount and term of grant.

The amount and term of a grant shall be determined at the time of grant award.

§ 30.345-2 Federal share.

The Federal share shall be set forth in the grant agreement expressed both as a dollar amount and as a percentage of approved eligible project costs. Such dollar amount shall represent the grant ceiling. The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee becomes aware that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the then-approved estimated total project cost, the grantee must notify the Project Officer promptly in writing to that effect, pursuant to § 30.900. The United States shall not be

obligated to participate in costs incurred in excess of the budget approved in the grant agreement or any amendments thereto. Grant payments will be made pursuant to § 30.615.

§ 30.345-3 Grant agreement.

Upon execution of the grant agreement by EPA, the appropriate EPA grants administration office will transmit the grant agreement (certified mail, return receipt requested) to the applicant for execution. The grant agreement must be executed by the applicant and returned within 3 calendar weeks after receipt, or within any extension of such time that may be granted by the EPA grants administration office. The grant agreement shall set forth the approved project scope, budget (including the EPA share), total project costs, and the approved commencement and completion dates for the project or major phases thereof.

§ 30.345-4 Costs incurred prior to execution.

Except as may be otherwise provided by statute or this subchapter, costs may not be incurred prior to the execution of the grant agreement by both parties thereto. However, costs incurred after the date of execution of the grant agreement by the EPA grant award official are allowable, if (a) there is explicit provision in the grant agreement, and (b) the agreement is executed without change by the grantee.

[43 FR 28484, June 30, 1978]

§ 30.345-5 Effect of grant award.

(a) The grant shall become effective and shall constitute an obligation of Federal funds in the amount and for the purposes stated in the grant agreement, at the time of execution of the grant agreement by the EPA grant award official.

(b) Neither the approval of a project nor the award of any grant shall commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

§ 30.350 Limitation on award.

(a) No grant may be awarded if the project will be performed at a facility listed by the Director, Office of Federal Activities, in violation of the requirements set forth in § 30.420-3 and Part 15 of this Chapter.

(b) No grant may be awarded if there is a personal or organizational conflict of interest, or the appearance of such conflict of interest (see § 30.420).

§ 30.355 Continuation grants.

(a) When an original grant award includes a provision for more than one budget period within the project period, EPA presumes that continuation grants for the subsequent budget periods will be awarded, subject to availability of funds and Agency priorities, as determined by the Administrator, if the grantee:

(1) Has demonstrated satisfactory performance during all previous budget periods; and

(2) Submits no later than 90 days prior to the end of the budget period a continuation application which includes a detailed progress report; a financial statement for the current budget period, including an estimate of the amount of unspent, uncommitted funds which will be carried over beyond the term of the prior grant; a budget for the new budget period; an updated work plan revised to account for actual progress accomplished during the current budget period; and any other reports as may be required by the grant agreement.

(b) Review of continuation applications will be conducted expeditiously. Generally, no extramural review will be required.

(c) Costs incurred after the end of the previous budget period may be allowed under the continuation grant provided that no longer than 30 days has elapsed between the end of the budget period and the execution of the continuation grant agreement.

Subpart C—Other Federal Requirements**§ 30.400 General grant conditions.**

It shall be a condition of every EPA grant award that the grantee comply with the applicable provisions of this subchapter and special conditions in the grant agreement (see § 30.425).

[43 FR 28484, June 30, 1978]

§ 30.405 Statutory conditions.

Compliance with the following statutory requirements, in addition to such other statutory provisions as may be applicable to particular grants or grantees or classes of grants or grantees, is a condition to each EPA grant.

§ 30.405-1 National Environmental Policy Act.

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended, and regulations issued thereunder, 40 CFR Part 6, particularly as it relates to the assessment of the environmental impact of federally assisted projects. Where an environmental assessment is required by 40 CFR Part 6, an

adequate environmental assessment must be prepared for each project by the applicant or grantee.

§ 30.405-2 Uniform Relocation Assistance and Real Property Acquisition Policies Act.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., 4651 et seq., and the regulations issued thereunder, 40 CFR Part 4. Grantees must assure that any acquisition of interest in real property or any displacement of persons, businesses, or farm operations is conducted in compliance with the requirements of the act and the regulations.

[43 FR 28484, June 30, 1978]

§ 30.405-3 Civil Rights Act of 1964.

The Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., as amended, and particularly Title VI thereof, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, as implemented by regulations issued thereunder, 40 CFR Part 7. The grantee must assure compliance with the provisions of the Act and regulations.

§ 30.405-4 Federal Water Pollution Control Act Amendments of 1972, Section 13.

Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) provides that no person in the United States shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving assistance under the Federal Water Pollution Control Act, as amended (86 Stat. 816) or the Environmental Financing Act (86 Stat. 899). The applicant or grantee must assure compliance with the provisions of section 13 and the regulations issued thereunder including 40 CFR Part 12.

§ 30.405-5 Title IX of the Education Amendments of 1972.

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

§ 30.405-6 Hatch Act.

The Hatch Act, 5 U.S.C. 1501 et seq., as amended, relating to certain political activities of certain State and local employees. State and local government grantees must ensure compliance on the part of their employees who are covered by the Hatch Act. A State or local officer or employee is covered by the Hatch Act on political activity if his principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. He is subject to the Act, if as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants. Specifically excluded is an individual who exercises no functions in connection with that activity; or an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

§ 30.405-7 National Historic Preservation Act.

The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., as amended, relating to the preservation of historic landmarks. Applicants must consult the National Register of Historic Places (published in the FEDERAL REGISTER) to determine if a National Register property (or one eligible for inclusion in the Register) is located within the area of the proposed project's environmental impact and observe required procedures.

§ 30.405-8 Public Law 93-291.

Public Law 93-291 (referred to as Archeological and Historic Preservation Act of 1974) relating to potential loss or destruction of significant scientific, historical, or archeological data in connection with Federally assisted activities.

§ 30.405-9 Demonstration Cities and Metropolitan Development Act and Intergovernmental Cooperation Act.

The Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 et seq., as amended, and particularly Section 204 thereof, requires that applications for Federal assistance for a wide variety of public facilities projects in metropolitan areas must be accompanied by the comments of an area-wide comprehensive planning agency covering the relationship of the proposed project to the planned development of the area. The Intergovernmental Coop-

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eration Act of 1968, 42 U.S.C. 4201 et seq., as amended, requires coordination by and among local, regional, State, and Federal agencies with reference to plans, programs, and development projects and activities. Compliance with these two Acts is ensured by adherence to procedures in OMB Circular No. A-95 (revised) (38 FR 32874, Nov. 28, 1973). Applicants must follow the coordination procedures established by that Circular prior to submitting an application (see § 30.305).

§ 30.405-10 Flood Disaster Protection Act.

(a) *General.* (1) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973), requires grantees to purchase flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal assistance for construction purposes or for the acquisition of any real or nonexpendable personal property in an identified special flood hazard area that is located within any community currently participating in the National Flood Insurance Program. The National Flood Insurance Program is a Federal program authorized by the National Flood Insurance Act of 1968, 42 U.S.C. 4001-4127, as amended.

(2) For any community that is not participating in the flood insurance program on the date of execution of the grant agreement by both parties, the statutory requirement for the purchase of flood insurance does not apply. However, after July 1, 1975, or one year after notification of identification as a flood-prone community, whichever is later, the requirement will apply to all identified special flood hazard areas within the United States, which have been delineated on Flood Hazard Boundary Maps or Flood Insurance Rate Maps issued by the Department of Housing and Urban Development (HUD). Thereafter, no financial assistance can legally be provided for real or nonexpendable personal property or for construction purposes in these areas unless the community has entered the program and flood insurance is purchased.

(3) Regulations pertaining to the National Flood Insurance Program are published in Title 24 of the Code of Federal Regulations, commencing at Part 1909. HUD guidelines regarding the mandatory purchase of insurance have been published in the FEDERAL REGISTER at 39 FR 26186-93, July 17, 1974. Additional information may be obtained from the regional offices of the Department of Housing and Urban Development, or from the Federal Insurance Administration, HUD, Washington, D.C. 20410.

(b) *Wastewater treatment construction grants.* (1) The grantee (or the construction contractor, as appropriate) must acquire any flood insurance made available to it under the National Flood Insurance Act of 1968 as amended beginning with the period of construction and maintain such insurance for the entire useful life of the project, if the total value of insurable improvements is \$10,000 or more.

(2) The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program such as bridges, dams, water and sewer lines, and underground structures, and excluding the cost of the land, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, whichever is less.

(3) The required insurance premium for the period of construction is an allowable project cost.

(c) *Other grant programs.* (1) A grantee must acquire and maintain any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, if the approved project includes (i) any construction-type activity, or (ii) any acquisition of real or nonexpendable personal property, and the total cost of such activities and acquisition is \$10,000 or more.

(2) The amount of insurance required is the total cost of any insurable nonexpendable personal or real property acquired, improved, or constructed, excluding the cost of land, with any portion of this grant, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, as amended, whichever is less, for the entire useful life of the property.

(3) The required insurance premium for the period of project support is an allowable project cost.

(4) If EPA provides financial assistance for personal property to a grantee that the Agency has previously assisted with respect to real estate at the same facility in the same location, EPA must require flood insurance on the previously-assisted building as well as on the personal property. The amount of flood insurance required on the building will be based upon its current value, however, and not on the amount of assistance previously provided.

§ 30.405-11 Clean Air Act, Section 306.

Section 306 of the Clean Air Act, 42 U.S.C. 1857h-4, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities (see § 30.410-4, Executive Order 11738).

§ 30.405-12 Federal Water Pollution Control Act, Section 508.

Section 508 of the Federal Water Pollution Control Act, 33 U.S.C. 1251, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities (see § 30.410-4, Executive Order 11738).

§ 30.410 Executive Orders.

Compliance with the following Executive Orders is a condition of each EPA grant.

§ 30.410-1 Executive Order 11246.

Executive Order 11246 dated September 24, 1965, as amended, with regard to equal employment opportunities, and all rules, regulations and procedures prescribed pursuant thereto (40 CFR Part 8).

§ 30.410-2 Executive Order 11988.

Executive Order 11988 dated May 24, 1977, provides that each Federal agency shall evaluate the potential effects of any actions it may take in a floodplain. Any action taken on a floodplain shall seek to reduce the risk of flood loss to minimize potential harm to people and property and to restore and preserve the natural and beneficial values served by the floodplain.

[43 FR 28484, June 30, 1978]

§ 30.410-3 Executive Order 11514.

Executive Order 11514 dated March 5, 1970, providing for the protection and enhancement of environmental quality in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (40 CFR Part 6).

§ 30.410-4 Executive Order 11738.

Executive Order 11738 dated September 12, 1973, which prohibits any Federal agency, grantee, contractor, or subcontractor from entering into, renewing, or extending any nonexempt grant or subagreement (contract or subcontract) which in the performance of the grant or subagreement utilizes any facility included on the EPA List of Violating Facilities (40 CFR Part 15). By so doing, the Executive Order requires compliance with the Clean Air Act and the Federal Water Pollution Control Act (see § 30.420-3).

§ 30.410-5 Executive Order 11990.

Executive Order 11990 dated May 24, 1977, provides that each Federal agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of

the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands.

[43 FR 28484, June 30, 1978]

§ 30.415 Additional requirements—federally assisted construction.

Grants for projects that involve construction are subject to the following additional requirements.

§ 30.415-1 Davis-Bacon Act.

The Davis-Bacon Act, as amended, 40 U.S.C. 276a et seq., and the regulations issued thereunder, 29 CFR 5.1 et seq., respecting wage rates for federally assisted construction contracts in excess of \$2,000.

§ 30.415-2 The Copeland Act.

The Copeland (Anti-Kickback) Act, 18 U.S.C. 874, 40 U.S.C. 276c, and the regulations issued thereunder, 29 CFR 3.1 et seq.

§ 30.415-3 The Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 et seq., and the regulations issued thereunder, 29 CFR Parts 5 and 1518.

§ 30.415-4 Convict labor.

Convict labor shall not be used in EPA assisted construction unless it is labor performed by convicts who are on work release, parole or probation.

§ 30.420 Additional requirements—all EPA grants.

Compliance with the following requirements is a condition of each EPA grant.

§ 30.420-1 Prohibition against contingent fees.

No person or agency may be employed or retained to solicit or secure a grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For violation of this prohibition, EPA shall have the right to annul the grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of any commission, percentage, brokerage or contingent fee.

§ 30.420-2 Officials not to benefit.

No member of, or delegate to Congress or Resident Commissioner, shall be permitted to any share or part of a grant, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to a grant if made with a corporation for its general benefit.

§ 30.420-3 Prohibition against violating facilities.

(a) *List of violating facilities.* Pursuant to 40 CFR Part 15, the Director, Office of Federal Activities, EPA, shall maintain a list that includes those facilities which have been designated to be in noncompliance with either the Clean Air Act or the Federal Water Pollution Control Act and with which no Federal agency, grantee, contractor, or subcontractor shall enter into, renew, or extend any nonexempt grant, contract, or subcontract. For the purpose of this subsection, the term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by an applicant, contractor, subcontractor, or grantee to be utilized in the performance of a grant, contract or subcontract. Where a location or site of construction or other operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility, except where the Director, Office of Federal Activities, EPA, determines that independent facilities are collocated in one geographic area.

(b) *Exempt transactions.* The following are exempt:

(1) Grants, contracts, and subcontracts not exceeding \$100,000.

(2) Contracts and subcontracts for indefinite quantities that are not anticipated to exceed \$100,000 for any 12 month period.

(3) Grants, contracts, or subcontracts, where the principal purpose is to assist a facility or facilities to comply with any Federal, State, or local law, regulation, limitation, guideline, standard, or other requirement relating to the abatement, control, or prevention of environmental pollution. This exemption does not apply to (i) subcontracts for materials, supplies, or equipment where an existing facility is modified or altered or (ii) grants, contracts, or subcontracts for new construction.

(4) Facilities located outside the United States.

(5) The foregoing exemptions shall not apply to the use of a facility that has been convicted of a violation under section 113(c)(1) of the Clean Air Act, or under section 309(c) of the Federal Water Pollution Control Act. The List of Violating Facilities will specify which facilities have been convicted.

(c) *Grant condition.* No nonexempt project work may be performed at a facility listed by the Director, Office of Federal Activities, EPA, in violation of the requirements of 40 CFR Part 15.

(d) *Contract stipulations.* Each grantee, contractor, and subcontractor must include or cause to be included in every nonexempt subagreement (including contract or subcontract) the criteria and requirements in paragraphs (d) through (f) of this section.

(e) *Notification.* Each applicant, grantee, bidder, contractor, and subcontractor must give prompt notification if at any time prior to or after the award of a nonexempt grant or contract, notification is received from the Director, Office of Federal Activities, indicating that a facility to be utilized in the performance of a nonexempt grant or subagreement has been listed or is under consideration to be listed on the EPA List of Violating Facilities.

(1) An applicant or grantee must notify the project officer.

(2) A bidder, contractor or subcontractor must notify the grantee which will notify the Project Officer.

(f) *Deferral of award.* The Director, Office of Federal Activities, EPA may request that the award of the grant, contract or subcontract be withheld for a period not to exceed 15 working days.

(g) *Compliance.* Each applicant, grantee, bidder, contractor, and subcontractor must comply with all the requirements of Section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information as well as all other requirements specified in section 114 and section 308 of the Clean Air Act and Federal Water Pollution Control Act, respectively, and all regulations and guidelines issued thereunder.

(h) *Failure to comply.* In the event any grantee, contractor or subcontractor fails to comply with clean air or water, standards at any facility used in the performance of a nonexempt grant or subagreement, the grantee, contractor, or subcontractor shall undertake the necessary corrective action to bring the facility into compliance. If the grantee, contractor, or subcontractor is unable or unwilling to do so, the grant will be suspended, annulled, or terminated, in whole or in part, unless the best interests of the Government would not thereby be served.

§ 30.420-4 Conflict of interest.

(a) The purpose of this section is to establish policies and procedures for the prevention of conflicts of interest, and the appearance of such conflicts of interest, involving former and current EPA employees in the award and administration of grants. This section does not apply to

former EPA employees performing duties as an elected or appointed official or full time employee of a State or local government (excluding State or local institutions of higher education and hospitals).

(b) It is EPA policy that personal or organizational conflict of interest, or the appearance of such conflict of interest, be prevented in the award and administration of EPA grants, including subagreements.

(c) Conflict of interest provisions for EPA employees are published in 40 CFR Part 3. In cases where an employee's action in the review, award, or administration of a grant would create an apparent conflict of interest, the employee shall disqualify himself and refer any necessary action to his superior.

(d) 18 U.S.C. 207 establishes penalties for certain actions on the part of former Federal employees.

(e) It shall be improper for a grant to be awarded, or for a subagreement to be awarded or approved, when the grant applicant or proposed contractor employs a person who served in EPA as a regular employee or as a special employee if either one of the following conditions exist:

(1) If the grant relates to a project in which the former EPA employee participated personally and substantially as an EPA employee, through decision, approval, disapproval, recommendation, and if the former EPA employee (i) was involved in developing or negotiating the application for the prospective grantee; (ii) will be involved in the management or administration of the project, or (iii) has a substantial financial interest (generally, a 20% or greater stock, partnership, or equivalent interest);

(2) If the former EPA employee's official duties involved, within one year prior to the termination of his employment with EPA, decision, approval, disapproval, or recommendation responsibilities concerning the subject matter of the grant or application, and the former EPA employee, within one year following the termination of his employment with EPA, (i) was involved in developing or negotiating the application for the prospective grantee; (ii) will be involved in management or administration of the project; or (iii) has a substantial financial interest (generally a 20% or greater stock, partnership or equivalent interest);

[43 FR 28484, June 30, 1978]

(f) Costs incurred on grants in violation of subparagraph (e) above shall be unallowable costs.

(g) Definitions pertaining to this section may be found in 40 CFR 3.102.

(h) The provisions of this section may be waived only by the Administrator or Deputy Administrator (1) upon a written determination of the General Counsel that the award or the administration of the project would not be likely to involve a violation of 18 U.S.C. 207 or other EPA regulations respecting conflicts of interest, 40 CFR Part 3, and (2) if the Administrator or Deputy Administrator determines that the best interests of the Government would be served by an award of the grant or subagreement or existing administration of the grant in view of the limited extent of the conflict of interest and the outstanding expertise of the former employee.

§ 30.420-5 Employment practices.

A grantee or a party to a subagreement shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA. Each grantee or party to a subagreement shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

§ 30.420-6 Conservation and efficient use of energy.

Grantees must participate in the National Energy Conservation Program by fostering, promoting, and achieving energy conservation in their grant programs. Grantees must utilize to the maximum practical extent the most energy-efficient equipment, materials, and construction and operating procedures available.

§ 30.425 Special conditions.

The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or of EPA objectives. However, special conditions inconsistent with the provision and intent of this Subchapter may not be utilized.

§ 30.430 Noncompliance.

Noncompliance with the provisions of this subchapter or of the grant agreement shall be cause for any one or more of the following sanctions, as determined appropriate by the grant award official, upon the recommendation of the Project Officer, subject to consultation with the Office of General Counsel:

(a) The grant may be terminated or annulled under § 30.920 of this subchapter;

(b) Project costs directly related to the noncompliance may be disallowed;

(c) Payment otherwise due to the grantee may be withheld (see § 30.615-3 of this subchapter);

(d) Project work may be suspended under § 30.915 of this subchapter;

(e) A noncomplying grantee may be found nonresponsible or ineligible for future Federal assistance or a noncomplying contractor may be found nonresponsible or ineligible for approval for future contract award under EPA grants;

(f) An injunction may be entered or other equitable relief afforded by a court of appropriate jurisdiction;

(g) Such other administrative or judicial action may be instituted as may be legally available and appropriate.

[43 FR 28484, June 30, 1978]

Subpart D—Patents, Data, and Copyrights

§ 30.500 General.

This subpart sets forth policy and procedure regarding patents, data, and copyrights under EPA grants or fellowships, and the grant clauses and regulations which define and implement that policy.

§ 30.502 Definitions.

Definitions applicable to this Subpart D, in addition to those in § 30.135, are set forth in Appendixes B and C to this Part.

§ 30.505 Required provision regarding patent and copyright infringement.

(a) The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee shall furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

(c) The grantee shall include in each subagreement (including any tier subagreement) in excess of \$10,000 a clause substantially similar to the foregoing provisions.

§ 30.510 Patents and inventions.

It is the policy of EPA to allocate rights to inventions that result from fed-

erally supported grants or fellowships in accordance with the guidance and criteria set forth in the Statement of Government Patent Policy by the President of the United States on August 23, 1971 (36 FR 16887), hereinafter referred to as "Statement." Section 1 of the Statement sets forth three major categories (1(a), 1(b), and 1(c)) of contract or grant objectives, and prescribes the manner for allocation of rights to inventions that result from a grant or contract which falls within the particular category.

(a) Under Section 1(a) of the Statement, the United States, at the time of grant award, normally acquires or reserves the right to acquire the principal or exclusive rights to any invention made under the grant or contract. Generally, this is implemented by the United States taking all domestic rights to such invention. However, section 1(a) permits the grantee in exceptional circumstances, to acquire greater rights than a nonexclusive license at the time of grant award where the Administrator certifies that such action will best serve the public interest. Section 1(a) also prescribes circumstances under which the grantee or contractor may acquire such greater rights after an invention is identified.

(b) Under section 1(b) of the Statement, the grantee normally acquires principal rights at the time of grant award.

(c) Section 1(c) applies to grants that are not covered by Section 1(a) or 1(b), and provides that allocation of rights is deferred until after inventions have been identified.

§ 30.515 Required patent provision.

(a) Every EPA grant involving research, developmental, experimental, or demonstration work shall be deemed subject to Section 1(a) of the Statement and shall be subject to the patent provisions set forth in Appendix B to this Part. The requirement is not applicable to fellowships.

(b) Inventions made under the Resource Conservation and Recovery Act of 1976 are subject to section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974. This is implemented by Appendix B.

[42 FR 56050, October 20, 1977]

§ 30.520 Optional patent provision.

The following clause may be inserted as a special condition in the grant agreement when requested by an applicant or grantee:

Authorization and consent. The Government hereby gives its authorization and con-

sent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this grant project or any part hereof or any amendment hereto or any subagreement hereunder (including any lower tier sub-contract).

§ 30.525 Data and copyrights.

EPA's data policy is to expedite general utilization or further development of new or improved pollution prevention and abatement technology and procedures developed under EPA grants and fellowships. Therefore, it is most important that the results of EPA sponsored research include data that is sufficient to enable those skilled in the particular area to promptly utilize or further develop such technology and procedures. Availability of adequate data permits accurate assessment of the progress achieved under a grant or fellowship so that EPA priorities can be established. Access to data accumulated by the grantee shall be made available to the Project Officer on request.

§ 30.530 Required data and copyright provision.

Every EPA grant or fellowship shall be subject to the rights in data and copyrights provisions set forth in Appendix C to this Part.

§ 30.540 Deviations.

Any request for deviation from the patent provisions in Appendix B and from the rights in data and copyrights provisions in Appendix C to this Part must be submitted in writing pursuant to Subpart I of this Regulation. No deviation or waiver of patent or data rights shall be granted without the concurrence of the EPA Patent Counsel.

Subpart E—Administration and Performance of Grants

§ 30.600 General.

The grantee bears primary responsibility for the administration and success of the grant project, including any subagreements made by the grantee for accomplishing grant objectives. Although grantees are encouraged to seek the advice and opinions of EPA on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to EPA. The primary concern of EPA is that grant funds awarded be used in conformance with applicable Federal requirements to achieve grant and program objectives and to make optimum contributions to the betterment of the environment.

§ 30.605 Access.

The grantee and its contractor and subcontractors must ensure that the Project Officer and any authorized representative of EPA, the Comptroller General of the United States or the Department of Labor, shall at all reasonable times during the period of EPA grant support and until three years following final settlement have access to the facilities, premises and records (as defined in § 30.805) related to the project. In addition, any person designated by the Project Officer shall have access, upon reasonable notice to the grantee by the Project Officer, to visit the facilities and premises related to the project. All subagreements (including any tier subagreement) in excess of \$10,000 are subject to the requirements of this section and grantees must include in all such subagreements a clause which will ensure the access required by this section.

§ 30.610 Rebudgeting of funds.

(a) *Notice.* Prompt notification of all rebudgeting in excess of \$1,000 is required under § 30.900(b). Such notification may be accomplished by submission of a revised copy of the budget forms contained in the grant application or in a letter.

[43 FR 28484, June 30, 1978]

(b) *Prior approval required.* Approval of minor adjustments to an approved budget is not required. Prior written EPA approval is required for any of the following changes under any grant except wastewater treatment construction grants (see Part 35, Subparts C and E of this subchapter):

(1) Where the total Federal share exceeds \$100,000 and the cumulative amount of transfers among cost categories or program elements exceeds or is expected to exceed \$10,000 or 5 percent of the budget period costs, whichever is greater.

(2) Where the total Federal share is \$100,000 or less, and the cumulative amount of transfers among cost categories or program elements exceeds or is expected to exceed 10 percent of such budget period costs.

[43 FR 28484, June 30, 1978]

(3) Rebudgeting which involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

(4) Rebudgeting which pertains to the addition of items requiring approval pursuant to Federal Management Circulars 73-8 and 74-4;

(5) Any transfers between construction and nonconstruction work;

(6) Any transfer of funds allotted for training allowances (direct payments to trainees);

[43 FR 28484, June 30, 1978]

(7) Rebudgeting which indicates the need for additional EPA funds.

(c) *Approval.* Where approval of rebudgeting is required, approval or disapproval shall be promptly communicated in writing to the grantee within three (3) weeks from date of receipt of notification.

§ 30.615 Payment.

All payments are made subject to such conditions as are imposed by or pursuant to this Subchapter for allowable project costs. The payment basis and method of payment will be set forth in the grant agreement. Any adjustment to the amount of payment requested by a grantee will be explained in writing.

§ 30.615-1 Method of payment.

[41 FR 56196, December 27, 1976]

(a) Payment for waste treatment construction grants will be on a reimbursable basis (see §§35.845, 35.937-10, 35.938-6, and 35.945).

[43 FR 28484, June 30, 1978]

(b) Payment for other grant programs will be on an advance basis. Grantees must request the initial advance payment on SF270, Request for Advance or Reimbursement. The initial advance will be based on the grantee's projected cash requirements, not to exceed the first three months. The cash advance will be issued either in one check or one check each month at the agency's option. As the grantee incurs expenditures under the grant, the grantee will submit a request for payment at least quarterly, but generally no more frequently than monthly. This request will report cumulative expenditures incurred under the grant and the grantee's projected cash requirements for the next advance period. The agency will make payment for any expenditure exceeding the previous advance and will provide for the grantee's projected cash requirements for the next advance period.

(c) Payment for certain grants authorized advance financing will be made by letter-of-credit. Detailed procedures will be provided to the grantee when a grantee meets the Treasury Department's criteria for this method of payment.

(d) For grants paid on an advance basis, payments will be made in a manner that will minimize the time elapsing between the transfer of funds from the United States Treasury and the disbursement of those funds by the grantee.

For grants which are paid on a reimbursable basis, payment will be made promptly upon submission by the grantee of the properly completed payment request. Grantees not complying with the timing requirements under advance payment methods may be transferred to the reimbursable payment method.

§ 30.615-2 Cash depositories.

(a) Physical segregation of cash depositories for EPA funds is neither required nor encouraged. However, a separate bank account shall be used when payments under a letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by the grantee, EPA, and the bank involved.

[41 FR 56196, December 27, 1976]

(b) Grantees are encouraged to use minority-owned banks (a bank which is owned by at least 50 percent minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230.

[43 FR 28484, June 30, 1978]

§ 30.615-3 Withholding of funds.

(a) It is EPA policy that full and prompt payment be made to the grantee for eligible project costs. Except as otherwise provided by this subchapter, the EPA grant approving official may only authorize the withholding of a grant payment where he determines in writing that a grantee has failed to comply with project objectives, grant award conditions, or EPA reporting requirements. Under such conditions, the EPA grant award official will inform the grantee by written notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected. Such withholding shall be limited to that amount necessary to assure compliance.

(b) The grant approving official may authorize withholding of payment to the extent of any indebtedness to the United States, unless he determines that collection of the indebtedness will impare accomplishment of the project objectives and that continuation of the project is in the best interest of the United States.

[43 FR 28484, June 30, 1978]

§ 30.615-4 Assignment.

The right to receive payment under a grant may not be assigned, nor may pay-

ments due under a grant be similarly encumbered.

§ 30.620 Grant related income.

(a) "Grant related income" means income generated from charges which are directly related to a principal project objective (such as the sale of a solid waste by-product or of copies of reports or studies) except as otherwise provided by statute or the grant agreement.

[43 FR 28484, June 30, 1978]

(b) Except as otherwise provided herein a grantee is accountable to EPA for all grant related income. Grantees are required to record the receipt and expenditure of all grant related income.

The net amount of such income shall be retained by the grantee and, except as may be otherwise provided in the grant agreement, shall be used to further support the project; or for grants with institutions of higher education, hospitals, and other non-profit organizations may be used to finance the non-Federal share of the project, if approved by EPA. To the extent such funds are not used for the project, such amounts shall be deducted from the total project costs for the purpose of determining the net costs on which the EPA share will be based. In no event will EPA be entitled to a credit in excess of the grant amount.

[41 FR 56196, December 27, 1976]

(c) Revenue generated under the governing powers of a State or local government which may have been generated without grant support is not considered grant related income. Such revenues shall include fines or penalties levied under judicial or penal power and used as means to enforce laws; license or permit fees for the purpose of regulation, special assessment to abate nuisances and public irritations, inspection fees, and taxes.

§ 30.620-1 Proceeds from sale of real or personal property.

Income derived from the sale of real or personal property shall be treated in accordance with § 30.810.

§ 30.620-2 Royalties received from copyrights and patents.

[41 FR 56196, December 27, 1976]

Unless the grant agreement provides otherwise, grantees (other than profit making) shall have no obligations to EPA with respect to royalties they receive as a result of copyrights or patents produced under the grant. However, nothing in this section shall be construed to diminish or eliminate any

rights or privileges flowing to the Federal Government as a result of the provisions of 40 CFR Part 30, Appendix B—Patents and Inventions or Appendix C—Rights in Data and Copyrights.

30.620-3 Interest earned on grant funds.

(a) All grantees except those listed below must return to EPA all interest earned on Federal funds pending their disbursement for project purposes (see 42 Comp. Gen. 289).

(b) The only grantees exempt from this requirement are:

(1) A State and any agency or instrumentality of a State, pending their disbursement for project purposes (Section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4201 et seq.); and

(2) A tribal organization (sections 102, 103, or 104 of the Indian Self Determination Act, Pub. L. 93-638).

[43 FR 28484, June 30, 1978]

§ 30.625 Grantee publications and publicity.

Pursuant to the Government Printing and Binding Regulations, no grant may be awarded primarily or substantially for the purpose of having material printed for the use of any Federal Department or Agency.

§ 30.625-1 Publicity.

Press releases and other public dissemination of information by the grantee concerning the project work shall acknowledge EPA grant support.

§ 30.625-2 Publications.

(a) *Policy.* EPA encourages and, when specified in the grant agreement, may require publication and distribution of reports of grant activity. The preparation, content, and editing of publications are the responsibilities of the grantee. Except for the final report, review of publications prior to distribution will not normally be made by EPA. Grantees must give notice in writing to the Project Officer at least 30 days prior to publication or other dissemination of project information (other than publicity) unless a shorter period has been approved by the Project Officer. This notice policy is intended to provide the EPA Project Officer with a minimal opportunity to discuss publication format, content, or to coordinate appropriate Agency activities; censorship is not intended nor permitted. This procedure does not apply to seminars, participation on panels, reporting to other research sponsors, or other similar nonpublishing activities.

(b) *Acknowledgement of support.* An acknowledgement of EPA support must be made in connection with the publishing of any material based on, or devel-

oped under, a project supported by EPA.

The acknowledgement shall be in the form of a statement substantially as follows:

This project has been financed (in part/entirely) with Federal funds from the Environmental Protection Agency under grant number _____. The contents do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

(c) *Copies of publications.* Upon publication, a minimum of six copies of the publication shall be furnished to the Project Officer. The Project Officer shall promptly file one copy of all publications resulting from EPA grant support in the official EPA grant file, EPA Headquarters Library, and with the National Technical Information Service, U.S. Department of Commerce.

§ 30.625-3 Signs.

A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility (e.g., mobile laboratories, construction and demolition sites, buildings in which a substantial portion of the work is EPA-funded, etc.). The sign must identify the project and EPA grant support. Grantees may obtain information pertaining to the design and specifications for the signs from their Project Officer. Costs of preparation and erection of the project identification sign are allowable project costs.

§ 30.630 Surveys and questionnaires.

(a) Costs associated with the collection of data or information through surveys or questionnaires by a grantee (or party to subagreement) shall be allowable project costs only if prior written approval of the Project Officer has been obtained for such survey or questionnaire. The Project Officer shall not give such approval without the concurrence of the EPA Headquarters Reports Management Officer to assure compliance with the Federal Reports Act of 1942 (44 U.S.C. 3501-3511).

(b) A grantee (or party to subagreement) collecting information from the public on his own initiative may not represent that the information is being collected by or for EPA without prior agency approval. If reference is to be made to EPA, or the purpose of the grant is for collection of information from the public, prior clearance of plans and report forms must be requested by the grantee through the Project Officer.

§ 30.635 Reports.

§ 30.635-1 Interim progress reports.

(a) It is EPA policy that where progress reports are required such reports shall be submitted to the Project Officer no more frequently than quarterly. Specific reporting requirements are set forth in Parts 35, 40, and 45 of this Subchapter.

(b) Between the required performance reporting dates, the grantee shall promptly notify the Project Officer, in accordance with § 30.900-1, of events which have significant impact upon the project.

§ 30.635-2 Final report.

(a) For all EPA research, demonstration, and training grants, the grantee shall prepare and submit to the Project Officer an acceptable final report prior to the end of the project period. An acceptable report shall document project activities over the entire period of grant support and shall describe the grantee's achievements with respect to stated project purposes and objectives. Where appropriate, the report shall set forth in complete detail all technical aspects of the project, both negative and positive, grantee's findings, conclusions, and results, including, as applicable, an evaluation of the technical effectiveness and economic feasibility of the methods or techniques investigated or demonstrated. Grantees are required to submit a draft final report to the Project Officer at least 90 days prior to the end of the approved project period. The final report shall adequately reflect (e.g., as a footnote or an appendix) EPA comments when required by the Project Officer. Prior to the end of the project period, one reproducible copy suitable for printing and such other copies as may be stipulated in the grant agreement shall be transmitted to the Project Officer.

(b) State or local program grants and grants for construction of waste treatment works do not require a final report.

(c) For all planning grants, the plan itself constitutes the final report.

(d) One copy of all final reports must be filed in the EPA Headquarters Library and the appropriate EPA official grant file.

§ 30.635-3 Financial reports.

(a) For all EPA grants, except for fellowships and wastewater treatment construction grants, the grantee must submit a financial status report to the grants administration office (1) within 90 days after the end of each budget period, and (2) no later than 90 days following the end of the project period or the date of complete termination of

grant support, whichever occurs first, or within such additional time as EPA may allow for good cause.

(b) For wastewater treatment construction grants, the grantee is required to submit an Outlay Report and Request for Reimbursement for Construction Programs which will also serve as the financial report.

§ 30.635-4 Invention reports.

As provided in Appendix B of this Part, prompt reporting to the Project Officer of all inventions is required for EPA grants involving experimental, developmental, research or demonstration work. In addition:

(a) An annual invention statement is required with a continuation application.

(b) A final invention report is required to be submitted to the grants administration office within 90 days after completion of the project period.

(c) When a project director or principal investigator changes institutions or ceases to direct a project, an invention statement must be promptly submitted to the grants administration office with a listing of all inventions during his administration of the grant.

§ 30.635-5 Property reports.

(a) For all EPA grants a physical inventory of property shall be taken by the grantee and the results reconciled with the grantee's property records at least once every 2 years. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(b) For all EPA grants except grants for construction of waste treatment works the grantee must submit at the end of each project period a complete inventory of all property for which the grantee is accountable pursuant to § 30.810. The submission must indicate the condition of each property item and recommendation for disposition. For the purposes of this subsection property for which the grantee is accountable means (1) property for which disposition instructions must be requested from EPA, or (2) property for which EPA must be compensated for its share.

(c) For all EPA grants, grantees shall submit an annual inventory of federally-owned property in their possession.

[41 FR 56196, December 27, 1976]

§ 30.635-6 [Reserved]

[43 FR 28484, June 30, 1978]

§ 30.635-7 Compliance.

Failure to comply with these reporting requirements in a timely manner will result in appropriate action pursuant to § 30.430.

§ 30.640 Utilization of Government procurement sources.

(a) Use of General Services Administration sources of supply and services by grantees is not allowed (see 37 FR 24113, November 14, 1972).

(b) Utilization of Government excess property by EPA grantees is not allowed.

§ 30.645 Force account work.

(a) Except as is otherwise provided in 40 CFR 35.936-14, the grantee must obtain specific written prior approval from the Project Officer for the utilization of the "force account" method (i.e., utilization of the grantee's own employees for construction, construction-related activities, or for facility repair or improvement) in lieu of subagreement for any construction activity in excess of \$10,000 unless the force account method is stipulated in the grant agreement.

(b) The Project Officer, with the concurrence of the EPA grant approving official, may authorize in writing the use of the force account method in lieu of contracting if he determines, based on the grantee's certification, that the grantee possesses the necessary competence required to accomplish such work and (1) the work can be accomplished more economically by the use of the force account method, or (2) emergency circumstances so dictate.

[43 FR 28484, June 30, 1978]

(c) Authorizations to utilize the force account method will identify applicable Federal requirements and the allowability of various cost items.

Subpart F—Project Costs

§ 30.700 Use of funds.

(a) All Federal assistance received under an EPA grant shall be expended by the grantee solely for the reasonable and eligible costs of the approved project in accordance with the terms of the grant agreement and this subchapter. All project expenditures by the grantee shall be deemed to include the Federal share.

(b) The grantee may not delegate nor transfer his responsibility for the use of grant funds.

(c) No profit or other increment above cost in the nature of profit is allowed.

§ 30.705 Allowable costs.

Project costs shall be allowable if payment is authorized by applicable

statutory provisions and the following conditions are met:

(a) The costs must be reasonable and within the scope of the project;

(b) The cost is allocable to the extent of benefit properly attributable to the project;

(c) Such costs must be accorded consistent treatment through application of generally accepted accounting principles;

(d) The cost must not be allocable to or included as a cost of any other federally assisted program in any accounting period (either current or prior); and

(e) The cost must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this Subchapter, including appropriate Federal cost principles of this Subpart.

§ 30.705-1 Payment to consultants.

For all grants awarded by EPA, the maximum daily rate paid to consultants retained by EPA, grantees, or contractors and subcontractors of grantees will not exceed the maximum daily rate for GS-18. This limitation applies only to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. Contracts negotiated with engineering or other firms under §§ 33.510-5 and 35.937-5 are not affected. This rate does not include transportation and subsistence costs for travel performed, which will be paid in accordance with the normal travel reimbursement practices. (SOURCE: The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1978, Pub. L. 95-119, dated October 4, 1977.)

[43 FR 28484, June 30, 1978]

§ 30.710 Federal cost principles.

The following cost principles are applicable to all EPA grants and subagreements of grantees, except as otherwise provided by statute or this Subchapter:

(a) *For state and local governments.* Federal Management Circular 74-4 (34 CFR Part 255) provides principles for determining allowable costs for all grants and subagreements awarded to State and local governments.

(b) *For educational institutions.* (1) Federal Management Circular 73-8 (34 CFR Part 254) provides cost principles for research and development, training, and other educational services under grants and subagreements with educational institutions.

(2) Federal Management Circular 73-6 (34 CFR Part 252) provides principles for coordinating (i) the establishment of indirect cost rates for, and (ii) the auditing of grants and subagreements with educational institutions.

(c) *For other nonprofit institutions.* Department of Health, Education, and Welfare publication OASC-5 (Revised) will be used for grants and subagreements awarded to other nonprofit institutions.

(d) *For all other grants and subagreements.* Federal Procurement Regulations (41 CFR Ch. I, Subpart 1-15.2 or 1-15.4, as appropriate) provide, to the greatest practical extent, comparable principles and procedures for use in cost reimbursement for all other grants and subagreements.

[40 FR 20232, May 8, 1975, as amended at 41 FR 20658, May 20, 1976]

§ 30.715 Direct and indirect costs.

(a) Project costs will generally be comprised of allowable direct costs and allowable indirect costs.

(b) Each item of cost must be treated consistently as either a direct or an indirect cost.

(c) Any cost allocable to a particular grant or cost objective under the appropriate Federal cost principles may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

§ 30.715-1 Direct costs.

Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to a project.

§ 30.715-2 Indirect costs.

[41 FR 20656, May 20, 1976]

Indirect costs are those incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. Federal Management Circulars 73-6 and 74-4 govern the methods that may be used in determining the amount of grantee departmental indirect cost allocable to a grant program. These directives provide for the assignment of cognizance to single Federal Departments and agencies for conducting indirect cost negotiations and audits at educational institutions and State and local governments. Procedures governing the application and disposition of indirect costs for subagreements with commercial organizations and architectural and engineering firms are covered by 41 CFR 1-15.2 and 1-15.4 re-

spectively. The rate(s) negotiated by the cognizant Federal agency are normally accepted by all Federal agencies. Organizations not covered by the above directives may have rates established by negotiation with EPA or another Federal agency. The following guidance is furnished:

(a) EPA uses the latest available negotiated rate as a basis for computing indirect costs for the applicant. In those cases where the indirect cost budgeted in the grant agreement is based on a provisional rate, the actual indirect costs may be adjusted only as follows:

(1) If a final rate is established and that rate is less than the provisional rate, the indirect costs will be adjusted downward.

(2) If a final rate is greater than the provisional rate, the grantee may transfer funds from the direct cost categories to indirect costs; however, payment may not exceed the total approved grant amount.

[43 FR 28484, June 30, 1978]

(b) A special indirect cost rate may be applied to a project (or portion of a project) to be carried out at an off-campus or off-site location. A special indirect cost rate may be negotiated for a large nonrecurring project when such project costs would distort the normal direct cost base used in computing the overhead.

(c) The following guidelines are to be used for determining the allowability and reimbursement of indirect costs claimed by a grantee:

(1) For indirect costs to be allowable under a grant, they must be provided for in the grant agreement.

(2) Provisional indirect cost rates may be used for billing purposes under EPA grants. Fixed or predetermined indirect cost rates may also be used where there is advance agreement between the grantee and the grant award official.

(3) A separate indirect cost proposal must be prepared for each fiscal year for which the grantee desires to claim indirect costs. However, there are different requirements for State agencies than for local agencies with respect to the submission of indirect cost proposals to the Federal Government: (i) All State unit indirect cost proposals must be submitted to the cognizant Federal agency within 6 months after the close of each fiscal year; and (ii) local unit indirect cost proposals must be retained but need not be submitted for approval unless required for a pending grant award or requested by the cogni-

zant Federal agency or its authorized representative. Pertinent financial records which substantiate the claim for indirect cost reimbursement must be retained by the grantee. If the required data is not retained and made available to the auditor upon his request at the time he initiates his audit of grant costs, the claim for indirect costs will be disallowed for that year.

(4) The audit of an indirect cost proposal will provide the basis for determining acceptable indirect cost rates.

[43 FR 28484, June 30, 1978]

§ 30.720 Cost sharing.

(a) Except as may be otherwise provided by law or this Subchapter, EPA grantees must share project costs. If there is no statutory matching requirement, a grantee must contribute not less than 5% of allowable project costs within each budget period. Such contributions may be reflected in either direct or indirect costs; in-kind contributions are permitted.

[41 FR 20656, May 20, 1976]

(b) Cost sharing must be negotiated prior to award of a grant and must be set forth in the grant agreement as a percentage of the total allowable project costs for each budget period. Criteria to be used in the negotiation concerning the extent of cost sharing may include the benefits the grantee will derive from the project; the financial risk the grantee will bear; and the resources the grantee has available.

(c) Contributions to cost sharing are allowable only if they: Are verifiable from the grantee's records; are not included as cost sharing or matching contributions for any other federally assisted program; are otherwise properly allocable to the project; constitute allowable project costs; are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to and; are provided for in the approved budget.

[43 FR 28484, June 30, 1978]

(d) Institutional cost sharing agreements are not permitted.

§ 30.725 Cost and price analysis.

§ 30.725-1 Policy.

The reasonableness of the price or cost of each grant application or negotiated subagreement proposal must be considered. The method and degree of analysis shall depend on the circumstances of the particular grant or subagreement action.

§ 30.725-2 Price analysis.

A price analysis is the process of examining and evaluating a prospective price by comparison without evaluation of the composition of separate cost elements and proposed profit.

§ 30.725-3 Cost analysis.

A cost analysis is the process of examining, verifying and evaluating cost data and the judgmental factors applied in projecting from the basic cost data to a reasonable estimated price that will be representative of the total cost of performance of the grant or negotiated sub-agreement.

§ 30.725-4 Requirements.

(a) A formal cost analysis shall be made and a summary of findings prepared for all research, demonstration, planning and training grant applications deemed relevant and requesting EPA funds in excess of \$150,000 for the budget period.

(b) A formal cost analysis shall be made and a summary of findings prepared for all grant applications from profit making organizations deemed relevant.

(c) Any other grant application or subagreement may receive a cost analysis where EPA's program office or grants administration office considers it appropriate.

(d) Price analysis techniques may be used instead of or to supplement cost analysis wherever appropriate.

Subpart G—Grantee Accountability

§ 30.800 Financial management.

The grantee is responsible for maintaining a financial management system which shall adequately provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with EPA reporting requirements. Accounting for project funds will be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all project funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized projects.

(d) Comparison of actual with budgeted amounts for each grant. If appropriate and required by the grant agreement, relation of financial information with performance or productivity data, including the production of unit cost information.

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

(f) Procedures for determining the allowability and allocability of costs in accordance with the provisions of § 30.705.

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

(h) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with the terms of the grant agreement. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds. Audits should be made in accordance with generally accepted auditing standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. It is not required that each grant awarded a grantee be audited. Generally, examination should be conducted on an organization-wide basis. The grantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity. The grantee shall provide EPA with a copy of audits made by the grantee or at his direction.

[43 FR 28484, June 30, 1978]

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 30.805 Records.

The following record and audit policies are applicable to all EPA grants and to all subagreements in excess of \$10,000 under grants.

(a) The grantee shall maintain books, records, documents, and other evidence

and accounting procedures and practices, sufficient to reflect properly (1) the amount, receipt, and disposition by the grantee of all assistance received for the project, including both Federal assistance and any matching share or cost sharing, and (2) the total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the EPA grant has been awarded. In addition, contractors of grantees, including contractors for professional services, shall also maintain books, documents, papers, and records which are pertinent to a specific EPA grant award. The foregoing constitute "records" for the purposes of this subpart.

(b) The grantee's records and the records of his contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying, and audit by EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(c) The grantee and contractors of grantees shall preserve and make their records available to EPA, the Comptroller General of the United States, Department of Labor, or any authorized representative until expiration of 3 years, except that (1) if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved, (2) records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition, and (3) when records are transferred to or maintained by EPA, the 3-year retention requirement is not applicable to the grantee. The 3-year retention period starts (i) from the date of submission of the final financial status report for project grants, or, for grants which are awarded annually, from the date of the submission of the annual financial status report, (ii) from the date of approval of the final payment request for the last project of a construction grant for WWT works, and (iii) for such longer period, if any, as is required by applicable statute or lawful requirement, or by paragraph (c)(2) (i) or (ii) of this section.

[43 FR 28484, June 30, 1978]

(i) If a grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

(ii) Records which relate to (a) appeals under the Subpart J-Disputes, of this Part, (b) litigation on the settlement of claims arising out of the performance of the project for which a grant was awarded, or (c) costs and expenses of the project to which exception has been taken by EPA or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved.

§ 30.810 Property.

Except as otherwise prescribed by statute or the grant agreement, §§ 30.810-1 through 30.810-9 prescribe policies and procedures governing management and ownership of real property and tangible personal property whose acquisition cost is borne in whole or in part by EPA as a direct cost under a grant. Grantees are authorized to use their own property management standards and procedures as long as the minimum standards of these sections are included.

§ 30.810-1 Definitions.

The following definitions apply for the purpose of §§ 30.180-1 through 30.810-9.

(a) *Acquisition cost of purchased nonexpendable personal property.* 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 required. 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 grantee's regular accounting practices.

[43 FR 28484, June 30, 1978]

(b) *Real property.* Except as otherwise defined by State law, land or any interest therein including land improvements, structures, fixtures and appurtenances thereto, but excluding movable machinery and equipment.

(c) *Personal property.* Except as otherwise defined by State law, tangible property of any kind except real property.

(d) *Nonexpendable personal property.* Tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all nonexpendable personal property as defined herein.

(e) *Expendable personal property.* Expendable personal property refers to

all tangible personal property (including consumable materials) other than nonexpendable personal property.

§ 30.810-2 Purchase of property.

Expenditures of project funds for property may be allowed as direct costs only to the extent that such property is necessary for the approved project during the project period. Purchase orders for purchase of personal property are subagreements as defined in this Part.

§ 30.810-3 Property management standards.

The grantee's property management standards for nonexpendable personal property shall include as a minimum the following elements:

(a) Accurately maintained property records which include:

(1) A description of the property,
(2) Manufacturer's serial number, model number, or other identification number,

(3) Source of the property, including contract or grant number,

(4) Whether title vests in the grantee or the Federal Government,

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost,

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

[41 FR 56196, December 27, 1976]

(7) Ultimate disposition data, including sales price or the method used to determine current fair market value where a grantee compensates EPA for its share.

8) Unit acquisition cost.

[41 FR 56196, December 27, 1976]

(b) A physical inventory of property that is taken, and the results reconciled with the property records, at least once every 2 years. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(c) A control system which insures adequate safeguards to prevent loss, damage, or theft to 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 grantee shall promptly notify the Project Officer.

(d) Adequate maintenance procedures which insure that the property is maintained in good condition and that instruments used for precision measurement are periodically calibrated.

(e) Proper sales procedures for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) Identification of property owned by the Federal Government to indicate Federal ownership.

§ 30.810-4 Title to property.

Except as may be otherwise provided by law or in this Subchapter or in the grant agreement, title to all real or personal property whose acquisition cost is a direct cost under a grant project shall vest in the grantee, subject to such interest in the United States as may be provided for in this Subchapter or in the grant agreement. For all property with an acquisition cost of \$10,000 or more per unit the grantee shall assure that the interest of the United States in the property is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code or other applicable local laws.

§ 30.810-5 Real property.

(a) The grantee shall use the real property for the purpose of the original grant.

(b) The grantee shall obtain approval from EPA for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by EPA.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the grantee shall request disposition instructions from EPA.

(d) EPA shall observe the following rules in the disposition instructions for real property:

(1) In the case of real property furnished by EPA or purchased wholly with EPA funds, the grantee shall return all such real property to the control of EPA.

(2) In the case of real property purchased in part with EPA funds, the grantee, at the direction of the Project Officer, may:

(i) Retain title with Federal restrictions removed if it compensates the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the current fair market value of the property, or

(ii) Sell the property under guidelines provided by EPA, using proper sales procedures that provide for competition to the extent practicable and result in the highest possible return, and, except as provided in § 30.810-5(d)(3), pay the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds), or

[43 FR 28484, June 30, 1978]

(iii) Transfer title of the property to the Federal Government with its consent provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the net cost of the project to the current fair market value of the property.

(3) In the case of real property purchased in part with EPA funds allotted for purposes set forth in § 35.940-3(a), the grantee, at the direction of the Project Officer, may sell the real property under procedures approved by EPA and may retain the amount of the Federal interest, as determined in § 30.810-5(d)(2)(ii), to be used solely for paying the eligible costs (in accordance with § 35.940) of the upgrading, expansion, replacement, or reconstruction of treatment works associated with the project.

[43 FR 28484, June 30, 1978]

§ 30.810-6 Federally-owned nonexpendable personal property.

(a) Title to federally owned property (property to which the Federal Government retains title) remains vested by law in the Federal Government.

(b) Upon termination of the grant or need for the property, such property shall be reported to EPA for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of EPA review. Under no circumstances shall grantees sell Government-owned property.

§ 30.810-7 Nonexpendable personal property acquired with Federal funds.

(a) Use.

(1) When nonexpendable personal property is acquired by a grantee as a direct cost under a grant, the grantee shall retain the property in the grant

program for its useful life or as long as there is a need for the property to accomplish the purpose of the grant program, whichever is shorter.

(2) During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee 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. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government is permissible subject to prior approval by EPA. User charges will be made, if appropriate.

(3) Except as may be provided in the grant agreement, when there is no longer a need for such property for the grant program, the grantee may utilize the property in the following order of priority:

(i) Other grant activities sponsored by EPA,

(ii) Grant activities sponsored by other Federal agencies.

[41 FR 56196, December 27, 1976]

(b) *Disposition.* When the grantee no longer has need for the property in any of its Federal grant programs, property disposition will be as follows:

(1) For all grantees except profit-making organizations, nonexpendable property with an acquisition cost of less than \$1,000 may be used for a grantee's own activities without reimbursement to the Federal Government or the grantee may sell the property and retain the proceeds. Profit-making organizations may retain the property provided that EPA is compensated for its proportionate share of the property. Compensation shall be computed by applying the percentage of EPA participation in the cost of the project to the fair market value of the property.

(2) Nonexpendable property with an acquisition cost of \$1,000 or more may be retained by the grantee provided that EPA is compensated for its proportionate share of the current market value of the property.

(3) When a grantee does not wish to retain property with an acquisition cost of \$1,000 or more, as provided in paragraph (b) (2) of this section, or when a profit-making organization does not wish to retain property as provided in (b) (1) of this section, the grantee shall request disposition instructions from EPA. EPA shall determine whether the property can be used to meet other Agency requirements; if not, EPA shall report the availability of the property to the General Services Administration to deter-

mine whether a requirement for the property exists in other Federal agencies

(4) EPA shall observe the following rules in the disposition instructions for nonexpendable personal property with an acquisition cost of \$1,000 or more.

(i) EPA may waive title to the property with all Federal restrictions and conditions removed, if the grantee is a nonprofit institution of higher education or nonprofit research organization, in accordance with the provisions of the Grants Act (Pub. L. 85-934).

(ii) EPA may instruct the grantee to ship the property elsewhere. Compensation will be made to the grantee by the benefiting Federal agency. Compensation shall be computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(iii) EPA may instruct the grantee to otherwise dispose of the property. Compensation will be made to the grantee by EPA. Compensation shall be computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any costs incurred in its disposition.

(iv) EPA shall issue disposition instructions to the grantee within 120 days. If disposition instructions are not received within 120 days after reporting, the grantee shall sell the property and reimburse EPA an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds, less \$100 or 10 percent of the proceeds, whichever is greater, for selling and handling expenses.

§ 30.810-8 Expendable personal property acquired with grant funds.

Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value upon termination or at the conclusion of the project period, and the property is not currently needed for any other federally-sponsored project or program, the grantee shall retain the property for use on nonfederally-sponsored activities, or sell it, but must in either case, compensate EPA for its share. The amount of such compensation shall be computed by applying the percentage of Federal participation in the net cost of the project to the current fair market value of the property.

[41 FR 56196, December 27, 1976]

§ 30.810-9 Property reports.

Property reports must be furnished in accordance with § 30.635-5.

§ 30.815 Final settlement.

Upon submission of the final financial status report pursuant to § 30.635-3, there shall be payable to the United States as final settlement the total sum of (a) any unexpended grant funds, (b) any amounts payable for equipment, materials, or supplies, pursuant to § 30.810, (c) other grant related income, pursuant to § 30.620, and (d) an amount equivalent to that portion of project costs which are unallowable, in proportion to the EPA share and to the extent grant payments therefor have been made. Any settlement made prior to the final audit is subject to adjustment based on the audit. Final settlement will not be considered complete until all audit findings, appeals, litigations, or claims have been resolved. Any debt owed by the grantee to the United States, and not paid at the time of final settlement shall be recovered from the grantee or its successors by setoff or other action as provided by law.

§ 30.820 Audit.

(a) Preaward or interim audits may be performed on grant applications and awards.

(b) A final audit shall be requested by the grant award official after the submission of or the due date of the final financial status report under § 30.635-3. Any settlement made prior to the final audit is subject to adjustment based on the audit. Grantees and subcontractors of grantees shall preserve and make their records available under § 30.805.

[43 FR 28484, June 30, 1978]

Subpart H—Modification, Suspension and Termination**§ 30.900 Project changes and grant modifications.**

(a) A grant modification means any written alteration in the grant amount, grant terms or conditions, budget or project period, or other administrative, technical, or financial agreement whether accomplished by unilateral action of the grantee or the Government in accordance with a provision of the grant agreement or this Subchapter, or by mutual action of the parties to the grant.

(b) The grantee must promptly notify the Project Officer in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification, such as:

- (1) Rebudgeting (see § 30.610);

- (2) Changes in approved technical plans or specifications for the project;

- (3) Changes which may affect the approved scope or objective of a project;

- (4) Significant changed conditions at the project site;

- (5) Acceleration or deceleration in the time for performance of the project, or any major phase thereof;

- (6) Changes which may increase or substantially decrease the total cost of a project (see § 30.900-1); or

- (7) Changes in the Project Director or other key personnel identified in the grant agreement or a reduction in time or effort devoted to the project on the part of such personnel.

(c) Grant modifications are of four general types: formal grant amendments, administrative grant changes, transfer of grants and change of name agreements, and grantee project changes (see § 30.900-1 through § 30.900-4).

(d) A copy of each document pertaining to grant modifications or requests therefor (any administrative change, approved or disapproved project changes and any letter of approval or disapproval, grant amendment, or agreement for transfer of a grant or change of name agreement) shall be retained in the official EPA grant file.

(e) The document which effects a grant modification shall establish the effective date of the action. If no such date is specified, then the date of execution of the document shall be the effective date for the action.

§ 30.900-1 Formal grant amendments.

(a) Project changes which substantially alter the cost or time of performance of the project or any major phase thereof, which substantially alter the objective or scope of the project, or which substantially reduce the time or effort devoted to the project on the part of key personnel will require a formal grant amendment to increase or decrease the dollar amount, the term, or other principal provisions of a grant. This should not be constructed as to apply to estimated payment schedules under grants for construction of treatment works.

(b) No formal grant amendment may be entered into unless the Project Officer has received timely notification of the proposed project change. However, if the Project Officer determines that circumstances justify such action, he may receive and act upon any request for formal grant amendment submitted (1) prior to final payment under grants for which payments of the Federal share have been made by reimbursement and (2) prior to grant closeout of other grants. Formal grant amendments may be executed sub-

sequently only with respect to matters which are the subject of final audit or dispute appeals.

(c) A formal grant amendment shall be effected only by a written amendment to the grant agreement. Such amendments shall be bilaterally executed by the EPA grant award official and the authorized representative of the grantee. However, in cases where this Subchapter or the grant agreement give the government a unilateral right (for example, the suspension or termination rights set forth in §§ 30.915 and 30.920, the withholding of grant payment pursuant to § 30.615-3, or the reduction of the grant amount under § 35.556 of this subchapter, any such right may be exercised by the appropriate EPA official (generally, the grant award official) in accordance with this Subchapter.

(d) The grants administration office shall prepare all formal grant amendments after approval of the modification by the Project Officer or Grant Approving Official, as appropriate.

§ 30.900-2 Administrative grant changes.

These changes, such as a change in the designation of the Project Officer, or of the office to which a report is to be transmitted, or a change in the payment schedule for grants for construction of treatment works, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Government or the grantee. Such changes may be issued unilaterally by the EPA grant award official or Project Officer and do not require the concurrence of the grantee. Such changes must be in writing and will generally be effected by a letter (certified mail, return receipt requested) to the grantee.

§ 30.900-3 Transfer of grants; change of name agreements.

Transfers of grants and change of name agreements require the prior written approval of the grant award official. The grant award official may not approve any transfer of a grant without the concurrence of the grant approving official and consultation with the Regional Counsel or the Assistant General Counsel, Grants, nor may he approve any change of name agreement without consultation with the Regional Counsel or the Assistant General Counsel, Grants. The grants administration office shall prepare the necessary documents upon receipt from the Project Officer of appropriate information and documentation submitted by the grantee.

§ 30.900-4 Grantee project changes.

Project changes not covered by §§ 30.900-1 through 30.900-3 shall be considered grantee project changes not requiring formal grant amendments.

(a) Rebudgeting changes may require prior written approval pursuant to § 30.610.

(b) All other grantee project changes shall be considered approved unless the Project Officer notifies the grantee of disapproval, with adequate explanation of the reason therefor, or the necessity for the execution of a grant amendment, in writing (certified mail, return receipt requested) not later than 3 weeks after receipt of notice pursuant to § 30.900(b). No action taken pursuant to this section shall commit or obligate the United States to any increase in the amount of a grant or payments thereunder, but shall not preclude consideration of a request for a formal grant amendment pursuant to § 30.900-1.

§ 30.915 Suspension of grants—stop work orders.

Work on a project or on a portion or phase of a project for which a grant has been awarded may be ordered stopped by the grant award official, except for grants to educational institutions or nonprofit research organizations.

§ 30.915-1 Use of stop-work orders.

Work stoppage may be required for good cause such as default by the grantee, failure to comply with the terms and conditions of the grant, realignment of programs, lack of adequate funding, or advancements in the state of the art. Inasmuch as stop-work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only after concurrence by the grant approving official and the Regional Counsel or the Assistant General Counsel, Grants. Generally, use of a stop-work order will be limited to those situations where it is advisable to suspend work on the project or a portion or phase of the project for important program or agency considerations and a supplemental agreement providing for such suspension is not feasible. Although a stop-work order may be used pending a decision to terminate by mutual agreement or for other cause, it will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

§ 30.915-2 Contents of stop-work orders.

Prior to issuance, stop-work orders should be discussed with the grantee and

should be appropriately modified, in the light of such discussions. Stop-work orders should include (a) a clear description of the work to be suspended, (b) instructions as to the issuance of further orders by the grantee for materials or services, (c) guidance as to action to be taken on subagreements, and (d) other suggestions to the grantee for minimizing costs.

§ 30.915-3 Issuance of stop-work order.

After appropriate concurrence in the proposed action has been obtained, the EPA grant award official may, by written order to the grantee (certified mail, return receipt requested), require the grantee to stop all, or any part of the project work for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. The grants administration office shall prepare the stop-work order. Any such order shall be specifically identified as a stop-work order issued pursuant to this section.

§ 30.915-4 Effect of stop-work order.

(a) Upon receipt of a stop-work order, the grantee shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, EPA shall either:

- (1) Cancel the stop-work order, in full or in part,
- (2) Terminate the work covered by such order as provided in § 30.920, or
- (3) Authorize resumption of work.

(b) If a stop-work order is canceled or the period of the order or any extension thereof expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly, if:

(1) The stop-work order results in an increase in the time required for, or an increase in the grantee's cost properly allocable to the performance of any part of the project, and

(2) The grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage. However, if the Project Officer determines the circumstances justify such action, he may receive and act upon any such claim asserted in accordance with § 30.900-1(b).

(c) If a stop-work order is not canceled and the grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(d) Costs incurred by the grantee or its contractors, subcontractors, or representatives, after a stop-work order is delivered, or within any extension of the stop-work period to which the parties shall have agreed, with respect to the project work suspended by such order or agreement which are not authorized by this Section or specifically authorized in writing by the grant award official, shall not be allowable costs.

§ 30.915-5 Disputes provision.

Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute (see Subpart J of this part).

§ 30.920 Termination of grants.

A grant may be terminated in whole or in part by the grant award official upon the recommendation of the Project Officer and after concurrence of the grant approving official in the proposed action and consultation with the Regional Counsel or the Assistant General Counsel, Grants.

§ 30.920-1 Termination agreement.

The parties may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this Subchapter. The agreement shall establish the effective date of termination of the project and grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party. The grants administration office will prepare the termination document.

§ 30.920-2 Project termination by grantee.

A grantee may not unilaterally terminate the project work for which a grant has been awarded, except for good cause. The grantee must promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee. If the Project Officer determines, with the concurrence of the EPA grant approving official, that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, the EPA grant award official may enter into a termination agreement or unilaterally terminate the grant pursuant to § 30.920-3, effective with the

date of cessation of the project work by the grantee. If the Project Officer, with the concurrence of the EPA grant approving official, determines that a grantee has ceased work on the project without good cause, the grant award official may unilaterally terminate the grant pursuant to § 30.920-3 or annul the grant pursuant to § 30.920-5.

§ 30.920-3 Grant termination by EPA.

(a) *Notice of intent to terminate.* After concurrence in the issuance of a termination notice has been obtained from the EPA grant approving official and the Regional Counsel or the Assistant General Counsel, Grants, the grant award official shall give not less than ten (10) days written notice to the grantee (certified mail, return receipt requested) of intent to terminate a grant in whole or in part.

(b) *Termination action.* The grantee must be afforded an opportunity for consultation prior to any termination. After the EPA grant approving official and the Regional Counsel or the Assistant General Counsel, Grants, have been informed of any expressed views of the grantee and concur in the proposed termination, the grant award official may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(c) *Basis for termination.* A grant may be terminated by EPA for good cause subject to negotiation and payment of appropriate termination settlement costs.

(d) *Method of Termination.* The preferred method of grant termination shall be by mutual agreement through a bilaterally executed grant agreement providing for payment of termination costs. However, if such agreement is not feasible, then the grant award official may unilaterally terminate the grant, in whole or in part.

[43 FR 28484, June 30, 1978]

§ 30.920-4 Effect of termination.

Upon termination, the grantee must refund or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion thereof as may be required to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable. The grantee shall not make any new commitments without EPA approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the Project Officer the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conform-

ance with applicable Federal cost principles listed in § 30.710.

§ 30.920-5 Annulment of grant.

(a) The grant award official may unilaterally annul the grant if the Project Officer determines, with the concurrence of the appropriate Assistant Administrator or Regional Administrator and the Regional Counsel or Assistant General Counsel, Grants, that:

(1) There has been no substantial performance of the project work without good cause;

(2) There is convincing evidence the grant was obtained by fraud; or

(3) There is convincing evidence of gross abuse or corrupt practices in the administration of the project.

(4) The grantee has inordinately delayed completion of the project without good cause; or

(5) The grantee has failed to achieve the project purpose (e.g., preparation of a research report) or to utilize the project (e.g., construction) to the extent that the fundamental purpose of the grant is frustrated.

[43 FR 28484, June 30, 1978]

(b) In addition to such remedies as may be available to the United States under Federal, State, or local law, all EPA grant funds previously paid to the grantee shall be returned or credited to the United States, and no further payments shall be made to the grantee.

§ 30.920-6 Disputes provision.

The grantee may appeal a termination or annulment action taken pursuant to this section (see Subpart J of this part).

Subpart I—Deviations

§ 30.1000 General.

The Director, Grants Administration Division, is authorized to approve deviations from statutory requirements of this Subchapter or grant related requirements of this Chapter when he determines that such deviations are essential to effect necessary grant actions or EPA objectives where special circumstances make such deviations in the best interest of the Government.

§ 30.1000-1 Applicability.

A deviation shall be considered to be any of the following:

(a) when limitations are imposed by this Subchapter or by grant related requirements of this Chapter upon the use of a procedure, form, grant clause, or any other grant action, the imposition of lesser or greater limitations,

(b) when a policy, procedure, method or practice of administering or conduct-

ing grant actions is prescribed by this Subchapter or by grant related requirements of this Chapter, any policy, procedure, method, or practice inconsistent therewith,

(c) when a prescribed grant clause is set forth verbatim in this Subchapter, use of a clause covering the same subject matter which varies from, or has the effect of altering, the prescribed clause or changing its application,

(d) when a limitation on award or grant condition is set forth in this Subchapter but not for use verbatim, use of a special condition covering the same subject matter which is inconsistent with the intent, principle, or substance of the limitation or condition, or related coverage of the subject matter,

(e) omission of any mandatory grant provision,

(f) when an EPA or other form is prescribed by this Subchapter, use of any other form for the same purpose, or

(g) alteration of an EPA or other form prescribed in this Subchapter.

§ 30.1000-2 Request for deviation.

A request for a deviation shall be submitted in writing to the Director, Grants Administration Division, as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(a) the name of the applicant or the grantee and the grant identification number of the application or grant affected, and the dollar value,

(b) identification of the section of this Subchapter or the grant related requirements of this Chapter from which a deviation is sought,

(c) an adequate description of the deviation and the circumstances in which it will be used, including any pertinent background information which will contribute to a fuller understanding of the deviation sought, and

(d) a statement as to whether the same or a similar deviation has been requested previously, and if so, circumstances of the previous request.

§ 30.1000-3 Approval of deviation.

Deviations may be approved only by the Director of the Grants Administration Division or his duly authorized representative. A copy of each such written approval shall be retained in the official EPA grant file. Concurrence in the approval of the deviation by the appropriate Assistant Administrator(s) is required prior to its effectiveness, where the deviation would involve more than a unique, special situation, e.g., will affect grantees as a class.

Subpart J—Disputes

§ 30.1100 Final Disputes Decision.

(a) Any dispute arising under a grant, or any preaward dispute authorized by this subchapter (see, for example, §§ 35.236 and 35.960), shall be decided, at the request of the applicant or grantee, by the Grant Approving Official or by the Project Officer (with the concurrence of the Grant Approving Official).

(b) Each final decision must adequately notify the recipient in writing (with proof of delivery) that the decision is a final decision which shall become final and conclusive, unless timely appealed. The following paragraph or alternate language approved by the Office of General Counsel must be utilized as the final paragraph of each final decision letter:

This is a final Disputes decision by me, the Grant Approving Official. Under applicable EPA regulations (see particularly Subpart J or 40 CFR Part 30), this decision will be final and conclusive unless, within thirty (30) days from the date of receipt of this decision, a brief written notice of appeal, addressed to the Administrator, Environmental Protection Agency (Attention: Office of General Counsel), is mailed by certified mail (return receipt requested) or otherwise delivered to (insert name and address of either the Grant Approving Official or the Project Officer, as appropriate). (You will be notified of further procedural requirements applicable to your appeal by a subsequent letter.) Your notice of appeal need only indicate that an appeal is intended, refer to this final decision by date, and briefly state the ultimate reasons why the decision is considered to be erroneous.

(c) An EPA official who receives a notice of appeal from a final decision should preserve the envelope in which the appeal was transmitted and other data evidencing the date of mailing of the notice of appeal (or the date of receipt, if the notice was otherwise delivered) and should promptly forward such information and the original of the notice of appeal to the Office of the General Counsel.

[43 FR 28484, June 30, 1978]

§ 30.1105 Grantee appeal.

A decision of the Project Officer made pursuant to § 30.1100 shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the grantee mails (certified mail, return receipt requested) or otherwise delivers to EPA (generally, to the Project Officer) a written appeal addressed to the Administrator.

§ 30.1115 Rights of the grantee and the Government.

In connection with an appeal proceeding pursuant to § 30.1110 the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record.

§ 30.1120 Decision of the Administrator.

The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

§ 30.1125 Questions of law.

Any question of law may be considered in connection with decisions provided for by this Subpart. Nothing in the grant agreement or related regulations, however, shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

§ 30.1130 Delegation of authority.

The General Counsel is authorized to appoint hearing examiners to hear and decide grant appeals from final dispute determinations under this subpart.

[43 FR 28484, June 30, 1978]

§ 30.1150 Appeal procedures.

The procedures for grant appeals under this subpart shall be those designated by the General Counsel. A copy of such procedures may be obtained from the Office of General Counsel.

[43 FR 28484, June 30, 1978]

APPENDIX A—GENERAL GRANT CONDITIONS

a. *General Conditions.* The grantee covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this grant, in accordance with the applicable grant provisions of 40 CFR Subchapter B. The grantee warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with 40 CFR Subchapter B, the following

General Conditions, the applicable supplemental conditions of 40 CFR Subchapter B, as amended, and any Special Conditions set forth in this grant agreement or any grant amendment.

1. *Access.* The grantee agrees that it will provide access to the facilities, premises and records related to the project as provided in §§ 30.605 and 30.805 of 40 CFR Subchapter B.

2. *Audit and records.* The grantee agrees that it will maintain an adequate system for financial management, property management and grantee audit in accordance with §§ 30.800 and 30.810-3, and that it will maintain, preserve and make available to the Government all project records for the purpose of inspection, interim and final audit, and copying as required by §§ 30.605, 30.805, and 30.820 of 40 CFR Subchapter B.

3. *Reports.* The grantee agrees to timely file with EPA such reports as are specifically required by the grant agreement or pursuant to 40 CFR Subchapter B, including progress reports (§ 30.635-1), financial reports (§ 30.635-3), inventory reports (§ 30.635-4), property reports (§ 30.635-5), relocation and acquisition reports (§ 30.635-6) and a final report (§ 30.635-2), and that failure to timely file a report may cause EPA to invoke the remedies provided in 40 CFR 30.430.

4. *Project changes; Grant modifications.* The grantee agrees that notification of project changes will be given pursuant to 40 CFR 30.900(b) and that all grant modifications will be effected in accordance with 40 CFR 30.900 through 30.900-4.

5. *Requirements pertaining to federally assisted construction.* The grantee agrees that it will comply, and that its contractors, subcontractors, employees and representatives will comply, with the requirements pertaining to federally assisted construction identified in 40 CFR 30.415.

6. *Suspension.* (a) The grantee agrees that the grant award official may, at any time, require the grantee to stop all, or any part, of the work within the scope of the project for which EPA grant assistance was awarded, by a written stop-work order, for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this clause. Upon receipt of such an order, the grantee agrees to forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. This suspension article shall not be applicable to educational institutions or nonprofit research organizations.

(b) The grantee agrees that, within any such suspension period, EPA may either (1) cancel the stop-work order, in full or in part; or (2) initiate action to terminate the grant, in part or in full, as provided in Article 7, below; or (3) authorize resumption of work.

(c) If a stop-work order is canceled or if the suspension period or any extension thereof expires, the grantee agrees to promptly resume the previously suspended project work.

(d) An equitable adjustment shall be made in the project period, budget period, or the grant amount, or all of these as appropriate, if:

(1) the stop-work order results in an increase in the time required for, or in the grantee's costs properly allocable to, the performance of any part of the project, and

(2) the grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage, provided, That if the Project Officer determines that the circumstances justify such action (for example, if the impact of cost or time factors resulting from a stop-work order could not have been ascertained prior to written submission of the claim), he may receive and act upon any such claim asserted at any time prior to final payment under this grant.

(e) If a stop-work order is not canceled and grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(f) The grantee agrees that costs incurred by the grantee or its contractors, subcontractors or representatives, after a stop-work order is delivered, or within any extension of the suspension period to which the parties may have agreed, with respect to the project work suspended by such order or agreement, which are not authorized by this article or specifically authorized in writing by the Project Officer shall not be allowable costs.

7. Termination; Annulment.—(a) *Grant Termination by EPA.* The grantee agrees that the grant award official may, at any time, after written notice and after opportunity for consultation has been afforded to the grantee, terminate the grant, in whole or in part, through a written termination notice specifying the effective date of the termination action.

(1) A grant may be terminated by EPA for good cause, subject to negotiation and payment of termination settlement costs.

(2) The grantee agrees that, upon such termination, it will return or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion as may be required by the grantee to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable.

(3) Whenever feasible, the grant award official and the grantee shall enter into a termination agreement as soon as possible after any such termination action to establish the basis for settlement of grant termination costs and the amount and date of payment of any sums due to either party.

(b) *Project termination by grantee.* The grantee agrees that it will not unilaterally terminate work on the project for which EPA grant assistance has been awarded, except for good cause. The grantee further agrees:

(1) that it will promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee, and

(2) that, if the Project Officer determines that the grantee has terminated the project work without good cause, the grant award official may annul the grant and all EPA grant funds previously paid or owing to the grantee shall be promptly returned or credited to the United States.

Upon request of the grantee, and if the Project Officer determines that there is good

cause for the termination of all or any portion of the project work for which EPA grant assistance has been awarded, the grant award official and the grantee may enter into a written termination agreement establishing the effective date of the grant and project termination, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due to either party.

(c) *Annulment.* The grantee agrees that the grant may be annulled pursuant to 40 CFR 30.920-5.

8. Disputes. (a) Except as otherwise provided by law or regulations, any dispute arising under this grant agreement shall be decided by the grant approving official or the Project Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the grantee. Such a decision shall be final and conclusive unless, within thirty (30) days from the date of receipt, the grantee mails or otherwise delivers to EPA (generally to the Project Officer) a written appeal addressed to the Administrator.

(b) The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

(c) In connection with an appeal proceeding under this article, the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record, in accordance with the applicable provisions of Subpart J of Part 30 of Title 40 CFR.

(d) This "Disputes" article shall not preclude consideration of any question of law in connection with decisions provided for by this article; provided, that nothing in this grant or related regulations shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

(9) *Patents; rights in data, copyright.*

(a) Every EPA grant involving research, developmental, experimental, or demonstration work shall be subject to the patent provisions of Appendix B to 40 CFR Part 30.

(b) Every EPA grant shall be subject to the rights in data, and copyright provisions of Appendix C to 40 CFR Part 30.

10. Notice and assistance regarding patent and copyright infringement. (a) The grantee agrees to report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant

or out of the use of any supplies furnished or work or services performed hereunder, the grantee agrees to furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

Note: EPA Form 5700-20, Grant Agreement/Amendment was filed as part of the original document

APPENDIX B—PATENTS AND INVENTIONS

A. Definitions. (1) "Background Patent" means a foreign or domestic patent (regardless of its date of issue relative to the date of the EPA grant):

(1) Which the grantee, but not the Government, has the right to license to others, and

(ii) Infringement of which cannot be avoided upon the practice of a Subject Invention or Specified Work Object.

(2) "Commercial Item" means—

(1) Any machine, manufacture, or composition of matter which, at the time of a request for a license pursuant to Part D of this Appendix, has been sold, offered for sale or otherwise made available commercially to the public in the regular course of business, at terms reasonable in the circumstances, and

(ii) Any process which, at the time of a request for a license, is in commercial use, or is offered for commercial use, so the results of the process or the products produced thereby are or will be accessible to the public at terms reasonable in the circumstances.

(3) "Specified Work Object" means the specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is the subject of the experimental, developmental, research or demonstration work performed under this grant.

(4) "Grantee" is the party which has accepted this grant award and includes entities controlled by the grantee. The term "controlled" means the direct or indirect ownership of more than 50 percent of outstanding stock entitled to vote for the election of directors, or a directing influence over such stock; provided, however, that foreign entities not wholly owned by the grantee shall not be considered as "controlled."

(5) "Subagreement" includes subagreements at any tier under this grant.

(6) "Domestic" and "foreign" refer, respectively, (1) to the United States of America, including its territories and possessions, Puerto Rico and the District of Columbia and (ii) to countries other than the United States of America.

(7) "Government" means the Federal Government of the United States of America.

(8) "Subject Invention" means any invention, discovery, improvement, or development (whether or not patentable) made in the course of or under this grant or any subagreement (at any tier) thereunder.

(9) "Made," when used in connection with any invention, means the conception or first actual reduction to practice of such invention.

(10) To "practice an invention or patent" means the right of a licensee on his own behalf to make, have made, use or have used,

sell or have sold, or otherwise dispose of according to law, any machine, design, manufacture, or composition of matter physically embodying the invention, or to use or have used the process or method comprising the invention.

(11) The phrase "to bring to the point of practical application" means to manufacture in the case of composition or product, to use in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(12) "Statement" means the President's Patent Policy Statement of August 23, 1971, 36 F.R. 16889, August 26, 1971.

B. Domestic patent rights in Subject Inventions. (1) The grantee agrees that he will promptly disclose to the Project Officer in writing each Subject Invention in a manner sufficiently complete as to technical details to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation and, as the case may be, the physical, chemical, biological, or electrical characteristics of the invention. However, if any Subject Invention is obviously unpatentable under the patent laws of the United States, such disclosure need not be made thereon. On request of the Project Officer, the grantee shall comment respecting the differences or similarities between the invention and the closest prior art drawn to his attention.

(2) Except in the instance of a determination, pursuant to paragraph (3) of this Section, by the Administrator to leave to the grantee rights greater than a nonexclusive license, the grantee agrees to grant and does hereby grant to the Government the full and entire domestic right, title, and interest in the Subject Invention, subject to retention by the grantee of a revocable, nonexclusive, royalty-free license to practice the Subject Invention. Any such license granted shall extend to any existing and future companies controlled by, controlling or under common control with the grantee and shall be assignable to the successor of the part of the grantee's business to which such invention pertains. Said license to the grantee may be revoked by the Administrator or his designee if it is determined that it is necessary to issue an exclusive license, pursuant to then applicable Government regulations, in order to more expeditiously bring the invention to commercialization; provided, however, that the grantee shall be provided the opportunity to present to the Administrator reasons why said license should not be revoked.

(3) Not later than three (3) months after the disclosure of a Subject Invention pursuant to paragraph (1) of this Section, and without regard to whether the invention is a primary object of this grant, the grantee may submit a request in writing to the Project Officer for a determination by the Administrator leaving the grantee greater rights than that reserved to the grantee in paragraph (2) of this Section. Such request should set forth information and facts which in the grantee's opinion, should justify a determination that:

(i) In the case of a Subject Invention which is clearly a primary object of this grant, the acquisition of such greater rights by the grantee is both consistent with the intent of Section 1(a) of the Statement and is either a necessary incentive to call forth

private risk capital and expense to bring the invention to the point of practical application or is justified because the Government's contribution to such invention is small compared to that of the grantee; or that

(ii) The Subject Invention is not a primary object of this grant, and that the acquisition of such greater rights will serve the public interest as expressed in the Statement, particularly when taking into account the scope and nature of the grantee's stated intentions to bring the invention to the point of practical application and the guidelines of Section 1(a) of the Statement. The Administrator will review the grantee's request for greater rights and will make a determination, either granting the request in whole or in part, or denying the request in its entirety. The grantee will be notified of such determination.

(4) In the event greater rights in any Subject Invention are vested in or granted to the grantee pursuant to paragraph (3) of this Section:

(i) The grantee's rights in such inventions shall, as a minimum, be subject to a non-exclusive, nontransferable, paid-up license to the Government to practice the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Administrator determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments; and said license shall include the right to sublicense any foreign government pursuant to any existing or future treaty or agreement if the Administrator determines it would be in the national interest to acquire this right; and

(ii) The grantee further agrees to and does hereby grant to the Government the right to require the granting of a license to a responsible applicant(s) under any such invention:

(a) On a nonexclusive or exclusive basis on terms that are reasonable under the circumstances, unless the grantee, its licensees or its assignees demonstrate to the Government, at the Government's request, that effective steps have been taken within three (3) years after a patent was issued on any such invention to bring it to the point of practical application, or that it has been made available for licensing royalty-free or in terms that are reasonable in the circumstances, or can show cause why the time period should be extended, or

(b) On a nonexclusive or exclusive basis on terms that are reasonable in the circumstances to the extent that the invention is required for public use by Governmental regulations or as may be necessary to fulfill health or safety needs or for such other public purposes as are stipulated in this grant, and

(iii) The grantee shall file in due form and within six (6) months of the granting of such greater rights a U.S. patent application claiming the Subject Invention and shall furnish, as soon as practicable, the information and materials required under paragraph (2) of Section F. As to each Subject Invention in which the grantee has been given greater rights, the grantee shall notify the Project Officer at the end of six (6) months period if he has failed to file or caused to be filed a patent application covering such invention. If the grantee has filed or caused to

be filed such an application within a six (6) month period but elects not to continue prosecution of such application, he shall so notify the Project Officer, and EPA Patent Counsel not less than forty-five (45) days before the expiration of the response period. In either of the situations covered by the two immediately preceding sentences, the Government shall be entitled to all right, title, and interest in such Subject Invention subject to the reservation to the grantee of a revocable royalty-free, nonexclusive license therein.

(iv) The grantee shall, if requested by the Government, either before or after final closeout of this grant, furnish written reports at reasonable intervals, as to:

(a) The commercial use that is being made or is intended to be made of such invention;

(b) The steps taken by the grantee to bring such invention to the point of practical application, or to make the invention available for licensing.

(5) Even in the event the Government elects to take the full and entire domestic title and interest in a Subject Invention, the Project Officer may request, prior to grant closeout, that the grantee prepare a domestic patent application for filing in the United States Patent Office on such invention and deliver it to the Project Officer for filing by EPA. Reasonable costs incurred for the preparation of such application or any revision thereof requested by EPA shall be allowable project costs.

C. Foreign rights and obligations. (1) Subject to the waiver provisions of paragraph (2) of this section, it is agreed that the entire foreign right, title, and interest in any Subject Invention shall be in the Government, as represented for this purpose by the Administrator. The Government agrees to grant and does hereby grant to the grantee a royalty-free nonexclusive license to practice the invention under any patent obtained on such Subject Invention in any foreign country. The license shall extend to existing and any future companies controlled by, controlling or under common control with the grantee, and shall be assignable to the successor of the part of the grantee's business to which such invention pertains.

(2) The grantee may request the foreign rights to a Subject Invention at any time subsequent to the reporting of such invention. The response to such request and notification thereof to the grantee will not be unreasonably delayed. The Government will waive title to the grantee to such Subject Invention in foreign countries in which the Government will not file an application for a patent for such invention, or otherwise secure protection therefor. Whenever the grantee is authorized to file in any foreign country the Government will not thereafter proceed with filing in such country except on the written agreement of the grantee, unless such authorization has been revoked pursuant to paragraph (3) of this Section.

(3) In the event the grantee is authorized to file a foreign patent application on a Subject Invention, the Government agrees that it will use its best efforts not to publish a description of such invention until a United States or foreign application on such invention is filed, whichever is earlier, but neither the Government, its officers, agents, or employees shall be liable for an inadvertent publication thereof. If the grantee is au-

thorized to file in any foreign country, he shall, on request of the Project Officer, furnish to the Government a patent specification in English within six (6) months after such authorization is granted, prior to any foreign filing and without additional compensation. The Project Officer, after concurrence by the EPA Patent Counsel, may revoke such authorization on failure on the part of the grantee to file any such foreign application within nine (9) months after such authorization has been granted.

(4) If the grantee files patent applications in foreign countries pursuant to authorization granted under paragraph (2) of this section, the grantee agrees to grant to the Government an irrevocable, nonexclusive, paid-up license to practice by or on its behalf the invention under any patents which may issue thereon in any foreign country. Such license shall include the right to issue sublicenses pursuant to any existing or future treaties or agreements between the Government and a foreign government for uses of such foreign government, provided the Administrator determines that it is in the national interest to acquire such right to sublicense.

(5) In the event the Government or the grantee elects not to continue prosecuting any foreign application or to maintain any foreign patent on a Subject Invention, the other party shall be notified no less than sixty (60) days before the expiration of the response period or maintenance tax due date, and upon written request, shall execute such instruments (prepared by the party wishing to continue the prosecution or to maintain such patent) as are necessary to enable such party to carry out its wishes in this regard.

D. Licenses under background patents. (1) The grantee agrees that he will make his Background Patent(s) available for use in conjunction with a Subject Invention or Specified Work Object for use in the specific field of technology in which the purpose of this grant or the work called for or required thereunder falls. This may be done (i) by making available, in quality, quantity, and price all of which are reasonable to the circumstances, an embodiment of the Subject Invention or Specified Work Object, which incorporates the invention covered by such Background Patent, as a Commercial Item, or (ii) by the sale of an embodiment of such Background Patent as a Commercial Item in a form which can be employed in the practice of a Subject Invention or Specified Work Object or can be so employed with relatively minor modifications, or (iii) by the licensing of the domestic Background Patent(s) at reasonable royalty to responsible applicants on their request.

(2) If the Administrator determines after a hearing that the quality, quantity, or price of embodiments of the Subject Invention or Specified Work Object sold or otherwise made available commercially as set forth in (D) (1) (i) is unreasonable in the circumstances, he may require the grantee to license such domestic Background Patent to a responsible applicant at reasonable terms, including a reasonable royalty, for use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and for use in connection with (i) a Specified Work Object, or (ii) a Subject Invention.

(3) (i) When a license to practice a domestic Background Patent in conjunction with a Subject Invention or Specified Work Object is requested in writing by a responsible applicant, for use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and such Background Patent is not available as set forth in D(1) (i) or (ii), the grantee shall have six (6) months from the date of his receipt of such request to decide whether to make such Background Patent so available. The grantee shall promptly notify EPA in writing of any request for a license to practice a Background Patent in conjunction with a Subject Invention or Specified Work Object, which the grantee or his exclusive licensee wish to attempt to make available as set forth in D(1) (i) or (ii).

(ii) If the grantee decides to make such domestic Background Patent so available either by himself or by an exclusive licensee, he shall so notify the Administrator within the said six (6) months, whereupon the Administrator shall then designate the reasonable time within which the grantee must make such Background Patent available in reasonable quantity and quality, and at a reasonable price. If the grantee or his exclusive licensee decides not to make such Background Patent so available, or fails to make it available within the time designated by the Administrator, the Background Patent shall be licensed to a responsible applicant at reasonable terms, including a reasonable royalty, in conjunction with (a) a Specified Work Object, or (b) a Subject Invention, and may be limited to the specific field of technology in which the purpose of this grant or the work called for thereunder falls.

(iii) The grantee agrees to grant or have granted to a designated applicant, upon the written request of the Government, a non-exclusive license at reasonable terms, including reasonable royalties, under any foreign Background Patent in furtherance of any treaty or agreement between the Government of the United States and a foreign government for practice by or on the behalf of such foreign government, if an embodiment of the Background Patent is not commercially available in that country; provided, however, that no such license will be required unless the Administrator determines that issuance of such license is in the national interest. Such license may be limited by the licensor to the practice of such Background Patent in conjunction with a Subject Invention or a Specified Work Object and for use in only the specific field of technology in which the purpose of this grant or the work called for thereunder falls.

(iv) The grantee agrees it will not seek injunctive relief or other prohibition of the use of the invention in enforcing its rights against any responsible applicant for such license and that it will not join with others in any such action. It is understood and agreed that the foregoing shall not affect the grantee's right to injunctive relief or other prohibition of the use of Background Patents in areas not connected with the practice of a Subject Invention or Specified Work Object in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, or where the grantee has made available a Commercial Item as set out in paragraph D(1) (i) or (ii).

(4) For use in the specific field of technology in which the purpose of this grant

or the work called for thereunder falls, and in conjunction with a Subject Invention or a Specified Work Object, the grantee agrees to grant to the Government a license under any Background Patent. Such license shall be nonexclusive, nontransferable, royalty-free and worldwide to practice such patent which is not available as a Commercial Item as specified in Paragraph D(1) (ii) for use of the Federal Government in connection with pilot plants, demonstration plants, test beds, and test modules. For all other Government uses, any royalty charged the Government under such license shall be reasonable and shall give due credit and allowance for the Government's contribution, if any, toward the making, commercial development, or enhancement of the invention(s) covered by the Background Patent.

(5) Any license granted under a process Background Patent for use with a specified Work Object shall be additionally limited to employment of the Background Patent under conditions and parameters reasonably equivalent to those called for or employed under this grant.

(6) It is understood and agreed that the grantee's obligation to grant licenses under Background Patents shall be limited to the extent of the grantee's right to grant the same without breaching any unexpired contract it had entered into prior to this grant or prior to the identification of a Background Patent, or without incurring any obligation to another solely on account of said grant. However, where such obligation is the payment of royalties or other compensation, the grantee's obligation to license his Background Patents shall continue and the reasonable license terms shall include such payments by the applicant as will at least fully compensate the grantee under said obligation to another.

(7) On the request of the Project Officer, the grantee shall identify and describe any license agreement which would limit his right to grant licenses under any Background Patent.

(8) In the event the grantee has a parent or an affiliated company, which has the right to license a patent which would be a Background Patent if owned by the grantee, but which is not available as a Commercial Item as specified in paragraph D(1) (i) or (ii), and a qualified applicant requests a license under such patent for use in the specific field of technology in which the purpose of this contract or the work called for thereunder falls, and in connection with the use of a Subject Invention or Specified Work Object, the grantee shall, at the written request of the Government, recommend to his parent company, or affiliated company, as the case may be, the granting of the requested license on reasonable terms, including reasonable royalties, and actively assist and participate with the Government and such applicant, as to technical matters and in liaison functions between the parties, as may reasonably be required in connection with any negotiations for issuance of such license. For the purpose of this subparagraph, (i) a parent company is one which owns or controls, through direct or indirect ownership of more than 50 percent of the outstanding stock entitled to vote for the election of directors, another company or other entity, and (ii) affiliated companies are companies or other entities owned or controlled by the same parent company.

E. Related inventions At the request of the Project Officer made during or subsequent to the term of this grant including any extensions for additional research and development work, the grantee shall furnish information concerning any invention which appears to the Project Officer to reasonably have the possibility of being a Subject Invention.

All information supplied by the grantee hereunder shall be of such nature and character as to enable the Project Officer, with the concurrence of the EPA Patent Counsel, reasonably to ascertain whether or not the invention concerned is a Subject Invention. Failure to furnish such information called for herein shall, in any subsequent proceeding, place on the grantee the burden of going forward with the evidence to establish that such invention is not a Subject Invention. If such evidence is not then presented, the invention shall be deemed to be a Subject Invention. After receipt of information furnished pursuant hereto, the Project Officer shall not unduly delay rendering his opinion on the matter. The Project Officer's decision shall be subject to the Disputes Clause of the grant. The grantee may furnish the information required under this Section E as grantee confidential information, which shall be identified as such.

F. General provisions. (1) The grantee shall obtain the execution of and deliver to the Project Officer any document, including domestic patent applications (see B(5) hereof), relating to Subject Inventions as the Project Officer may require under the terms hereof to enable the Government to file and prosecute patent applications therefor in any country and to evidence and preserve its rights. Each party hereto agrees to execute and deliver to the other party on its request suitable documents to evidence and preserve license rights derived from this Appendix.

(2) The Government and the grantee shall promptly notify each other of the filing of a patent application on a Subject Invention in any country, identifying the country or countries in which such filing occurs and the date and serial number of the application, and on request shall furnish a copy of such application to the other party and a copy of any action on such patent application by any Patent Office and the responses thereto. Any applications or responses furnished shall be kept confidential, unless the Government has title to the invention.

(3) Any other provisions of this Appendix notwithstanding, the Project Officer, or any authorized EPA representative shall, until the expiration of three (3) years after submission of the final financial status report under this grant, have the right to examine in confidence any books, records, documents, and other supporting data of the grantee which the Project Officer or any authorized EPA representative shall reasonably deem directly pertinent to the discovery or identification of Subject Inventions or to the compliance by the grantee with the requirements of this Appendix.

(4) Notwithstanding the grant of a license under any patents to the Government pursuant to any provisions of this Appendix, the Government shall not be prevented from contesting the validity, enforceability, scope, or title of such licensed patent.

(5) The grantee shall furnish to the Project Officer every 12 months, or earlier as may be agreed in this grant (the initial pe-

riod shall commence with the date of award of this grant) an interim report listing all Subject Inventions required to be disclosed which were made during the interim reporting period or certify that there are no such unreported inventions.

(6) The grantee shall submit a final report under this grant listing all Subject Inventions required to be disclosed which were made in the course of the work performed under this grant, and all subagreements subject to this Appendix. If to the best of the grantee's knowledge and belief, no Subject Inventions have resulted from this grant the grantee shall so certify to the Project Officer. If there are no such subagreements, a negative report is required.

(7) The interim and final reports submitted under F (5) and (6) and Subject Invention disclosures required under B(1) shall be submitted on EPA forms which will be furnished by the Project Officer on request. Any equivalent form approved by the Project Officer with the concurrence of the EPA Patent Counsel may be used in lieu of EPA forms. Such reports and disclosures shall be submitted in triplicate.

(8) Any action required by or of the Government under this patent provision shall be undertaken by the Project Officer or other authorized EPA official as its duly authorized representative unless otherwise stated.

(9) The Government may duplicate and disclose reports and disclosures of Subject Inventions required to be furnished by the grantee pursuant to this Appendix without additional compensation.

(10) The grantees shall furnish to the Project Officer, in writing, and as soon as practicable, information as to the date and identity of any first public use, sale or publication of any Subject Invention made by or known to the grantee, or of any contemplated publication of the grantee.

(11) The Administrator shall determine the responsibility of an applicant for a license under any provision of this patent provision when this matter is in dispute and his determination thereof shall be final and binding.

(12) The grantee shall furnish promptly to the Project Officer or other authorized EPA official on request an irrevocable power to inspect and make copies of each U.S. patent application filed by or on behalf of the grantee covering any Subject Invention.

(13) The grantee shall include in the first paragraph in any U.S. patent application which it may file on a Subject Invention the following statement:

This invention resulted from work done under Grant No. ---- with the Environmental Protection Agency and is subject to the terms and provisions of said Grant.

(14) All information furnished in confidence pursuant to this Appendix shall be clearly identified by an appropriate written legend. Such information shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and shall in any event cease to be confidential if it is or becomes generally available to the public, or has been made or becomes available to the Government (i) from other sources, or (ii) by the grantee without limitation as to use, or was already known to the Government when furnished to it.

(15) Any action by the Project Officer affecting the disposition of rights to patents or inventions pursuant to this Appendix

shall be taken only after review by the Office of General Counsel.

G. Warranties. (1) The grantee warrants that whenever he has divested himself of the right to license any Background Patent (or any invention owned by the grantee which could become the subject of a Background Patent) prior to the date of this grant, such divestment was not done to avoid the licensing requirements set forth in Section D of this Appendix. After a Background Patent, or invention which could become the subject of a Background Patent, is identified, the grantee shall take no action which shall impair the performance of his obligation to issue Background Patent licenses pursuant to this grant.

(2) The grantee warrants that he will take no action which will impair his obligation to assign to the Government any invention first actually conceived or reduced to practice in the course of or under this grant.

(3) The grantee warrants that he has full authority to make obligations of this Appendix effective by reason of agreements with all of the personnel, including consultants who might reasonably be expected to make inventions, and who will be employed in work on the project for which the grant has been awarded, to assign to the grantee all discoveries and inventions made within the scope of their employment.

H. Subagreements This Appendix shall be included in any subagreement over \$10,000 under this grant where a purpose of the subagreement is the conduct of experimental, developmental, research, or demonstration work, unless the Grant Approving Official with the concurrence of the EPA Patent Counsel, authorizes the omission or modification of this Appendix. The grantee shall not acquire any rights to Subject Inventions made under such subagreement for his own use (as distinguished from such rights as may be required solely to fulfill his grant obligations to the Government in performance of this grant). Upon completion of work under such a subagreement, the grantee shall promptly notify the Project Officer in writing of such completion, and shall upon request furnish a copy of the subagreement to the Project Officer. The grantee hereby assigns to the Government all rights of the grantee to enforce the obligations of the party to such subagreement with respect to Subject Inventions, Background Patents, and pursuant to Section E of this Appendix. The grantee shall cooperate with the Government at the Government's request and expense in any legal action to secure the Government's rights.

APPENDIX C—RIGHTS IN DATA AND COPYRIGHTS

1. The term "Subject Data" as used herein includes writings, technical reports, sound recordings, magnetic recordings, computer programs, computerized data bases, pictorial reproductions, plans, drawings, specifications, or other graphical representations, and works of any similar nature (whether or not copyrighted) which are submitted with a proposal or grant application or which are specified to be delivered under this grant or which are developed or produced and paid for under this grant. The term does not include financial reports, cost analyses, and other information incidental to grant administration.

2 Except as may otherwise be provided in the grant agreement, when publications,

films, or similar materials are developed directly or indirectly from a project supported by the Environmental Protection Agency, the author is free to arrange for copyright without approval. However, such materials shall include acknowledgement of EPA grant assistance. The grantee agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data, or copyrightable material based on such data, now or hereafter covered by copyright.

3 The grantee shall not include in the Subject Data any copyrighted matter, without the written approval of the Project Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in Article 2 above.

4 The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the grantee with respect to all Subject Data delivered under this grant.

5 Nothing contained in this Appendix shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent.

6. Unless otherwise limited below, the Government may, without additional compensation to the grantee, duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data.

7. Notwithstanding any provisions of this grant concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate, or ignore any marking not authorized by the terms of this grant on any piece of Subject Data furnished under this grant.

8. Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed or investigated, if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items or processes which were developed at private expense and previously sold or offered for sale or commercially practiced in the case of a process, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed or investigated, if in lieu thereof the grantee shall identify such other item or processes and that "proprietary data" pertaining thereto which is necessary to enable

reproduction or manufacture of the item or performance of the process. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a grantee's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the grantee has protected such information from unrestricted use by others.