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EPA

Managing Your Financial Assistance Agreement

Project Officer Responsibilities

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INTRODUCTION

WHY AN ASSISTANCE PROJECT OFFICERS COURSE?

- **TRAINING IDENTIFIED AS A WEAKNESS**
- **ROLES AND RESPONSIBILITIES NOT IDENTIFIED ELSEWHERE**
- **CERTIFICATION OF ASSISTANCE PROJECT OFFICERS**

VIEWGRAPH # 1
TITLE: Why an Assistance Project Officers Course?

KEY POINTS:

- A large part of EPA's mission is accomplished by awarding extramural funds to other organizations to conduct environmental programs and or projects.
- EPA (and other Federal agencies) award funds through one of two methods -- "acquisition" or "assistance." The basic difference between acquisition and an assistance is the relationship between the parties. If an activity is funded to meet an internal EPA need e.g., a specific report to Congress, purchase of furnishings for EPA staff, then an acquisition relationship exists and EPA's direct procurement requirements (e.g., the Federal Acquisition Regulations) apply . If the activity is funded to benefit someone other than the Federal government, e.g., build a wastewater treatment plant, then an assistance relationship exists and EPA's rules which apply to assistance programs apply. It is the latter situation which is the subject of this course.
- Because of Congressional Hearings, inquiries on contract management, and recent audits, the area of assistance management is receiving increased scrutiny from EPA management.
- EPA obligates approximately $3.5 Billion (or about 50% of its budget) through assistance agreements.
- The Project Officer (PO) plays a key role in assuring the proper expenditure of these funds.
- Several recent assessments identified PO training as one of the highest needs in the assistance management area.

VIEWGRAPH # 1 (Continued)
TITLE: Why an Assistance Project Officers Course?

KEY POINTS:

- This course identifies the **administrative responsibilities** of the Project Officers (PO), Grants Management Offices (GMO), Financial Management Offices (FMO), and other players involved in the management of assistance agreements.
- This course **will provide**:
  - A framework for the POs' responsibilities;
  - Awareness of the interactions between the POs and others;
  - Listing of the cradle-to-grave responsibilities of POs; and a
  - Groundwork for future PO Certification.
- This course **will not provide** specific PO programmatic requirements. This is a responsibility of the National Program Manager (NPM) for each program. Some NPMs (e.g., Office of Water, §106 grant program and the Office of Research and Development) are developing training courses on the **programmatic** aspects of their POs' responsibilities.
- This manual is organized into 8 modules:
  - The first module provides background information;
  - The second module discusses sources of administrative requirements governing assistance;
  - The third through sixth modules cover the phases from preapplication through closeout;
  - The seventh module covers audits of assistance awards; and
  - The eighth module addresses Interagency Agreements (IAGs).
- The modules are followed by the Appendices. Items in the Appendices are cross-referenced throughout the text of the modules.
- A Subject Index and Glossary are included and follow the Appendices.

ASSISTANCE
PROJECT OFFICERS
TRAINING COURSE

MODULE I
BACKGROUND

OVERVIEW

- **Federal Grant and Cooperative Agreement Act of 1977**
- **Competition In Assistance Agreements**
- **Conflicts of Interest**

VIEWGRAPH#1
TITLE: OVERVIEW

KEY POINTS:

In this module we will discuss the following:

- The Federal Grant and Cooperative Agreement Act of 1977.
  - The difference between a **contract** and an **assistance agreement;**
  - The types of assistance agreements (grants and cooperative agreements) and the difference between a **grant** and a **cooperative agreement;**
  - When a contract, grant, cooperative agreement should/must be used; and
  - The Project Officer's (PO)/Program's role in making the decision of which instrument to use;
- Competition in the selection of recipients.
  - When it is required; and
  - The Office of Research and Development requirements for research awards.
- Conflicts of interest.
  - The requirements on Federal employees;
  - The restrictions on EPA involvement in recipient decisions; and
  - The requirements on recipients.

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977

- **DISTINGUISHES BETWEEN PROCUREMENT AND ASSISTANCE**
- **ESTABLISHES DECISION CRITERIA**
- **DISTINGUISHES BETWEEN GRANTS AND COOPERATIVE AGREEMENTS**

VIEWGRAPH # 2
TITLE: Federal Grant And Cooperative Agreement Act of 1977
KEY POINTS:

- Various Federal statutes authorize and/or direct EPA to carry out specific environmental activities. These statutes may specify whether the activities may be accomplished in-house (using EPA staff) or by funding outside parties. The Federal government awards **extramural funding** in one of two ways -- either through a procurement contract **(acquisition)** or through a grant or cooperative agreement **(assistance)**.
- In the 1970's, Congress was concerned over the perceived misuse of assistance agreements. Specifically, Congress was concerned that agencies were misusing the assistance agreements to circumvent competition and other procurement rules, and also applying unnecessarily burdensome contract paperwork requirements to non-procurement transactions.
- To address these problems, and ensure consistent and uniform agency practice, Congress passed the Federal Grant and Cooperative Agreement Act (see Appendix A) Act in 1977.
- The **purpose of the Act is to establish governmentwide criteria for determining the appropriate legal instrument to use** for an extramural funding activity.

VIEWGRAPH # 2 (continued)
TITLE: Federal Grant And Cooperative Agreement Act of 1977
KEY POINTS:

- The Act **distinguishes** between procurement (acquisition) and assistance, based on the **principle purpose of the relationship between the parties.** If the principle purpose of the activity being funded (i.e., "relationship") is to provide something for the direct benefit or use of the Federal government, then a contract is the appropriate legal instrument to use. If the principle purpose of the activity is to provide something of value to someone other than the Federal government (e.g., State, local government, university), then an assistance agreement may be used.
- It is important to note that **the Act does not expand an Agency's authority to award assistance agreements.** EPA has no inherent authority to award assistance agreements; such authority must be found in EPA's statutes and does not derive from the Federal Grant and Cooperative Agreement Act. On the other hand, unless legislatively prohibited, every Agency has inherent authority to enter into contracts as long as the procurement is related to the Agency's mission.
- **Whether to use a contract or an assistance agreement is a decision which should be made in the planning process, and certainly before the Program develops any annual guidance or requests solicitations. Offices and laboratories should review all contemplated projects as soon as possible for the purpose of determining whether the nature of the project activity is acquisition or assistance. If it is unclear whether a project is acquisition or assistance, the office or laboratory should contact the responsible GMO/Award Official for assistance.** Please do not wait until the award package is ready to send to the GMO [or Senior Resource Official (SRO) if appropriate] to justify an assistance relationship. If the Program (PO or SRO) has a problem justifying an assistance relationship, the GMO and auditors will also have a problem.

DECISION MAKING RESPONSIBILITIES

- **APPROVAL OFFICIAL**
- **SENIOR RESOURCE OFFICIAL**
- **GRANTS MANAGEMENT OFFICE**
- **AWARD OFFICIAL**

VIEWGRAPH #3
TITLE: Decision Making Responsibilities

KEY POINTS:

Approval Official

- Each Approval Official must determine whether a proposed relationship is one of acquisition or assistance. In making this determination, each EPA office and laboratory will use the criteria set forth in the "Policy for Distinguishing Between Acquisition and Assistance." (see Appendix B).
- In those limited occasions where the Approval Official has the responsibility of overseeing an award originating in another office, then the Approval Official's responsibility is limited to ensuring that the originating office states it has determined an assistance relationship exists based on the criteria set forth in the policy.
- **The Decision Memorandum** (see Module 4) **must state that the assistance instrument is appropriate** based on the criteria in the policy.

Senior Resource Official:

- The Senior Resource Official will concur in the Program's decision to use a contract or assistance agreement before the award package is sent to the GMO.

VIEWGRAPH #3 (Continued)
TITLE: Roles and Responsibilities

KEY POINTS:

Grants Management Office

- The GMO will review the determination of the office or laboratory and decide whether to concur. The GMO will make this decision in conjunction with the Office of General Counsel, Grants and Intergovernmental Division (or Regional Counsel), if necessary.
- **The GMO will return all completed assistance application packages that are acquisition activities to the office or laboratory and say why** it cannot award the project as an assistance project.

Award Official

- The Award Official ensures all technical, legal, and administrative evaluations have been made and that the proposed agreement is awardable. If a proposed agreement is awardable, the Award Official is responsible for making the official offer to the designated recipient by signing the assistance agreement.

ACQUISITION VS ASSISTANCE

VIEWGRAPH # 3
TITLE: Acquisition vs. Assistance

KEY POINTS:

- The critical determinant to remember when selecting the appropriate award instrument is based solely on the principal purpose of the relationship.
- Except where the authorizing legislation was enacted after the FGCAA and the authorizing legislation specifically states it supersedes the FGCAA or other provisions of law, you must use the criteria in the FGCAA to determine the appropriate award instrument. In cases where legislation specifically states that it supercedes the FGCAA, the award instrument specified in the authorizing legislation must be used.
  - If the principle purpose is acquiring property or services for the **direct benefit or use of the Federal Government,** then a **contract** is the appropriate legal instrument to use.
  - If EPA is funding a recipient to support or stimulate activities that are **not principally for the direct benefit or use of the Federal Government**, and the award is authorized by Federal statute, then an **assistance agreement may be used.**
- Note that substantial involvement during performance is not relevant in determining whether an acquisition or assistance mechanism is required. It is only after determining that an assistance agreement is appropriate that substantial involvement becomes a factor. In other words, the need for substantial involvement does not dictate the use of a cooperative agreement rather than a contract. The substantial involvement test is used to distinguish between a grant or a cooperative agreement.

IDENTIFYING PRINCIPAL PURPOSE

- **DIRECT BENEFIT OR USE**
  - **INCIDENTAL USE OF BENEFIT**
- **SUPPORT OR STIMULATION**
- **NON-PROFIT VS PROFIT**
  - **TYPE OF ORGANIZATION NOT A FACTOR**

VIEWGRAPH #4
TITLE: Identifying Principal Purpose

KEY POINTS:

Direct Benefit or Use/Support or Stimulation

- The Federal Grant and Cooperative Agreement Act requires that to use an assistance agreement, the activity must accomplish a public purpose of support or stimulation that is not principally for the direct benefit or use of the Federal government.
- The program office plays the key role in determining whether the two tests are met.

  Direct Benefit or Use:

  - The originating office must determine whether the government is the direct beneficiary or user of the activity. If EPA provides the specifications for the project; is having the project completed based on its own identified needs; or will directly use the report or result of the project (for example, by incorporating or relying on information developed by the project in writing EPA guidance or standards) then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of EPA and thus, a contract relationship exists.
  - However, there may be cases where EPA expects to derive some incidental use or benefit from funded activities. Such incidental use or benefit does not preclude an award of assistance when the principal purpose is public support or stimulation. For such cases, an assistance vehicle may still appropriate.

VIEWGRAPH # 4 (Continued)
TITLE: Identifying Principal Purpose

KEY POINTS:

Support or Stimulation:

- To determine "public purpose of support or stimulation", the program does not have to determine that the recipient needed the Federal assistance to perform the activity; nor is it necessary to determine that the recipient, rather than the EPA initiated the proposed project. **The applicant must perform the project for its own purposes and EPA is merely supporting the project with financial or other assistance.**

Non-Profit vs. Profit Organizations:

- The type of organization does not drive the decision to use one instrument or the other.
- A non-profit organization does not automatically qualify for an assistance relationship.
- Similarly, a profit making organization does not automatically reflect an acquisition relationship (although a profit making organization may be an assistance recipient only if the statutory authority so provides).
- Also, research does not always have to funded by an assistance agreement. Research can be funded by contract and universities can receive grants or contracts, as well as cooperative agreements.

CONFERENCES

- **DEPENDS ON PURPOSE**

- **EXCEPTION FOR ASSOCIATIONS OF STATE OFFICIALS**

VIEWGRAPH #5
TITLE: Conferences

KEY POINTS:

- Conferences may be funded with an assistance agreement if the principal purpose is not for the direct benefit of the Government.
- As a general rule, an assistance agreement may not be used to support a conference or other services if the principal purpose is to provide advice, recommendations, or other information for EPA's direct use in developing or changing guidance, regulations, etc. For example, an office or laboratory cannot award an assistance agreement to a trade association or consulting firm to arrange and conduct a conference of EPA officials and members of the regulated community if the principal purpose is to enable EPA to obtain the views of the regulated community on a proposed new policy or changes in an existing one. If the office or laboratory needs help in putting on such a conference, it should use a contract to acquire logistical support services.
- An exception to this general rule is assistance to associations of State officials who implement EPA programs. An assistance agreement may be used to provide funding to an association of State officials or agencies to hold a conference among its members and EPA officials to discuss issues in the implementation of a Federal effort that the States implement on a day-to-day basis under a formal delegation or as partners with EPA in a coordinated, national effort. Although EPA does derive benefits from such a conference and may subsequently decide to adopt recommendations or use information provided by the State officials at the conference, the principal purpose is to support the association in helping its State members participate in developing the policies that they will carry out. (See Appendix B, page 9 for restrictions on these types of conferences.)

GRANTS VS COOPERATIVE AGREEMENTS

SUBSTANTIAL FEDERAL INVOLVEMENT

vs.

NO SUBSTANTIAL FEDERAL INVOLVEMENT

VIEWGRAPH # 6
TITLE: Grants vs Cooperative Agreements

KEY POINTS:

- The legal instrument for providing an award of assistance from EPA to the recipient is either through a grant or a cooperative agreement.
- It is important to note that the **administrative requirements are the same** regardless of whether a grant or a cooperative agreement is used.
- The distinguishing factor between a grant and a cooperative agreement is the degree of Federal participation or involvement during performance.
- Section 5(2) of the Act requires that a grant instrument be used whenever:

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

- Section 6(2) of the Act requires that a cooperative agreement be used whenever:

  "(2) substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity."

VIEWGRAPH # 6 (continued)
TITLE: Grants vs Cooperative Agreements

KEY POINTS:

- **Substantial involvement**. Some examples of substantial involvement are:
  - EPA must approve one phase of the project before the recipient may proceed to the next phase.
  - EPA must approve key personnel involved in the project (other than the principal investigator);
  - EPA will review and approve provisions directly related to the work that a recipient may wish to add to any proposed contracts;
  - EPA will participate (technically assist) in some of the project activities;
  - EPA prior review or approval of substantial portions of proposed contracts;
  - Joint operational involvement/participation and/or collaboration;
  - Intense monitoring by EPA; and
  - EPA collaboration on the Work Plan\Narrative, organizational structure, staffing, mode of operation, or other management process.
- **HOWEVER, whether a cooperative agreement or a grant is used, EPA must:**
  - Approve the narrative (workplan/scope of work) prior to award of the agreement;
  - Address any deficiencies in performance;
  - Review project results/products after completion of the work; and
  - Ensure recipient compliance with all applicable statutes, regulations, policies and all requirements in the agreement, e.g., on-site reviews (semi-annual, annual); and
  - Review progress reports.

IN-KIND ASSISTANCE

- **CRITERIA**
- **DOCUMENTATION**

VIEWGRAPH #7
TITLE: In-kind Assistance

KEY POINTS:

- In addition to transferring money to an authorized assistance recipient, EPA may use an assistance agreement to transfer anything of value, such as equipment or services to a recipient.
- If it is more efficient in terms of cost or time for EPA rather than the recipient to purchase equipment or services, EPA may do so and provide the equipment or services to the recipient under the assistance agreement. This approach would be appropriate, for example, where a piece of equipment necessary for an assistance project can be purchased at a considerably lower price or be delivered much earlier using an existing EPA contract. Likewise, EPA may provide the services of an EPA contractor to an assistance recipient in lieu of money, where appropriate.
- Programs should provide the following documentation in their files when providing in-kind assistance:
  - The expected savings of cost or time;
  - That all charges are to the grants object class series; and
  - That the in-kind assistance complies with the requirements in 40 CFR Part 30 or 31, (e.g., it is allowable and reasonable), and any program guidance.

FAILURE TO COMPLY

- **GOOD FAITH EFFORTS TO DETERMINE**
- **TERMINATION, ANNULMENT, RATIFICATION**

VIEWGRAPH #8
TITLE: Failure to Comply

KEY POINTS:

- Individuals discovering situations where an assistance agreement was wrongly awarded where a contract was required, are directed to consult with representatives from the EPA program office or laboratory, the Award Official, and the Office of General Counsel to determine all necessary actions.
- It is **GAD policy to allow completion** of the assistance agreement **where good faith effort was made to determine principal purpose in accordance with the Federal Grant and Cooperative Agreement Act.** GAD will seek to ensure that future funding decisions by the involved office or laboratory are consistent with the Act.
- It is not EPA policy to terminate, annul, or require ratification for these awards **unless there were or will be serious irregularities, e.g., conflict of interest or intentional misconduct.**

COMPETITION IN ASSISTANCE AGREEMENTS

- **ENCOURAGED BUT NOT REQUIRED**
- **MAY BE REQUIRED BY PROGRAM OFFICES**

VIEWGRAPH # 9
TITLE: **Competition in Assistance Agreements**

KEY POINTS:

- The Federal Grant and Cooperative Agreement Act **encourages** competition in assistance programs where appropriate, in order to identify and fund the best possible projects to achieve program purposes.
- However, there is no overall requirement for competition, certainly nothing approaching the detail of the legislation applicable to procurement contracts, such as the Competition in Contracting Act of 1984.
- While there are no EPA statutes requiring competition, some program offices are using competition to help ensure they fund the best proposals, e.g., Research and Development and some training.
- Programs should look at the nature of activities they fund and make a decision on whether to compete an award.
- The proposed EPA Order on Senior Resource Official (SRO) responsibilities requires that the SRO (through the Approval/Decision Official) make an affirmative determination that competition is not appropriate for a particular project.

CONFLICTS OF INTEREST

- **USING PUBLIC OFFICE FOR PRIVATE GAIN**
- **PREFERENTIAL TREATMENT**
- **LOSING INDEPENDENCE OR IMPARTIALITY OF DECISIONS**

VIEWGRAPH # 9
TITLE: Conflicts of Interest

KEY POINTS:

FEDERAL EMPLOYEE ETHICS STANDARDS

- **All circumstances that might result in a conflict of interest, or the appearance of a conflict of interest, or any prejudices, biases, or predispositions on the part of reviewers must be avoided.**
- Public service is a public trust. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee must comply with certain fundamental principles of ethical service. These principles are contained in a regulation entitled, "Standards of Ethical Conduct for Employees of the Executive Branch," published on August 7, 1992, by the Office of Government Ethics (5 CFR §2635) and are codified for EPA in 40 CFR Part 3, "Employee Responsibilities and Conduct."
- Per these regulations, EPA employees may not take any action which would, among other things, create the reasonable appearance of:
  - Using a public office for private gain;
  - Giving preferential treatment to any organization or person; or
  - Losing independence or impartiality of action.

RESPONSIBLE OFFICIALS

- Deputy Ethics Officials (DEO)
  - Each Regional Office has two persons designated as DEOs -- the Regional Counsel and either the Regional Administrator or the Deputy Regional Administrator.
  - In Headquarters, the DEOs are generally the Office Directors and Deputy Assistant Administrators.
  - In the EPA Laboratories, the DEOs are the Lab Directors.

VIEWGRAPH # 9 (Continued)
TITLE: Conflict of Interest

KEY POINTS:

- Disciplinary action for violating the new governmental ethics rules will not be taken against an employee who has engaged in conduct based on advice of an EPA ethics official, provided that employee has made full disclosure of all relevant circumstances.

EXAMPLES

- May an EPA employee who serves without compensation on the board of directors of a non-profit corporation that engages in environmental activities review a grant application submitted by the nonprofit organization? **No, because even though the employee's personal financial interests will not be affected, the employee must disqualify himself from participating in the review of the grant application. Award or denial of the grant will affect the financial interests of the non-profit and its financial interests are imputed to the employee as a member of its board of directors.**
- May an employee whose principal duty in their position is to write regulations relating to the disposal of hazardous waste serve as president of a non-profit environmental organization that routinely submits comments on such regulations? **No, the employee's service as an officer would require their disqualification from duties critical to the performance of their official duties on a basis so frequent as to materially impair the employee's ability to perform the duties of their position.**

EPA INVOLVEMENT IN RECIPIENT DECISIONS

- POs must not direct or require recipients to use particular persons or firms in the performance of a grant or cooperative agreement. (See memo entitled "EPA Involvement in Grantee Personnel and Contractor Selection Under Grants and Cooperative Agreements," Appendix C.)
- EPA personnel may participate in a panel to determine the qualifications of potential contractors, but may not be involved in the selection of a contractor.
- EPA personnel may also suggest contractors, when asked by the recipient, but cannot tell a recipient to use a particular contractor.

RECIPIENT CODE OF CONDUCT

- The Code of Conduct standards for applicants/recipients are in 40 CFR 30.613 and 40 CFR 31.36(b)(3). (See Appendices D and E).

MODULE II

MODULE II

REQUIREMENTS GOVERNING ASSISTANCE AGREEMENTS

OVERVIEW

- **REQUIREMENTS GOVERNING EPA ASSISTANCE PROGRAMS**
- **HIERARCHY OF REQUIREMENTS**
- **SPECIAL PROVISIONS GOVERNING INDIAN TRIBAL GOVERNMENTS**

VIEWGRAPH # 1

TITLE: Overview

KEY POINTS:

- EPA assistance programs are governed by requirements which apply to all Federal agencies and requirements which are specific to EPA programs. Even though the Grants Management Office (GMO) has the overall responsibility for ensuring that the administrative requirements are met, the Program offices and laboratories are responsible for implementing many of these requirements. Therefore, POs must understand what the requirements are and should be familiar with the source of these requirements.
- This module describes the sources of requirements affecting assistance programs -- Federal statutes, Delegations of Authority, Executive Orders, OMB Circulars, Federal regulations, EPA Orders, and policies -- and which requirements take precedence over the others.
- This module also reviews the special provisions pertaining to Federally recognized Indian Tribal governments.

FEDERAL STATUTES

- **LEGAL BASIS FOR PROGRAMS**
- **NEED STATUTORY AUTHORITY TO MAKE AN AWARD**

VIEWGRAPH # 2

TITLE: **Federal Statutes**

KEY POINTS:

- Federal statutes form the legal basis for **all** EPA assistance programs. All EPA projects/programs must have a statutory basis before EPA can legally fund them.
- Appendix F contains a list of EPA's assistance programs along with the Federal statute which authorizes that program.
- **If there is no statutory authority for an activity, EPA cannot legally fund the activity.** As we will discuss in Module 3, the program's Decision Memorandum must contain the statutory authority for making an award.

DELEGATIONS OF AUTHORITY

- **REQUIRED TO AWARD ASSISTANCE AGREEMENT**
- **TWO SEPARATE DELEGATIONS:**
  - **APPROVAL AUTHORITY**
  - **AWARD AUTHORITY**

VIEWGRAPH #3
TITLE: Delegations of Authority

KEY POINTS:

- Delegation of Authority is a transfer of responsibility from the EPA Administrator to senior management officials in Headquarters and the Regions that allow those officials to exercise authority on behalf of the Administrator (see Appendix G). A Delegation of Authority is necessary **if someone other than the Administrator is to approve and sign the award.**
- There are two types of assistance Delegations -- Approval and Award.
- The Award Delegation of Authority (1-14) transfers the authority to **award** an assistance agreement to the Regional Administrator (Regional awards) and to the Grants Administration Division Director (Headquarters awards).
- The Approval Delegations of Authority transfer the authority to **approve** an application for award. Each assistance program will have a Delegation of Authority specific to that program.
- All Delegations of Authority are contained in the Agency's Delegations Manual. The manual is maintained by the Management & Organization Division (M&O). POs should have a copy of the approval Delegation of Authority which applies to the assistance agreements for which they are responsible. Copies of the Delegations can be obtained from M&O.

VIEWGRAPH #3 (Continued)
TITLE: Delegations of Authority

KEY POINTS:

REGIONAL AWARDS

- Each Region will have a Regional Delegations Manual which will specify who in the Region may act as the Approval and/or Award Official. In some regions the Regional Administrator retains all award authority, in others, the award authority is redelegated to the Division Directors or Assistant Regional Administrator. Currently, the award authority may not be redelegated below the Division Director/Assistant Regional Administrator level.

HEADQUARTERS AWARDS

- The authority to make Headquarters awards is delegated from the Director of Grants Administration Division to the Chief of the Grants Operation Branch, and the Chief of the Grants Information and Analysis Branch.

EXECUTIVE ORDERS

- **E.O. 11738 - Clean Air/Water Violators**
- **E.O. 12549 - Debarment and Suspension Rules For Nonprocurement Activities**
- **E.O. 11625 - National Minority Business Enterprise Program**
- **E.O. 12432 - Minority Business Enterprise Development**
- **E.O. 12138 - National Women's Business Enterprise Policy**
- **E.O. 12372 - Intergovernmental Review of Federal Programs**
- **E.O. 12803 - Infrastructure Privatization**
- **E.O. 12898 - Federal Actions to Address Environmental Justice in Minority Populations & Low-Income Populations**

VIEWGRAPH # 4

TITLE: Executive Orders

KEY POINTS:

- Executive orders are requirements issued and signed by the President of the United States. They pertain to the business of Federal agencies and hold the force and effect of law. In other words, EPA and our recipients must follow the requirements in an Executive Order.
- This viewgraph identifies the primary Executive Orders governing EPA assistance agreements.

"BAD ACTORS"

- Executive Order 11738, "Clean Air/Water Violators," issued September 10, 1973, prohibits the utilization of clean air/water violators for Federal contracts and projects funded, wholly or in part, with Federal grants or loans. If an entity is convicted of violating these provisions, they are listed along with the suspended and debarred bidders in the General Service Administration's, "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (contact the General/Regional Council, or GMO for a copy of this list).
- Executive Order 12549, "Debarment and Suspension Rules for Nonprocurement Activities," provides authority to suspend or debar any "person" from participation in any Federally assisted project if necessary to protect the government's interest. It is implemented in 40 CFR Part 32.

VIEWGRAPH # 4 (Continued)
TITLE: Executive Orders

KEY POINTS:

SOCIO-ECONOMIC ACTIVITIES

- Executive Order 11625, "National Minority Business Enterprise Program," issued October 13, 1971, clarified the authority of the Secretary of Commerce to implement policy and to assist minority business enterprise. This Order required the Secretary to develop comprehensive plans and specific program goals to promote the use of minority business enterprises, as well as the monitoring and reporting systems required to implement these plans and programs. This Order also requires the head of each Federal department or agency to furnish information and reports in a manner prescribed by the Secretary of Commerce. It further stipulates that within the constraints of law and appropriations, Federal departments and agencies must foster and promote minority business enterprise.
- Executive Order 12138, "National Women's Business Enterprise Policy," issued May 18, 1979, directed all Federal agencies to:
  - Strengthen women's business enterprise and to ensure full participation by women in the free enterprise system;
  - Take affirmative action in support of women's business enterprise; and
  - Require the recipients of federal assistance to take appropriate affirmative action in support of women's business enterprise, and to prohibit actions or policies which discriminate against women's business enterprise. Federal agencies were also required to prescribe sanctions for noncompliance.
- Executive Order 12432, "Minority Business Enterprise Development," issued July 14, 1983, directed all Federal agencies to:
  - Develop an MBE plan on an annual basis;
  - Establish MBE objectives;
  - Identify methods for encouraging prime contractors and recipients to utilize MBEs;
  - Build upon programs administered by the Small Business Administration and Minority Business Development Agency;
  - Furnish an annual report regarding the accomplishments of their MBE programs; and
  - Establish programs to deliver management and technical assistance to MBEs.

  EPA implements these Executive Orders in an Agency Disadvantaged Business Plan, which is discussed on page 2.23.

VIEWGRAPH # 4 (Continued)

TITLE: Executive Orders

KEY POINTS:

LEVERGING FEDERAL DOLLARS

- Executive Order 12372, "Intergovernmental Review of Federal Programs," provides States the opportunity to review and comment on activities proposed for Federal funding. It is implemented in 40 CFR Part 29.

NEW FEDERALISM

- Executive Order 12803, "Infrastructure Privatization", issued April 30, 1992, promotes private investment in local infrastructure.

ENVIRONMENTAL JUSTICE

- Executive Order 12989, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," signed February 11, 1994, focuses on the environmental and human health conditions in minority and low-income communities. The goal of of the Executive Order is to achieve environmental justice through nondiscrimination in Federal programs, access to public information on and opportunity for public participation in, matters relating to human health or the environment.

OVERVIEW OF ADMINISTRATIVE REQUIREMENTS

TYPE OF RECIPIENT	ACTIVITY	REGULATION/CIRCULAR
	PROCUREMENT	
STATE, LOCAL& INDIAN TRIBE		40 CFR PART 31/A-102
UNIVERSITIES & NONPROFITS		40 CFR PART 33/A-110
PROFIT MAKERS		48 CFR PART 31/A-102
	ADMINISTRATION	
STATE, LOCAL & INDIAN TRIBES		40 CFR PART 31/A-102
UNIVERSITIES & NONPROFITS		40 CFR PART 30/A-110
PROFIT MAKERS		40 CFR PART 30
	AUDIT	
STATE, LOCAL & INDIAN TRIBES		40 CFR PART 31/A-128
UNIVERSITIES & NONPROFITS		40 CFR PART 30/A-133
PROFIT MAKERS		GOVERNMENT AUDITORS
	COST PRINCIPLES	
STATE, LOCAL & INDIAN TRIBES		40 CFR PART 31/ A-87
UNIVERSITIES		40 CFR PART 30/A-21
NONPROFITS		40 CFR PART 30/A-122
PROFIT MAKERS		48 CFR PART 31

VIEWGRAPH #5
TITLE: Overview of Administrative Requirements

KEY POINTS:

- This slide is an overview of administrative requirements for recipients by source of the administrative requirements and type of recipient, for each major area.
- While the administrative requirements for assistance agreements are basically the same for all types of recipients, there are differences. This module will touch briefly on the source of the requirements and the major requirements of each.

OMB CIRCULARS

		40 CFR
• A-102	Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments	Part 31
• A-110	Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations	Parts 30 & 33
• A-21	Cost Principles for Educational Institutions	Part 30 &33
• A-87	Cost Principles for State and Local Governments	Part 31
• A-122	Cost Principles for Non-Profit Organizations	Part 30 & 33
• A-128	Audits of State and Local Governments	Part 31
• A-133	Audits of Institutions of Higher Learning and Other Non-Profit Organizations	Part 30

VIEWGRAPH #6

TITLE: OMB Circulars

KEY POINTS:

- OMB Circulars are guidelines issued by the Office of Management and Budget. They pertain only to the business of Federal agencies. While they are binding on the Federal agency or agencies to which they relate, they do not hold the full force and effect of law. In other words, while EPA must follow the Circulars, unless the Circular is implemented in a Federal regulation, recipients are not required to follow them. For instance, recipients are required to follow the cost principles because they are incorporated by reference in EPA regulations.
- This viewgraph identifies the primary OMB Circulars governing EPA assistance programs.
- For a listing of other OMB Circulars that relate to EPA assistance programs, see Appendix 1-A of the Assistance Administration Manual.

ADMINISTRATIVE REQUIREMENTS

- OMB Circulars A-102 and A-110 provide uniform administrative requirements for managing the pre-award, award, and post-award phases.
  - OMB Circular A-102, issued on March 3, 1988, establishes requirements for State and local governments. This Circular is implemented in 40 CFR Part 31.
  - OMB Circular A-110, issued April 1, 1976, establishes requirements for institutions of higher learning, hospitals, and other non-profit organizations. This Circular is implemented in 40 CFR Parts 30 and 33.

VIEWGRAPH # 6 (continued)

TITLE: OMB Circulars

KEY POINTS:

COST PRINCIPLES

- **The cost principles determine allowable, unallowable, and costs which are acceptable if approved by the Federal agency.** The cost principles which apply to Federal assistance are contained in OMB Circulars A-21, A-87, and A-122 and in the Federal Acquisition Regulation. Whether or not a cost is eligible for a specific project or program is determined by the governing statutes and implementing program guidance and policy for that project or program.
  - OMB Circular A-21, issued February 26, 1979, and last revised on October, 1991, provides guidelines for educational institutions.
  - OMB Circular A-87, issued January 20, 1981, provides guidelines for State and local governments.
  - OMB Circular A-122, issued August 8, 1980 and revised May 19, 1987 provides guidelines for non-profit organizations other than States, local governments, and educational institutions.
  - Cost principles for profit making entities are contained in the Federal Acquisition Regulation (48 CFR Part 31).

NON-FEDERAL AUDITS

- OMB Circulars A-128 and A-133 provide audit guidance.
  - OMB Circular A-128, issued April 12, 1985, provides Federal agencies with policy guidance for implementing the requirements of the Single Audit Act of 1984, which governs State and local governments, and Indian tribes. This Circular is implemented in 40 CFR Part 31.
  - OMB Circular A-133, issued March 8, 1990, provides policy guidance to Federal agencies for establishing uniform requirements for audits of institutions of higher education and other non-profit organizations receiving Federal assistance. This Circular is implemented in 40 CFR Part 30.

FEDERAL AUDITS

- Federal auditors, whether EPA or contract auditors, will conduct any audit of a profit maker receiving an assistance agreement.
- EPA auditors may also conduct an audit of any other assistance recipient, but is to rely, as much as possible, on audits conducted under A-128 and A-133.

TITLE 40 OF THE CODE OF FEDERAL REGULATIONS

PARTS GOVERNING ASSISTANCE		APPLIES TO
PART 29	Intergovernmental Review of EPA Programs and Activities	All
PART 30	General Regulation for Assistance Programs For Other Than State and Local Governments	Universities Nonprofits
PART 31	Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments	State, Locals Indian tribes
PART 32	Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for a Drug-Free Workplace	All
PART 33	Procurement Under Assistance Agreements	Universities, Nonprofits
PART 34	New Restrictions on Lobbying	All
PART 35	State and Local Assistance	Varies
PART 40	Research and Demonstration Grants	All
PART 45	Training Assistance	All
PART 46	Fellowships	All
PART 47	Environmental Education Grants	All

VIEWGRAPH #7

TITLE: Title 40 of the Code of Federal Regulations

KEY POINTS:

- This viewgraph illustrates the primary EPA regulations governing assistance programs and recipients. All EPA regulations are codified in Title 40 of the Code of Federal Regulations.
- The Code of Federal Regulations contains rules developed by Federal agencies and issued by the Federal government to implement Federal statutes or agency policy, and therefore, hold the full force and effect of law.
- If a Federal regulation conflicts with a statute or E.O., the statute or E.O. supercedes the regulations.
- Federal regulations may be more restrictive than OMB Circulars, if the Federal Agency makes a strong enough case to OMB and OMB approves. For instance, in the Superfund program, States are required to follow EPA specific procurement requirements because EPA made the case that more stringent requirements were necessary to comply with the program's cost recovery requirements.
- These regulations are described further in subsequent viewgraphs.

40 CFR PART 29

- **Provides Intergovernmental Review Requirements**
- **Applies to Most EPA Assistance Programs**
- **Implements Executive Order 12372**

VIEWGRAPH #8

TITLE: 40 CFR Part 29

KEY POINTS:

- 40 CFR Part 29, issued June 24, 1983, provides intergovernmental review requirements for EPA-specific programs and activities, as well as the appropriate communication channels for voicing comments. Intergovernmental review refers to coordinated review processes performed at two or more levels of government.
- 40 CFR Part 29 implements Executive Order 12372 "Intergovernmental Review of Federal Programs," which requires Federal agencies to allow State and local governments the opportunity to review proposed Federal financial assistance and direct Federal development impacting State and local programs. Further, Executive Order 12372 provides that where feasible, and to the extent permitted by law, State and local review processes and comments must be incorporated into Federal programs as early in the planning stage as possible.
- Additionally, 40 CFR Part 29 implements provisions of the Intergovernmental Cooperation Act of 1968 and the Demonstration Cities and Metropolitan Development Act of 1966.
- Indian Tribes are exempt from intergovernmental review requirements, but are encouraged to comply.
- Remember, the intergovernmental process is designed by the States. The only time an intergovernmental review is not required is when the applicant's State process does not cover the program, or the program is exempt, based on government-wide criteria.

VIEWGRAPH #8 (Continued)

TITLE: 40 CFR Part 29

KEY POINTS:

EO 12372

- The intent of the intergovernmental review process is to increase the responsiveness of EPA to State and local entities, and to identify potential duplication of effort, and/or lack of coordination with State and EPA projects conducted in a State. The process allows all officials directly affected by a proposed activity to comment on that activity.
- Though States are not required to do so, they are encouraged to develop an intergovernmental review process and identify under which assistance programs they want to review applications. Any application subject to a State's official review process must undergo intergovernmental review before EPA will obligate funds. This procedure applies to most EPA programs. **Exceptions** are:
  - Training (other than Wastewater Treatment Operator and Landfill Operator training programs);
  - Fellowships;
  - Research & development, **unless**:
    - public health is affected;
    - an environmental impact statement is needed; or
    - the proposal has a unique geographic focus and is directly relevant to the governmental responsibilities of a State or local government within the geographic areas of the project site.
- The comment period is generally 60 days for new proposals and 30 days for a continuation programs.

If No EO 12372 Process:

- Applicants in States that do not have an official State process must comply with the Intergovernmental Cooperation Act of 1968, and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended. These Acts require applicants for federally funded projects in metropolitan areas to give area-wide, metropolitan, regional or local planning agencies designated to perform planning for the geographical location of the proposed project an opportunity to review and comment on a proposed application (generally 60 days).

VIEWGRAPH #8 (Continued)

TITLE: 40 CFR Part 29

KEY POINTS:

- The type of proposals subject to this requirement involve, among other things, the construction of highways, wastewater treatment facilities, sewers, airports, jails, mass transit, open-space land projects, water development, or land conservation projects. Section 401 provides that to the maximum extent possible Federal financial assistance for development purposes should be consistent with planning activities and decisions at State, regional, and local levels.
- To satisfy these requirements, the applicant sends a copy of its application to the areawide metropolitan, regional, or local planning agency designated to perform planning for the geographic location of the proposed project and allows them 60 days for review and comment. If a project is proposed by a specialized unit of local government, the same opportunity must be given to the general unit of local government having jurisdiction over the project area. The applicant must attach any comments that are received to the application and submit them to the Federal funding agency, i.e., EPA.

40 CFR PART 30

- **Provides Administrative Requirements for Assistance Agreements to Other Than State and Local Governments**

- **Implements OMB Circulars A-21, A-110, A-122, and A-133**

VIEWGRAPH #9

TITLE: **40 CFR Part 30**

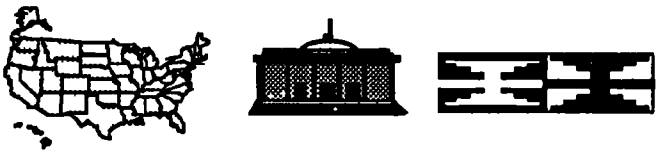
KEY POINTS:

- 40 CFR Part 30 "General Assistance Regulation for State and Local Governments" was amended on October 1, 1988 and retitled "General Regulation for Assistance Programs for Other Than State and Local Governments." (See Appendix D).
- This regulation provides administrative requirements for all recipients other than States, local governments, and Indian Tribes.
- 40 CFR Part 30 implements: OMB Circular A-21 "Cost Principles for Educational Institutions;" OMB Circular A-110 "Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;" OMB Circular A-122 "Cost Principles for Non-profit Organizations," and OMB Circular A-133 "Audits of Institutions of Higher Learning and Other Non-Profit Institutions."
- Profit makers receiving assistance agreements must comply with the administrative requirements in 40 CFR Part 30.

40 CFR PART 31

- **Provides Administrative Requirements for Assistance Agreements to State, Local, and Indian Tribal Governments**

- **Implements OMB Circulars A-87, A-102, and A-128**



VIEWGRAPH #10

TITLE: 40 CFR Part 31

KEY POINTS:

- 40 CFR Part 31, issued March 11, 1988, with an effective date of October 1, 1988, establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local, and Indian Tribal governments. (See Appendix E.)

- Audit requirements contained in 40 CFR Part 31 are prescribed by OMB Circular A-128 "Audits of State and Local Governments."

- Additionally, 40 CFR Part 31, implements OMB Circular A-87 "Cost Principles for State and Local Governments" and OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments."

40 CFR PART 32

- **Implements Executive Order 12549, Debarment and Suspension Rules For Nonprocurement Activities**

- **Describes Drug-Free Workplace Requirements For Assistance Recipients**

VIEWGRAPH #11

TITLE: 40 CFR Part 32

KEY POINTS:

- This regulation requires EPA to exclude debarred or suspended parties from certain types of assistance, and to report certain information about debarred or suspended parties to the General Services Administration. Debarment or suspension of a party by one assistance agency has a government-wide effect, i.e., it debars or suspends them from receiving assistance agreements from all Federal agencies.
- 40 CFR Part 32, issued May 26, 1988, and last amended May 3, 1990, implements Sections 3 and 6 of Executive Order 12549 (regarding government-wide debarment or suspension) and selected provisions of the Drug-Free Workplace Act of 1988. It establishes: (1) rules for debarring or suspending parties; (2) government authority for compiling and distributing lists of parties debarred or suspended from receiving Federal assistance; (3) requirements governing EPA reporting of parties debarred or suspended from Federal activities; and (4) rules governing drug use among assistance recipients and their contractors in the project workplace.

40 CFR PART 33

- **PROCUREMENT REQUIREMENTS FOR:**
  - **INSTITUTIONS OF HIGHER EDUCATION, AND**
  - **OTHER NONPROFITS**

VIEWGRAPH #12

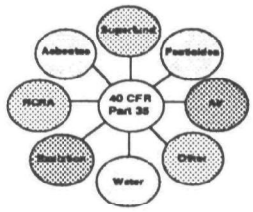
TITLE: 40 CFR Part 33

KEY POINTS:

- 40 CFR Part 33, issued March 28, 1983 and last amended March 11, 1988, describes requirements for procurement under assistance agreements for recipients other than States, local governments, Indian Tribes, and profit makers. This regulation discusses procurement of supplies, services, and construction under EPA assistance agreements and supplements 40 CFR Parts 30, 32, and 35. (See Appendix H).

40 CFR PART 35

- **Provides Program-Specific Assistance Requirements**
- **Contains 16 Subparts**



VIEWGRAPH #13

TITLE: 40 CFR Part 35

KEY POINTS:

- While 40 CFR Parts 30 and 31 provide the general assistance requirements, 40 CFR Part 35 provides the program-specific assistance requirements for other than Research & Development, Training, Fellowship programs, and Environmental Education grants.
- The subparts of 40 CFR Part 35 which apply to construction grants are as follows:
  - Grants for Construction of Wastewater Treatment Work (Subpart C)
  - Reimbursement Grants (Subpart D)
  - Grants for Construction of Treatment Works/Clean Water Act (Subpart E)
  - Grants for Construction of Treatment Works (Subpart I)
  - Construction Grants Program Delegation to States (Subpart J).
- The subparts of 40 CFR Part 35 which apply to non-construction grants are as follows:
  - Financial Assistance for Continuing Environmental Programs (Subpart A)
  - Cooperative Agreements for Protecting and Restoring Publicly Owned Freshwater Lakes (Subpart H)
  - State Water Pollution Control Revolving Funds (Subpart K)
  - Grants for Technical Assistance (Subpart M)
  - Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Subpart O).
  - Financial Assistance for the National Estuary Program (Subpart P).
- Subparts B, F, G, L, and N are reserved for future use.

40 CFR PARTS 40, 45, 46, and 47

- PART 40
  Requirements for Research and Demonstration Grants
- PART 45
  Requirements for Training Assistance
- PART 46
  Requirements for Fellowships
- PART 47
  Environmental Education Grants

VIEWGRAPH #14

TITLE: 40 CFR Parts 40, 45, 46, and 47

KEY POINTS:

- EPA provides three primary types of assistance with a nationwide impact: research , development, and demonstration; training; and fellowships. These types of assistance are normally awarded by Headquarters and are governed by 40 CFR Parts 40, 45, 46, and 47 which are described below. (See Appendix I).
- 40 CFR Part 40, issued May 15, 1973, and last amended June 24, 1983, establishes EPA's requirements for awarding and managing research and demonstration grants. Research and demonstration projects are funded to research and analyze various environmental issues.
- 40 CFR Part 45, issued October 18, 1984, implements EPA's requirements for awarding and managing training projects. The purpose of this assistance is to improve and develop the skill base of students and professionals in the environmental field. Training assistance under 40 CFR Part 45 includes the following: (1) developing, expanding, planning, implementing, and improving environmental training; (2) increasing the number of trained pollution control and abatement personnel; (3) upgrading the level of occupational and professional training among State and local environmental control personnel; (4) training people to train others in occupations involving pollution abatement and control; and (5) bringing new people into the environmental control field.

VIEWGRAPH #14 (Continued)

TITLE: 40 CFR Parts 40, 45, 46, and 47

KEY POINTS:

- 40 CFR Part 46, issued October 18, 1984, sets forth EPA's requirements for awarding and managing fellowships. This program was created to enhance the capabilities of State and local agencies in the area of environmental protection and management. EPA fellowships are also awarded to individuals for specific educational programs in the area of environmental science. EPA sponsors the following three types of fellowships: (1) local agency fellowship, (2) State agency fellowships, and (3) special fellowships.
- 40 CFR Part 47, "National Environmental Education Act Grants Regulations; Interim Final Rule", is a program awarded out of both Headquarters and the Regions. The Environmental Education grants are available to local education agencies, colleges, universities, State education or environmental agencies, not for profit organizations, or noncommercial educational broadcasting entities.

EPA ORDERS, POLICIES & GUIDANCE

- RECYCLED PAPER
- FUNDING ASSISTANCE AGREEMENTS
- PERFORMANCE-BASED ASSISTANCE
- CARRYOVER OF UNOBLIGATED BALANCES
- USE OF DISADVANTAGED BUSINESS ENTERPRISES
- TIMELY AWARD OF ASSISTANCE
- POLLUTION PREVENTION GUIDANCE
- ASSISTANCE VS. ACQUISITION

VIEWGRAPH #15

TITLE: EPA Orders, Policies, and Guidance

KEY POINTS:

- EPA Orders and policies are agency requirements issued by EPA Headquarters. Regions may also issue regional policies and guidance consistent with Headquarters policies and guidance issued by EPA's National Program Managers (NPM). Regions may also issue guidance to implement EPA Orders, policies, or guidance.
- The following are the major Orders, policies, and guidance issuances affecting assistance administration.

EPA ORDERS

- EPA's policy on **recycled paper** is provided in EPA Order No. 1000.25 "Use of Recycled Paper." Issued on January 24, 1990 and last amended on April 12, 1990, this order was developed to promote the use of recycled paper. Specifically, it requires new contracts and assistance agreements to specify that reports delivered to EPA in conjunction with EPA contracts or assistance agreements must be printed on recycled paper (even if recycled paper is more costly). (See Appendix J)
- To help resolve problems EPA program and GMO staffs are experiencing in making awards for one-time projects, new programs, and using Administrator or Regional Administrator discretionary funds, EPA established consistent, standard operating procedures for **funding assistance agreements**. (See Appendix K for the Order, "Policy and Procedures for Funding Assistance Agreements.")
  - Clarifies what information is needed before an award can be made, and identifies which office is responsible for providing the information.
  - The policy states that the Program Office must identify the Program Element, Statutory Authority, and Delegation of Authority **before** funds are distributed to Headquarters or the Region for award.

VIEWGRAPH #15 (Continued)

TITLE: EPA Orders, Policies, and Guidance

KEY POINTS:

- EPA's Order on the use of assistance agreements versus acquisition (5700.1) is discussed in Module I. This Order describes when it is proper to use an assistance agreement and when a contract is required.

EPA POLICIES

- EPA's **performance-based assistance** policy, issued May 31, 1985, establishes agency-wide procedures for negotiating and overseeing assistance agreements. It includes guidelines for: (1) assessing performance, (2) rewarding accomplishments, (3) correcting problems, and (4) imposing penalties. (See Appendix L.) While the policy applies to Continuing Environmental Program Grants, the guidelines may be helpful to other programs.
- EPA's policy on **carryover of unobligated balances** is covered in EPA Policy Statement No. 88-09 "Disposition of Unobligated Balances of Assistance Agreements." Issued May 6, 1988, by the Office of the Comptroller with an effective date of June 30, 1988, this policy describes the cases in which the use of appropriated funds may be carried over to subsequent budget periods and the documentation and accounting methods this involves. Additionally, this policy statement discusses cases in which budgets may be decreased without carrying over appropriated funds. (see Appendix M.)
  - Carryover of unobligated balances is authorized for both project type assistance agreements and Continuing Environmental programs in cases where the source appropriation has not expired. For project type assistance agreements, carryover may also be approved when the source appropriation has expired, if the scope of the work has not changed and the project period has not expired.
- EPA's requirements on the **use of disadvantaged business enterprises** (DBE) are contained in two EPA plans. (See Appendix N) The plans set forth how EPA will implement the statutory provisions of the Clean Air Act Amendments of 1990 and EPA's 1991 Appropriations Act as well as the requirements in the Executive Orders discussed on page 2.6. The Clean Air Act requires that EPA establish a minimum <u>10%</u> goal for the use of DBEs in contracts awarded under Clean Air

VIEWGRAPH #15 (Continued)
TITLE: EPA Orders, Policies, and Guidance

KEY POINTS:

research grants. The 1991 Appropriations Act requires that EPA establish a minimum 8% goal for the use of DBEs in contracts awarded under all other assistance agreements.

- In addition to the two plans, EPA's requirements on the use of DBEs are contained in 40 CFR 33.240 (for universities and other nonprofits); 40 CFR 31.36 (e) (for States, local governments, and Indian tribes); and 40 CFR 35.6580 (for Superfund recipients).

- The timely award policy (**"Policy on the Timely Award of Assistance Funds for Continuing Environmental Programs"**) calls for funding Continuing Environmental Programs as quickly as possible after funds become available. It was issued September 14, 1992, in conjunction with the Office of Comptroller's June 26, 1992, memorandum clarifying Agency policy on when funds are available for award. (See Appendix O)

EPA GUIDANCE

- The Agency's implementation of pollution prevention is provided in EPA's **"State Grants Guidance: Integration of Pollution Prevention,"** dated November 12, 1992. (See Appendix P.) This guidance establishes the Agency's pollution prevention commitment by:
  - Promoting pollution prevention in State programs supported by EPA funds;
  - Ensuring that grant requirements as interpreted by EPA/State workplans support innovative State pollution prevention activities;
  - Establishing a process to share information on successful State projects and identify statutory or other barriers to funding State proposals; and
  - Building State capacity in pollution prevention to the extent consistent with statutory assistance requirements.

SPECIAL PROVISIONS FOR INDIAN TRIBAL GOVERNMENTS

- **Minimum Requirements For Establishing "Treatment as States"**
- **Exemption from Certain Statutory Requirements**
- **Exclusion from Intergovernmental Review**
- **Multi-Media Grants**

VIEWGRAPH #16

TITLE: Special Provisions for Indian Tribal Governments

KEY POINTS:

- To be "treated as a State" under EPA assistance programs, tribes must document that they are:
  - A Federally recognized Indian Tribal government; and
  - Have a tribal governing body which oversees environmental and health concerns.
- For each program, a tribe must demonstrate that it has the administrative and programmatic capability to carry out the proposed activities.
- With respect to EPA programs, Indian Tribal governments are excluded from intergovernmental review requirements.
- Additionally, Federally recognized Indian tribes, tribal consortia, or existing organizations which represent groups of Indian tribes are eligible for multi-media grants. Multi-media grants are agreements which provide government funds for multiple purposes under one grant. EPA's Multi-Media Program for Indian Tribes was established by statute in FY91.
- Multi-media environmental program grants are provided for the purposes of:
  - Assisting a tribe to develop capability to operate environmental programs; and
  - Determining/prioritizing the Tribe's environmental needs and addressing those needs through a multi-media approach.

Hierarchy

STATUTES

EXECUTIVE ORDERS

FEDERAL REGULATIONS
OMB CIRCULARS (implemented through Federal regulations)

EPA ORDERS & POLICIES

EPA GUIDANCE

VIEWGRAPH #17
TITLE: HIERARCHY

KEY POINTS:

- If there is a conflict between two or more documents, those documents that have the force and effect of law take precedent over those that do not.
- The viewgraph lists in descending order which document has precedent over the others.
- A Federal statute carries the greatest amount of weight in this scheme, followed by an Executive Order, and down through EPA guidance.

MODULE III

MODULE III
PREAPPLICATION
APPLICATION
PHASE

OVERVIEW

- **PRE-APPLICATION ASSISTANCE**
- **APPLICATION REVIEWS**
- **PROGRAM GUIDANCE**

VIEWGRAPH # 1
TITLE: Overview

KEY POINTS:

- The **PO reviews** preapplications and applications to determine:
  - **Relevance of the proposal to EPA objectives;**
  - **Programmatic, technical, and/or scientific merit;**
  - **Relationship to other proposals and on-going work**; and
  - **Availability of funds**.
- The PO's and GMO's responsibilities begin with the assistance provided to prospective applicants in developing their application (pre-application assistance). The **PO conducts the programmatic evaluation** of the narrative/workplan and provides assistance on the programmatic aspects of the application, while the **GMO conducts the administrative evaluation** and provides assistance on the administrative aspects of the application. In some areas, such as reviewing the budget and determining whether a grant or a contract should be used, the expertise of both the PO and GMO are required to ensure that the Agency makes an appropriate determination.
- After the PO's and GMO's initial contact with a prospective applicant, they should keep a record of any material discussion with the applicant. While the Official File is not required until the GMO assigns an Assistance Identification Number, it may be helpful to keep a record of all discussions with the applicant in case an issue arises later which was discussed during this phase.

GUIDANCE/SOLICITATION

- **HEADQUARTERS GUIDANCE OR SOLICITATION**
- **REGIONAL GUIDANCE OR SOLICITATION**
- **DISTRIBUTION OF GUIDANCE OR SOLICITATION**

VIEWGRAPH #2
TITLE: Guidance

KEY POINTS:

- The award of an assistance agreement **begins with the issuance of Agency guidance to the applicant. For research grants, the solicitation serves the same purpose as the guidance does for other programs.** The purpose of the guidance or solicitation is to inform applicants of the:
  - Amount of possible funding;
  - EPA (Headquarters/Regional) program priorities;
  - Tasks/activities applicants must address in the workplan or narrative;
  - Application due date;
  - If the award is competed, the evaluation criteria and the relative weight of each criteria;
  - Statutory cite;
  - Evaluation criteria;
  - Any special emphasis, e.g. the need to meet DBE requirements; and
  - EPA Contact person.
- To eliminate misunderstanding over what EPA will fund and what is expected from the applicant, the guidance or solicitation **must be in writing.**

VIEWGRAPH #2 (Continued)
TITLE: Guidance

KEY POINTS:

- The Program may distribute the guidance or solicitation by:
  - **Sending directly to the applicant**, e.g., if the PO knows the potential applicants which are eligible, such as continuing environmental program grants;
  - **Publishing in a publication (Federal Register, Commerce Business Daily, trade journal) which reaches the target audience**,e.g., if the awards are to be made based on competition; or
  - **Distributing to potential applicants in a meeting /conference.**

PREAPPLICATION ASSISTANCE

- **FORMAL OR INFORMAL**
- **RESULTS IN BETTER PROPOSALS**
- **BENEFITS BOTH EPA AND THE APPLICANT**

VIEWGRAPH # 3
TITLE: Preapplication Assistance

KEY POINTS:

- EPA encourages POs to meet with prospective applicants and discuss the proposed work and budget before they submit an application. This will help the prospective applicant to develop the proposal, or sharpen the focus of a proposal, and will help avoid delays caused by submitting an incomplete application.
- Preapplication assistance may be formal, i.e, the prospective applicant requests in writing or sends in an SF 424 "Application For Federal Assistance," (see Appendix Q) designated as a Preapplication; or informal, i.e., discussions with the PO and GMO concerning various aspects of the proposed project or questions on the process itself.
- Preapplication assistance should take place if it is appropriate, i.e., it may not be necessary for Continuing Environmental Program grants, but may be desirable for new recipients or for projects where the applicant wants to "grease the skids" to speed up the process.
- The POs and GMOs should review preapplications generally within 45 days of receipt.
- Applicants for Continuing Environmental Program grants should request preapplication assistance well before the 60 day application due date to allow sufficient time for a thorough review.
- The discussions the PO will have with the prospective applicant will focus on programmatic activities EPA will fund, e.g., does the application meet statutory goals and objectives and is it consistent with program goals and objectives. The program staff performs a programmatic evaluation of the application. When the programmatic review of a proposal requires specific qualifications not available in the program, the reviewer must obtain assistance from other EPA staff with expertise in the subject area, such as reviewing a Quality Assurance Plan.

VIEWGRAPH # 3 (Continued)
TITLE: Pre-application Assistance

KEY POINTS:

- The discussions with the GMO will focus on the administrative issues, e.g., what needs to be submitted with the application to make it acceptable from the administrative point of view, what certifications are required, what justification is needed to support the budget.
- Release of information:
  - If the Award is to be made based on competition, no EPA official may provide information regarding priorities, criteria, or other pertinent matters to a particular applicant or other interested person, unless such information is available to all parties.
  - If the award is not based on competition, EPA employees may review draft narrative/workplans and provide input. EPA employees may also negotiate with the applicant to change the proposed outputs, reduce the assistance amount, or condition the award based on approval of a revised workplan.
  - As a rule, EPA employees should not prepare an application on behalf of an individual or organization. It is permissible to help applicants by answering questions, but the applicant should be preparing the application, after all, this is their proposal!
- After evaluating a pre-application, the Approval/Decision Official or their designee must notify the applicant, preferably in writing, of the results of the evaluation and either:
  - Encourage submission of a formal application for assistance. The reviewer may suggest modifications or revisions to any aspect of the application, but **under no circumstances should the applicant be assured of funding;** or
  - Reject the pre-application. This letter should give specific reasons for rejection, e.g., lack of scientific/technical merit, not relevant to Agency's objectives, lack of funds; or
  - Take other action. Suggest the preapplication be submitted to another Federal agency which has a more direct interest in the project.

VIEWGRAPH #3 (Continued)
TITLE: Preapplication Assistance

KEY POINTS:

- Some benefits from preapplications are:
  - Establishes communications between EPA and the potential applicant;
  - Determines eligibility early in the process;
  - Determines how well the project fits program guidance and objectives;
  - Determines how well the project might compete with other similar applications;
  - Discourages inappropriate proposals;
  - Speeds award of meritorious proposals; and
  - Prevents the need to rework inappropriately or incorrectly prepared formal applications.

APPLICATION PHASE

- **GMO RECEIVES APPLICATION**
- **GMO CONDUCTS ADMINISTRATIVE REVIEW**
- **PO CONDUCTS PROGRAMMATIC REVIEW**
- **REVIEW AND EVALUATE APPLICATIONS IN 60-90 DAYS**

VIEWGRAPH #4
TITLE: Application Phase

KEY POINTS:

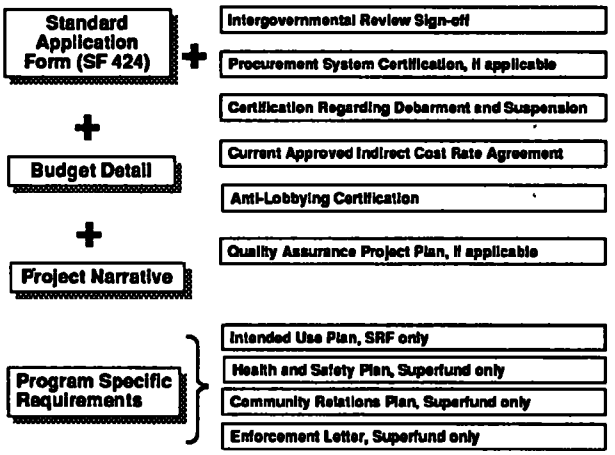
- During this phase the PO and GMO will review the application to ensure that it meets programmatic and administrative requirements.
- The **application should be sent to the GMO** who will assign an Assistance Identification Number, establish the official assistance file, and conduct legal and administrative evaluations. Remember, an application is not officially received in EPA until the GMO assigns an Assistance Identification Number and enters it into the Grants Information and Control System (GICS).
- The **GMO is responsible for sending a copy of the application to the PO**, who will perform a technical review and also obtain the required in-house or extramural reviews. These two reviews should be done concurrently to minimize delays. While the length of the programmatic review will vary depending upon the complexity of the proposal, time of year, program workload, other EPA staff involvement, the PO should attempt to complete the review within 3 weeks from receipt of the application.
- Technical Review. The PO's **technical review is an appraisal to select those proposals that will contribute most effectively to EPA's program objectives and priorities**. The **PO must ensure that the proposal is consistent with applicable regulations and established EPA program criteria and annual guidance.** When the programmatic review of a proposal requires specific qualifications not available in the program, the reviewer must obtain assistance from other EPA staff with expertise in the subject area, such as reviewing a Quality Assurance Plan.

VIEWGRAPH # 4 (Continued)
TITLE: Application Phase

KEY POINTS:

- Extramural (Non-EPA) Review. EPA supplements the reviews of Agency personnel in some programs by **obtaining independent reviews from qualified non-EPA professionals.**
  - Research and Demonstration. The **program must arrange for a minimum of one intramural and two extramural reviews for technical and scientific merit** of applications found to be relevant.
  - Extramural reviews are not required for continuation applications, or for applications requesting support of a conference or symposium.
- A programmatic review should:
  - **Highlight strengths and weaknesses;**
  - **Identify gaps between program objectives and intended activities;**
  - **Determine that the correct funding mechanism** (contract or assistance agreement) is being proposed;
  - **Identify best management approaches**; and
  - **Suggest how a proposal might be strengthened.**
- EPA's general goal is to complete its application review and evaluation within 90 days after the GMO receives the application, unless there is a statutory or program requirement to review the application sooner, e.g., the Waste Water Treatment Construction Grant program has a 60 day review requirement.
- **The PO and GMO may discuss with applicants how to improve applications. The application should not dwell on how the project will benefit EPA, but specifically address why it should be a grant or cooperative agreement and not a contract.**
- POs who furnish information to the public must make sure the information is consistent with program objectives and guidance, as well as releasable under the Freedom of Information Act. If there is any question over whether the information is releasable under FOIA, the PO must contact the Office of General Counsel/Office of Regional Counsel. **Never release a draft workplan.**

THE APPLICATION PACKAGE

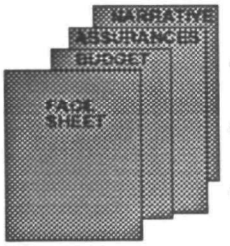


VIEWGRAPH # 5
TITLE: The Application Package

KEY POINTS:

- The application consists of:
  - The SF 424, "Application for Federal Assistance",
  - Detailed budget,
  - A Narrative/Workplan, and
  - Certification attachments.
- The application package may also contain program specific requirements, such as the Intended Use Plan for the State Revolving Fund program, or the Community Relations plan, Health and Safety Plan, and Enforcement Letter for the Superfund program.
- The following is a description of the contents of a "common" application package.

SF 424 - APPLICATION FOR FEDERAL ASSISTANCE



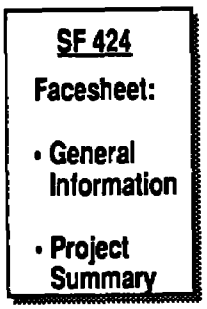
- **FACESHEET**
- **BUDGET INFORMATION**
- **ASSURANCES**
- **NARRATIVE/WORKPLAN**

VIEWGRAPH # 6
TITLE: SF 424- Application for Federal Assistance

KEY POINTS:

- The application (SF 424) consists of four parts -- the Facesheet, Budget information, Assurances, and a Program Narrative/Workplan.
- Even if an application has already been through a preapplication evaluation, it still may be necessary for the GMO and PO to work with the applicant to revise the application further before it is approvable.
- The PO is also responsible for:
  - Reviewing the application to ensure that all budget items, proposed contracting and subcontracting, and work elements are reasonable and necessary. To do this, the PO needs to review the narrative/workplan and must ask the applicant questions if the application does not provide a clear understanding of why the costs in the budget are necessary and reasonable.
  - Reviewing the application budget to ensure the activities are eligible under the program statute(s), guidance, and regulations, and the work is allocable to the project.
- GMOs are responsible for reviewing and analyzing the application to ensure that all information is complete and correct. This includes ensuring that all costs are allowable and that assistance is the appropriate funding mechanism. The GMOs also ensure that the application meets all statutory, regulatory, and legal requirements.
- The SF 424 application (see Appendix Q) is used for all EPA programs except for the Wastewater Treatment Construction Grants program (which uses EPA Form 5720-12), and the Fellowship programs (which use EPA Form 5770-2). These last two forms were specifically developed for those two programs.

FACESHEET
GENERAL SUMMARY INFORMATION



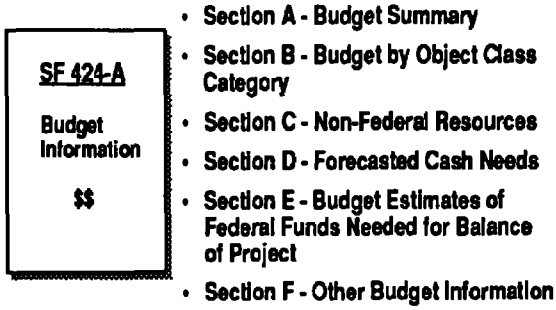
- **Provides General Information About Applicant**
- **Provides Summary Information on the Proposed Project**

VIEWGRAPH # 7
TITLE: **SF 424 - Facesheet**

KEY POINTS:

- The applicant provides the information on the Facesheet. The Facesheet provides:
  - General administrative information about the applicant, e.g., type of entity, location of the project, name of the applicant's contact person, Congressional district, and
  - Summary information about the proposed project, e.g., budget, length of budget and project periods.
- The GMO will review the Facesheet to ensure that all items are properly completed.
- If the award of assistance involves verification of the recipient having met the required level of effort under a previous award (e.g., §106 of the Clean Water Act and §105 of the Clean Air Act), the most recent Financial Status Report and supporting documentation must be carefully reviewed to ensure the requirement was met.

BUDGET INFORMATION



VIEWGRAPH # 8
TITLE: SF 424 - Budget Information

KEY POINTS:

- SF 424A (Budget Information) - Budget information indicates total funding needs and summary information for proposed projects.
- Sections A, B, C, and D call for budget estimates for the entire project, except for projects funded on an annual or other incremental basis. In the latter case, Section E provides the budget information for subsequent budget periods. The form itself provides detailed instructions for completing the form.
- The applicant is responsible for preparing the budget.
- The narrative/workplan must justify the necessity for every item . There is no one way to determine the reasonableness of any particular item. If the PO questions whether a particular item is "reasonably" priced, they should ask other POs or call various suppliers. The PO may also ask the GMO for advice, other EPA persons, or the applicant how they arrived at the cost.
- The PO is responsible for reviewing the proposed budget against the Narrative/Workplan to determine whether the budget is reasonable from a programmatic perspective. In making this determination, the PO should consider the technical necessity for and price reasonableness of proposed personnel, travel, equipment, supplies, procurements, and other items in the budget.
- The GMO is responsible for ensuring that budget information is complete and costs are consistent with Federal cost principles and policies. The GMO also reviews the indirect cost rate (if indirect costs are claimed) and will verify that the applicant has a current, approved rate (provisional or final).

VIEWGRAPH # 8 (Continued)
TITLE: SF 424 - Budget Information

KEY POINTS:

- The PO should also consider what will happen to the property after it is no longer needed for the project/program or the project/program is terminated. The GMO will add a condition to the agreement regarding disposition.
- Section A - Budget Information provides a summary of the budget by program, function, or activity.
- Section B - Budget Categories identifies budget amounts by object class categories. Object Class categories include: personnel, fringe benefits, travel, equipment, supplies, contractual, construction, indirect cost, and other.
  - The applicant must provide documentation to support the costs in each object class. This support may either be in the narrative/workplan or may be an attachment to the application. If the information supplied is not sufficient to determine that the costs are reasonable and allowable, the GMO or PO will contact the applicant to obtain additional support.
  - For **Personnel,** the applicant must identify all staff positions by title, annual salary, and the percentage of time each position will be assigned to the project/program. The PO must examine staffing requirements for the project and must determine whether project staff support is adequate and the right mix to meet the project objectives. (The GMO will review this category to determine if the salary ranges proposed are reasonable. Some of the questions the PO should consider are:
    - Who is charged with the ultimate responsibility to manage the project?
    - Will key staff members participate full time?
    - Are there gaps in areas of expertise?
  - For **Equipment,** the applicant must identify each item and its cost. The PO must review the list and determine that **each item is necessary to carry out the objectives of the project.**
    - Some programs (such as Superfund) require the applicant to conduct a cost/benefit analysis of purchasing equipment, leasing, or letting the contractor purchase the equipment. The PO is responsible for ensuring that the applicant complies with any preaward program specific requirements regarding property (or any other cost item).

VIEWGRAPH # 8 (Continued)
TITLE: SF 424 - Budget Information

KEY POINTS:

- For **Supplies**, the applicant must only request supplies which are needed to complete the proposed workplan. The PO must review these costs to determine that the requested supplies are needed for the proposed workplan.
- For **Travel**, the applicant must identify the number of trips planned, the destination for each trip, the number of travelers, and the estimated cost of each trip. The PO must review these costs to ensure that the number of trips are necessary to complete the scope of work and that the number of travelers is consistent with the purpose of the trip. The GMO will review these costs to verify that the costs are reasonable, e.g., airline ticket costs, per diem rates, mileage rates.
- For the **Other** category of costs, the PO must review these to determine that they are consistent with the proposed workplan and are necessary to complete the approved workplan.
- For **contractual costs,** the applicant must identify what contracts they intend to award during the budget period. The PO must review this list and satisfy themselves that:
  - The contract support proposed is necessary to carry out the objectives of the project/program;
  - That the applicant has determined that any proposed contractors are not suspended or debarred; and
  - The proposed costs appear reasonable.
- The GMO may also be reviewing the costs from a reasonableness standpoint.
- If the applicant is proposing to award a sole-source contract, they must provide their reasoning so that the PO and GMO can determine if there is adequate justification .
- For **Indirect Costs,** the applicant must provide a copy of its current approved indirect cost rate. EPA will not allow a recipient to draw down on indirect costs unless they have an approved, current rate. The GMO will verify that the applicant has an approved rate. (If not, the GMO will condition the award to limit the applicant's ability to draw down indirect costs until a final rate is approved by the applicant's Cognizant Federal Agency.)

VIEWGRAPH # 8 (Continued)
TITLE: SF 424 - Budget Information

KEY POINTS:

- Section C - Non-Federal Resources includes a list of funding sources and amounts other than those provided by EPA or other Federal agencies. If the applicant is required to cost share, this section is where those costs will be shown. For universities of higher education and other non-profits, there is a minimum 5% cost share (unless a statute or program requires a higher cost share or an approved deviation has waived the requirement). For all other recipients, the amount of the cost share, if any, will be determined by statute or by program regulations or guidance.
- Section D - Forecasted Cash Needs shows the estimated rate of expenditures by quarter over the Fiscal Year. EPA does not generally require that its applicants complete this Section.
- Section E - Budget Estimates of Federal Funds Needed for the Balance of the Project provides useful information to estimate funds necessary for future years.
- Section F - Other Budget Information is used to list and explain specific direct and indirect charges that appear in Section B. Space is also provided to allow the applicant to clarify other parts or sections of the application.

COST SHARING

- **Requirements Vary With Program**
- **Only Allowable Costs Can Be Used**
- **Cannot Use Federal Funds As Match**
- **May Use In-Kind**

VIEWGRAPH # 9
TITLE: **Cost Sharing**

KEY POINTS:

- The amount of the cost share is specified in the regulations applicable to the program.
- Cost sharing requirements may be required by statute (e.g., Air §105 grants), program policy (Superfund Technical Assistance Grants), or by regulation (5% minimum cost share for recipients subject to the provisions in 40 CFR Part 30.)
- Appendix 14-A of the Assistance Administration Manual contains a list of the statutory/regulatory cost sharing requirements.
- Recipients can claim only allowable costs to meet cost sharing requirements.
- The Director, Grants Administration Division, may approve a deviation from **non-statutory** cost sharing requirements.
- Funds awarded under assistance programs of other Federal agencies cannot be used to meet EPA cost sharing requirements unless the other agency's legislation explicitly authorizes such use, e.g., Department of Housing and Urban Development's Community Development Block Grant program,

VIEWGRAPH # 9 (Continued)
TITLE: Cost Sharing

KEY POINTS:

- Sources of funds for recipient cost sharing are either:
  - "In-kind" contributions e.g., facilities, equipment, materials, professional services, volunteer staff time provided by non-Federal public agencies, organizations, or individuals, or
  - Cash.
- If there is a cost sharing requirement, the recipient cannot decide which task, sub task, etc., is funded with Federal dollars and which is not. **Each assistance-related dollar includes both the Federal and recipient shares.** Recipients cannot avoid Federal statutory or regulatory requirements by separating their funds from Federal funds.

ELIGIBLE, ALLOWABLE, REASONABLE, AND ALLOCABLE COSTS

- **ELIGIBLE - STATUTORY BASIS**
- **ALLOWABLE - PERMITTED BY REGULATION, CIRCULAR, ETC.**
- **REASONABLE - PRUDENT PERSON THEORY**
- **ALLOCABLE - BENEFITS RECEIVED**

VIEWGRAPH # 10
TITLE: Eligible, Allowable, Reasonable, and Allocable Costs

KEY POINTS:

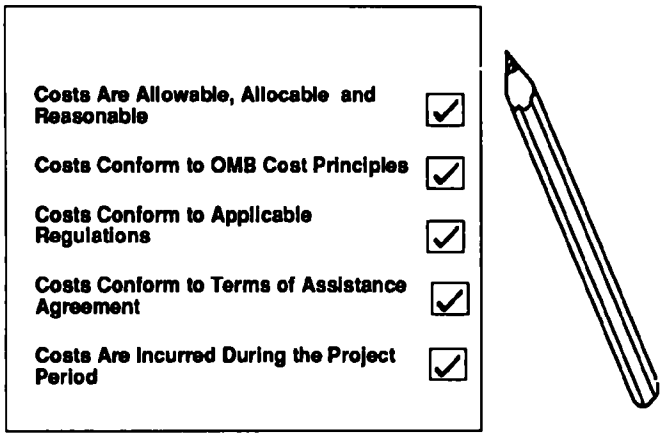
- **Eligible**: To be eligible, the cost must be permitted by statute, program guidance, or regulations. The costs must also conform to any Federal limitations (e.g., real property purchases under the Construction Grants program, mobile treatment systems under Superfund);
- **Allowable**: To be allowable, the costs must meet the following general criteria:
  - Be necessary and reasonable for the performance of the award;
  - Be authorized by the appropriate Cost Principles;
  - Be authorized, or not prohibited, under Federal, State or local laws or regulations;
  - Be consistent with the recipient's policies, regulations, and procedures. The recipient must apply the same policies, regulations, etc. to both Federally assisted and non-Federally assisted activities;
  - Be consistent with Generally Accepted Accounting Principles;
  - Not be included as a cost or used to meet cost sharing/matching requirements of any other federally financed program (unless specifically authorized by Federal law); and
  - Be adequately documented.

VIEWGRAPH #10 (Continued)
TITLE: Eligible, Allowable, Allocable

KEY POINTS:

- **Reasonable**: A cost is reasonable if it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. To determine the reasonableness of a specific cost, consideration must be given to:
  - Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or performance of the award.
  - The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.
  - Whether the individuals concerned acted with prudence under the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Government.
  - Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.
- **Allocable** : A cost is "allocable" to an assistance agreement to the extent that it directly benefits the approved work, or to the extent it can be distributed in proportion to the benefits received. A cost is distributed to a particular cost objective (e.g., assistance agreement, project, service, or other activity) based on benefit received by that cost objective. A cost is allocable to an agreement if it is treated consistently with other costs incurred for the same purposes in like circumstances and if it:
  - Is incurred specifically for the award;
  - Benefits the award and can be distributed in reasonable proportion to the benefits received; and
  - Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

CRITERIA FOR APPROVING COSTS



VIEWGRAPH #11
TITLE: Criteria for Approving costs

KEY POINTS:

- Each recipient must follow the Federal cost principles applicable to that type of organization. (See page 2.10, for a list of the cost principles.)
- Recipients must maintain and report costs in accordance with the regulation that governs the agreement, i.e., either 40 CFR 30.500 or 40 CFR 31.20.
- The recipient cannot be reimbursed for costs that are contrary to the specific terms of the agreement or are outside its scope.
- The recipient may only charge costs if they resulted from obligations made during the approved funding period.

Preaward Costs

- Recipients may not be reimbursed for costs incurred before the Award Official signs the agreement unless pre-award costs are specifically allowed. EPA allows pre-award costs **only** in specific circumstances in the following programs:

  Construction Grants

  - The Award Official must specifically approve preaward costs before they are allowable. (See 40 CFR 35.2118 for the limitations of pre-award costs.)

VIEWGRAPH #11 (Continued)
TITLE: Criteria for Approving Costs

KEY POINTS:

Continuing Environmental Program Awards/Superfund Awards

- EPA will reimburse the applicant for allowable costs incurred from the beginning of the budget period, provided such costs are **contained in the approved application** and that the application was submitted before the expiration of the **prior** budget period.
- If an application is received before the end of the prior budget period, no deviation is necessary.
- If an application is **not** received before the end of the prior budget period, a deviation from 40 CFR 35.141 is necessary [40 CFR 35.6275(b) for Superfund awards].

Project Type Awards

- Recipients may charge to the award only those costs resulting from obligations incurred during the funding period.
- If the recipient incurs pre-award costs, they must obtain a deviation from the Director, Grants Administration Division before those costs can be charged to the agreement. (See pages 5.13 and 5.14 for a discussion of the deviation process.)

CLASSIFICATION OF PROPERTY

Personal Property Real Property Intangible Property

VIEWGRAPH #12
TITLE: Classification of Property

KEY POINTS:

- There are two types of **personal property**: equipment and supplies.

  Equipment:

  - State, Local, and Indian tribal recipients must follow the definitions for equipment in Part 31. Equipment is defined as items with a useful life of at least 1 year and an acquisition cost of $5,000 or more per unit.
  - For universities and non-profits, equipment is defined as items with a useful life of at least 2 years and an acquisition cost of $1,000 or more per unit.

  Supplies.

  - Under all EPA assistance programs, supplies are defined as tangible personal property other than equipment.

- **Real property** under all EPA assistance programs is defined as land, including land improvements, structures, and right-of-ways, excluding movable machinery and equipment.

- **Intangible property** includes copyrights, rights in data, and patents.

ACQUISITION OF PROPERTY

- MUST BE AUTHORIZED IN ASSISTANCE AGREEMENT

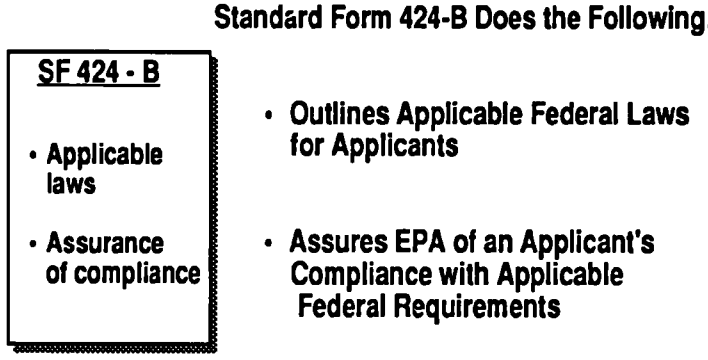
- MUST BE ACQUIRED DURING BUDGET/PROJECT PERIOD

VIEWGRAPH # 13
TITLE: Acquisition of Property

KEY POINTS:

- In order to purchase property under an assistance agreement, it must first be authorized in the agreement.
- Recipients may purchase property only during the budget/project period of the assistance agreements.
- The title to personal property purchased under an assistance agreement is always vested with the recipient; however, EPA reserves the right (in condition(s) to the agreement) to transfer title to another entity within 120 days after the end of the project. Also, EPA has an "interest" in the property equal to the percent of Federal funds in the property, e.g., if the match is 90% Federal and 10% recipient, EPA has a 90% "interest" in the property. At time of disposal, EPA gets 90% of the proceeds from the sale or, if EPA gets the property, EPA owes the recipient 10% of the proceeds from the sale.
- When Federally owned property is provided to the recipient, the title remains with the Federal government.
- The title to supplies also vests with the recipient.

ASSURANCES

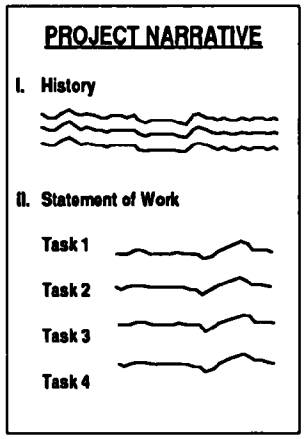


VIEWGRAPH # 14
TITLE: Assurances

KEY POINTS:

- The purpose of the assurances in the SF 424B is to emphasize to the applicant the Federal laws and requirements which are applicable to all Federally assisted projects, i.e., "crosscutting" requirements.
- The applicant **must** sign this page as well as the Facesheet. Usually, the same person signs both places, but **whoever signs must have the authority to bind the organization to the terms of the assistance agreement.**
- By signing the Assurance page, the applicant is indicating they will comply with each of these requirements. Some of the major requirements the applicant is agreeing to are:
  - They will complete the project within the time specified in the agreement.
  - They will comply with all applicable Federal laws, regulations, and policies.
  - They have the financial, managerial, and legal authority to complete the project.
  - The person signing the form is authorized by their governing body to sign the application as the official representative of the applicant.

PROJECT NARRATIVE/ WORKPLAN



- **Describes the History of the Problem, and Proposed Actions**
- **Indicates Compliance with Regulatory Requirements**

VIEWGRAPH # 15
TITLE: Project Narrative/Workplan

KEY POINTS:

- The approved project narrative/workplan is the basis for making an award and is used by the PO to manage and evaluate performance under the agreement.
- A narrative/workplan must be included as part of the application. It should justify proposed financial, facility, equipment, and resource needs and provide technical and other information required by program-specific regulations/requirements.
- The narrative/workplan also must describe the need for the project/program; its objectives; the method to accomplish the objectives; the geographical location of the project; and the "public" benefits or results expected to be obtained from the assistance, e.g., why the activity should be funded with an assistance relationship and not a contract.
- The PO performs a technical review of the narrative/workplan. If the PO does not have the technical expertise to perform the review, they must obtain assistance from other EPA staff with the expertise.
- The PO may negotiate the narrative/workplan. The negotiation should be a two-way process to accommodate applicant needs and practices, as long as they do not conflict with Federal and/or EPA program requirements/priorities.

VIEWGRAPH # 15 (Continued)
TITLE: Project Narrative/Workplan

KEY POINTS:

- An effective narrative/workplan:
  - Will list expected outputs;
  - Quantify outputs;
  - Link outputs to funding;
  - Identify target dates and milestones,
  - Require periodic reporting, and
  - Explain how the activities will be accomplished.
- The workplan for each Continuing Environmental Program must also:
  - Specify work years and amount and source of funds,
  - Identify the agency responsible for each of the outputs, and
  - Discuss performance to date under the existing award.
- For research awards, the workplan should contain a biographical sketch(es) of the Key Person(s).

TIPS FOR NEGOTIATING WORKPLANS

- **STRIVE FOR REALISTIC GOALS**
- **ADDRESS MAJOR OBJECTIVES**
- **USE DIPLOMACY**
- **COMPROMISE**
- **PAY ATTENTION TO DETAIL**

VIEWGRAPH #16
TITLE: Tips for Negotiating Workplans

KEY POINTS:

- The goal is to negotiate a workable document that is:
  - Realistic and contains well defined commitments that foster accountability.
  - Reflects all activities to be conducted with total assistance dollars (every dollar includes the Federal and recipient shares.)
- Seven management principles to follow are:
  - Set priorities and commitments.
  - Set a realistic schedule.
  - Ensure applicant structures their workplan according to key program elements with specific outputs.
  - Negotiate to improve the workplan.
  - Involve other programs in developing the workplan, if appropriate.
  - Plan for evaluation from the outset.
  - Coordinate with the GMO staff during workplan development, as needed.
- The Project Officer will, in most cases, be EPA's lead negotiator. The PO also may often need to negotiate internally to establish their program's official position in dealing with the applicant. To be successful the PO should:
  - Start the process early; provide guidance timely; if necessary, convene a meeting with the applicant early in the process to answer questions and influence the drafting of the workplan.
  - Have accurate data about the applicant's past performance.

VIEWGRAPH #16 (Continued)
TITLE: Tips for Negotiating Workplans

KEY POINTS:

- Realistically assess the applicant's capacity to meet commitments. Understand their current workload and ability and/or capability to take on new work.
- Identify areas of potential consensus and potential disagreements early in the process.
- Focus on interests basic to achieving program objectives. Make EPA's objectives clear to the applicant and work work to identify shared interests.
- Search for options to resolve conflicts.
- **HAVE A PLAN.** Know what role EPA personnel will have in reviewing the draft and final workplan submittals. Establish firm deadlines for negotiating the workplan and stick to them.

• Evaluation Plan. Introduce your plan for evaluating progress and performance EARLY in your negotiating process. Define consequences of inadequate and or nonperformance. Include reporting plans and schedules and describe the contents expected in the reports. Coordinate with and include the GMO during the development of the evaluation plan.

CERTIFICATIONS

- **PROCUREMENT SYSTEM CERTIFICATION**
- **ANTI-LOBBYING**
- **SUSPENSION AND DEBARMENT**
- **DRUG-FREE WORKPLACE**

VIEWGRAPH # 17
TITLE: Certifications

KEY POINTS:

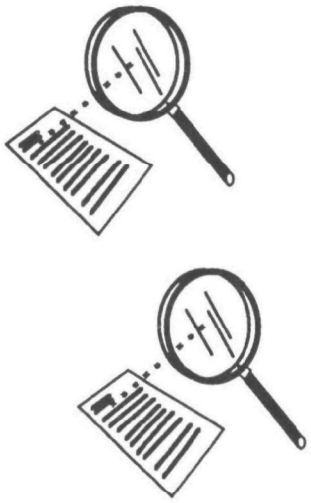
- The applicant must make the following certifications.
- The Procurement System Certification Form (EPA Form 5700-48) indicates whether or not the applicant will follow its own procurement system (provided system(s) comply with EPA requirements).
  - If the applicant indicates it will not follow its own system (either because that system does not comply with EPA's requirements or because the applicant does not wish to certify), they are required to follow 40 CFR Part 31 (local governments and Indian tribes) or 40 CFR Part 33 (universities of higher education and other non-profits). By not certifying, the applicant also is agreeing they will allow EPA to conduct a preaward review of proposed contract awards.
  - **The form does not apply to State governments except under the Superfund program (see 40 CFR 35.6550(a)).**
- The Anti-lobbying requirements in 40 CFR Part 34, require that applicants certify that no appropriated funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with any Federal award **in excess of $100,000.** 40 CFR Part 34 requires applicants and recipients to submit the Standard Form LLL, "Disclosure of Lobbying Activities," if they used non-Federal funds to "lobby" in relation to certain Federal contracting and financial transactions. This form is not required if the entity did not "lobby" for the grant.

VIEWGRAPH # 17 (continued)
TITLE: Certifications

KEY POINTS:

- Suspension and Debarment are methods which can be used to keep "bad actors" from receiving Federal funds. Suspended or debarred entities are listed in the General Services Administration's publication, "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs." **The Program Offices and the GMO should ensure that the list has been checked before an award is made.** In the Regions, the GMO or the Headquarters/Regional Counsel's office will probably have the current list.
  - Debarment requires a formal investigation, notification, a hearing, and (if requested) an appeals process before the EPA Debarment Official (Director of the Office of Grants and Debarment) can debar someone.
  - Suspension is an immediate temporary action taken to protect the Federal government and/or public interest pending the completion of an investigation or ensuing legal or debarment proceedings. The EPA Debarment Official is the only person that can suspend someone.
- The Drug Free Workplace Act of 1988 requires contractors and recipients of Federal funds to certify that they will provide a drug-free workplace. The Act applies to all Federal assistance programs and contracts, regardless of value. **No separate certification form is required. The applicant certifies by signing the application.**

QUALITY ASSURANCE/ QUALITY CONTROL



Recipients are Required to Develop a QAPP.

- **A QAPP Outlines Procedures for Ensuring Quality in Environmental Monitoring**
- **The Application Must Include Either a QAPP or a Schedule for its Development**
- **A QAPP Must be Approved Before On-site Sampling Can Begin**

VIEWGRAPH # 18
TITLE: Quality Assurance/Quality Control

KEY POINTS:

- If a project involves environmentally related measurements or data generation, the applicant must develop and implement quality assurance practices. These practices consist of policies, procedures, specifications, standards, and documentation which will produce data of sufficient quality to meet project objectives and will minimize loss of data due to out-of-control conditions or malfunctions.
- If the applicant has an EPA approved quality assurance program plan and it covers the project in the application, they need only reference that plan in their application.
- The quality assurance program plan must be acceptable to the Award Official in order to receive an award.

  Quality Assurance Program Plan: A formal document which describes an orderly assembly of management policies, objectives, principles, organizational responsibilities, and procedures by which an agency or laboratory specifies how it intends to:

  - Produce data of documented quality, and
  - Provide for the preparation of quality assurance project plans and standard operating procedures.

VIEWGRAPH #18 (Continued)

TITLE: Quality Assurance/Quality Control

KEY POINTS:

Quality Assurance Project Plan: An organization's written procedures which delineate how it produces quality data for a specific project or measurement method.

- If an applicant is unfamiliar with EPA Quality Assurance (QA) requirements, the PO should direct them to the appropriate QA office in Headquarters, laboratories, or the Region.
- QA requirements by type of applicant:
  - If the application is for **research financial assistance**, the application must include a **QA narrative statement** which either addresses certain areas or provides justification why any areas do not apply (see 40 CFR 30.503(d)).
  - If the application is from a **State or local government** (except for a Wastewater Treatment Construction Grant or Superfund) the applicant must submit a **QA program plan.**
  - **All other applicants** must submit a **QA project plan** with their application. (Under the Superfund program a recipient may not begin field work before EPA approves the plan.)
- The requirements for quality assurance are contained in 40 CFR Part 30 for universities and other non-profits, and in 40 CFR Part 31.45 for States, local governments, and Indian tribal governments.

APPLICATIONS INVOLVING INTERNATIONAL ACTIVITIES

- **ALL APPLICATIONS THROUGH AA FOR IA**
- **STATE DEPARTMENT REVIEW MAY BE NECESSARY**

VIEWGRAPH # 19
TITLE: International Activities

KEY POINTS:

- **All applications where all or part of the project is to be performed in a foreign country by a US recipient, a foreign recipient, or an international organization regardless of where it is located must be:**
  - **Approved by the Assistant Administrator for International Activities; and**
  - **Submitted to the Department of State for clearance.** A minimum of 35 calendar days must be allowed to obtain State Department clearance. The OIA will submit the applications to the Department of State.
- Any agreement where there will be substantial foreign travel should go through the OIA.
- The "Fly America Act" requires that all government-financed foreign air travel must be on U.S. air carriers certified under 49 U.S.C. §1371 to the extent that service by such carriers is available. This applies to Federal employees and their dependents, consultants, contractors, recipients, and other traveling for the U.S. Government.
- The Program Office is responsible for sending a copy of the application to OIA for approval. This approval must be obtained before the Program submits the funding recommendation to the GMO.
- The Assistant Administrator for International Activities will review each proposal with a substantial international component to determine whether it is in accordance with the EPA and US Government International Environmental Mission as well as EPA's and the US Government's overall relationship with the foreign country concerned.
- If you have any questions, please call the Office of International Activities, Washington, DC.

PROJECT OFFICER ROLES AND RESPONSIBILITIES

- PROVIDE TECHNICAL EXPERTISE
- APPROVE BUDGET/WORKPLAN
- WORK WITH APPLICANT
- INITIAL DETERMINATION OF GRANT VS CONTRACT
- DETERMINE GRANTS VS COOPERATIVE AGREEMENT ISSUES

VIEWGRAPH #20
TITLE: Project Officer Roles and Responsibilities Preapplication/Application
KEY POINTS:

- In this phase, the PO is responsible for:
  - Determining the appropriateness of the workplan (narrative) activities, whether they comply with program regulations and guidelines, and identifying any deficiencies in the application.
  - Comparing proposed work with other similar efforts the PO is aware of and ensuring that any overlap or duplication is absolutely necessary, e.g., in research, some duplication may be beneficial.
  - Informing the prospective applicant that EPA does not pay for costs incurred before an award is made (except in limited circumstances, see p. 3.10)
  - Informing the prospective applicant that there is no obligation by EPA to fund the proposal.
  - Negotiating the level of funding within constraints of the available funds.
  - Providing the prospective applicant with the Catalog of Federal Domestic Assistance (CFDA) number for the assistance program, if applicable. If in doubt, the PO should contact the GMO.
  - Notifying the GMO of anticipated applications/solicitations and receipt date. This will help the GMO plan their work and may help avoid unnecessary delays in making the award.

VIEWGRAPH #20 (Continued)
TITLE: Project Officer Roles and Responsibilities Pre-application/Application

KEY POINTS:

- Making the initial determination whether an assistance agreement or a contract should be used. (The GMO will also review the decision when they review the award package.) The Program's rationale for deciding that an assistance agreement is appropriate must be included in the Decision Memorandum.
- Determining if there will be substantial Federal involvement and if so, developing a condition to include in the cooperative agreement explaining the substantial involvement.
- Serving as primary program and technical resource to the Selection Panel, if one is used, regarding program policy, objectives, and goals.
- Reviewing the application (along with the GMO) to assure that the work plan is consistent with the budget, e.g., whether any proposed procurements or property purchases are necessary and reasonable.
- Obtaining required in-house and/or extramural reviews of the application.
- Cautioning the applicant against making an award or permitting any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs. (The applicant must also submit a Debarment Certification with the application.)
- Conducting preaward or post award site visits as necessary to evaluate programmatic capability.
- Ensuring the Approval/Decision Official informs the applicant and the GMO if the application will not be funded.

GMO ROLES AND RESPONSIBILITIES PRE-APPLICATION/APPLICATION PHASE

- OFFICIAL RECEIPT POINT FOR APPLICATIONS
- PROVIDE ADMINISTRATIVE EXPERTISE
- REVIEW APPLICATION FOR ADMINISTRATIVE ISSUES
- COMMUNICATE ADMINISTRATIVE ISSUES TO APPLICANT

VIEWGRAPH #21
TITLE: GMO Roles and Responsibilities Preapplication/Application

KEY POINTS:

- In this phase the GMO is responsible for:
  - Developing and distributing application kits.
  - Responding to the prospective applicant's administrative questions and issues.
  - Receiving, logging in the formal pre-application/application, and distributing a copy to the PO for their programmatic review.
  - Reviewing the application (in conjunction with the PO) to ensure that it is complete and complies with EPA's administrative requirements.
  - Performing a cost review of the budget to ensure that the costs are allowable and are adequately supported. This may require working with the PO to obtain additional information.
  - Notifying the recipient if any administrative deficiencies are found in the application and working with the applicant to resolve the issues.
  - Conducting a review of the applicant's management systems (procurement, property, administrative and financial - with the FMO), if necessary.
  - Reviewing the program decision to ensure that an appropriate instrument is proposed and determining that an assistance agreement rather than a contract is the appropriate funding instrument.

OTHER PLAYERS
ROLES AND RESPONSIBILITIES
PRE-APPLICATION/APPLICATION PHASE

- **APPLICANT**
- **FMO/SFO**
- **OGC/ORC**
- **MBE/WBE COORDINATOR**

VIEWGRAPH #22
TITLE: **Applicant Roles And Responsibilities Preapplication/Application**
KEY POINTS:

- In this phase, the **applicant** is expected to:
  - Seek informal/formal assistance to answer questions concerning the technical or administrative requirements,
  - Respond to inquiries from the PO and GMO concerning the application,
  - Revise the application based on comments received from the PO and GMO, and
  - Comply with Executive Order 12372 intergovernmental review requirements, if required.
- In this phase, the **FMO/SFO** is responsible for:
  - Responding to any request for assistance from the applicant to establish or improve the recipient's financial management system.
  - Determining whether to use the EPA/Automated Clearinghouse Payment System, advance payment, or reimbursement by Treasury check to pay the recipient.
- In this phase, the PO or GMO may need the assistance of the **Office of General Counsel/Regional Counsel** if legal issues arise. For instance, if it is unclear whether the award should be a contract, grant or cooperative agreement, it may be necessary for the GMO to get OGC/ORC's legal opinion. Also, if there is a question over who is eligible or if certain activities are eligible, OGC/ORC may be able to help the PO make the decision.

VIEWGRAPH #22 (Continued)
TITLE: Other Players Roles and Responsibilities Application/Preapplication Phase

KEY POINTS:

- In this phase, the Regional or Headquarters **MBE Coordinator** may negotiate with the applicant to determine the Fair Share percentage the applicant will use if EPA makes an award . **If this negotiation does not take place during this phase, it must be done during the award phase.**
  - The MBE Coordinators are responsible for negotiating the Fair Share objectives with each recipient. The recipient must agree to a Fair Share percentage before they award any contracts under the assistance agreement. The Fair Share is the percentage of contract awards that the recipient will try to award to MBE/WBE contractors.
  - Each Region has a Regional MBE Coordinator who should be contacted for questions on regional assistance agreements. The MBE Coordinator in Headquarters is in the Grants Administration Division. If there are questions on Headquarters awarded awards, this individual should be contacted. See Appendix R for a list of the Headquarters and Regional MBE Coordinators.

MODULE IV

AWARD

THE ASSISTANCE AGREEMENT:
AWARD PHASE

- **RESPONSIBILITIES OF DIFFERENT OFFICES**
- **DIFFERENCE BETWEEN PROGRAM APPROVAL AND THE AWARD DECISION**
- **PREPARATION OF FUNDING RECOMMENDATION AND THE ASSISTANCE AGREEMENT**

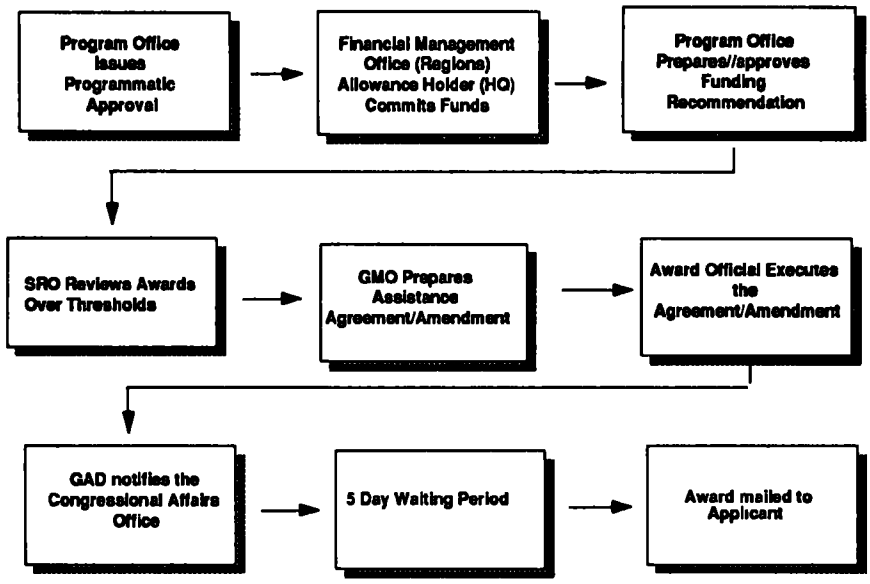
VIEWGRAPH # 1

TITLE: **The Assistance Agreement: Award Phase**

KEY POINTS:

- This module discusses the award stage of funding an application.
- The award stage consists of making the program and award decisions; preparing the funding recommendation package and the assistance agreement; notifying the Congressional delegation, various EPA offices, and the recipient, and executing the assistance agreement.
- During the award phase, the PO and the GMO must prepare various documents, including the funding recommendation/Decision Memorandum and the assistance agreement.

OVERVIEW OF THE AWARD PHASE



VIEWGRAPH # 2

TITLE: Overview of the Award Phase

KEY POINTS:

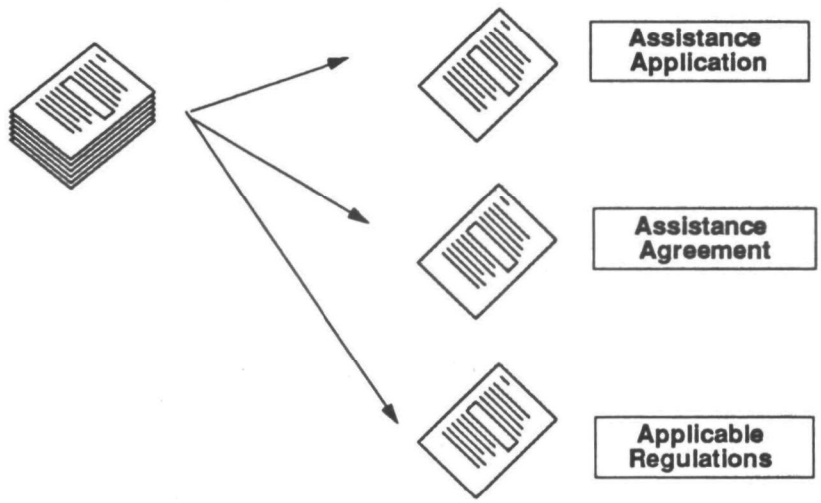
- The award phase of assistance administration consists of nine stages, as illustrated.
- The program office (Approval/Decision Official) approves an application for award and obtains funding approval.
- All funds must be entered into IFMS. In the Regions, the FMO commits, records, and obligates funds, in Headquarters, GOB and GIAB obligate the funds.
- The program office prepares and forwards its funding recommendation package to the GMO.
- The Senior Resource Official will review all program grants and State Revolving Fund grants over $5 million, and all other awards over $1 million to ensure that the proper funding mechanism is being proposed and, if there was no competition, there is adequate justification for not competing the award.

VIEWGRAPH # 2 (Continued)
TITLE: Overview of the Award Phase

KEY POINTS:

- The GMO prepares the assistance agreement and forwards it to the Award Official. The GMO must also verify commitments against data in IFMS (Prevalidation) before the Award Official signs the award.
- Once the Award Official signs the assistance agreement, the GMO informs the Grants Administration Division which, in turn, informs the Congressional and Legislative Affairs, which is responsible for notifying the appropriate House and Senate members.
- After the 5 workday Congressional notification hold period has passed, the GMO mails the award offer to the applicant for their signature.

COMPONENTS OF THE AWARD



VIEWGRAPH # 3

TITLE: Components of the Award

KEY POINTS:

- The award includes the following:
  (1) EPA Assistance Application, including the approved workplan/narrative (by reference);
  (2) EPA Assistance Agreement (EPA Form 5700-20/20A), including any Terms and Conditions, and/or any Special Conditions for "High Risk" applicants; and
  (3) EPA regulations (by reference).

CONTENTS OF FUNDING RECOMMENDATION PACKAGE

	NEW AWARD	INCREMENTAL FUNDING	SUPPLEMENTAL FUNDING	CONTINUATION AWARD
DECISION MEMORANDUM	X	N/A	X	X
FUNDING ORDER	X	X	X	X
PROGRAMMATIC TERMS & CONDITIONS,	X	X	X	X
COMMITMENT NOTICE	X	X	X	X
IN-HOUSE REVIEW	X	N/A	X	X
EXTRAMURAL REVIEWS (OR PANEL REVIEW) RESEARCH ONLY	X	N/A	N/A	N/A
ENVIRONMENTAL REVIEW, ORD GRANTS ONLY	X	N/A	N/A	N/A
QUALITY ASSURANCE REVIEWS, IF APPLICABLE	X	N/A	N/A	X
ADDITIONAL INFORMATION NEGOTIATED WITH RECIPIENT	X	X	X	X

VIEWGRAPH #4
TITLE: Contents of Funding Recommendation Package

KEY POINTS:

Definitions

- *New/Initial award:* the initial award of a project.
- *Incremental Funding:* an amendment to an initial award or continuation award to provide additional funds to the recipient per the original application when the initial award has not been fully funded.
- *Supplemental Funding:* an amendment to an initial award or continuation award, based on a written request from the recipient, to provide additional funds over and above the amount requested in their original application.
- *Continuation Award :* the award of a subsequent budget period within an approved project period. For projects over two years, usually more than one budget period is required. The PO should consult appropriate regulations for limits that apply to duration of budget and project periods.

VIEWGRAPH #4 (Continued)
TITLE: Contents of the Funding Package

KEY POINTS:

- The Program Office prepares and forwards to the GMO the:
  - Funding Order (EPA Form 5700-14), if required by the GMO;
  - Commitment Notice (EPA Form 2550-9), if required by the GMO; and
  - Decision documentation.
- The Funding Order (signed by the Approval Official) identifies the approved funding amounts and the name of the assigned Project Officer. The Funding Order provides the GMO with the financial information needed to prepare the award document. The PO is responsible for attaching any programmatic terms and conditions. The program may provide this information in a Decision Memorandum.
- The Commitment Notice is used to reserve funds. EPA cannot make an award unless funds are "committed" in the Integrated Financial Management System (IFMS).
- For research grants, the Office of Research and Development has special review procedures. Compliance with these extramural (or panel) reviews must be addressed in the funding package.
- The Decision Memorandum is the Program's recommendation for award. This documentation must include:
  - What actions the Program wants the GMO to take, e.g., transfer funds among categories, make an award, approve equipment.
  - Statutory authority for the award;
  - Objectives of the project/program;
  - Summary of review(s) and reconciliation of issues identified in any reviews;
  - Delegation of Authority number;
  - Total amount of the award;
  - Amount of Federal funds;

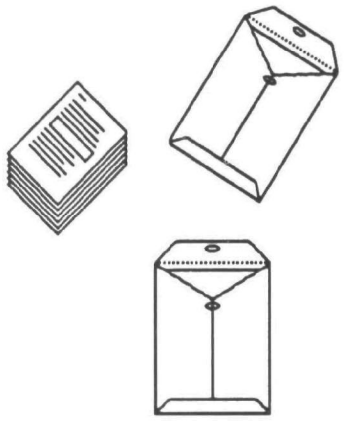
VIEWGRAPH # 4 (Continued)
TITLE: Content of the Funding Package

KEY POINTS:

- Budget/project period;
- Statement that the award should be awarded as an assistance agreement and a brief statement why (e.g., statute requires, direct beneficiary not the Federal government);
- If the award is to be a cooperative agreement, what the substantial Federal involvement will be;
- Whether QA/QC approval is necessary and whether EPA has given that approval; and
- Specific program conditions to be added to the award, e.g., need quarterly progress reports rather than annual; need specific PO approval before recipient starts specific tasks/activities; equipment disposition, if applicable.
- Justify using funds from two different appropriation accounts (mixing appropriations), e.g., funding a project with both Research and Solid Waste funds. If more than one appropriation account is used, **contact your Senior Budget Officer to ensure that the proper accounting data is used. Since this could be time consuming, start this as soon as you know two or more appropriations will be used.**

CONDITIONS IN THE ASSISTANCE AGREEMENT

- **Terms and Conditions**



- **Special Conditions**

VIEWGRAPH # 5

TITLE: **Conditions in the Assistance Agreement**

KEY POINTS:

- Terms and Conditions and Special Conditions are the additional requirements that will govern an award. These are either spelled out directly in the assistance agreement or are incorporated by reference (e.g., the 40 CFR Parts 30 and 31 administrative regulations).

Terms and Conditions:

- Each recipient is subject to certain terms and conditions. These include all applicable provisions of Title 40 of the Code of Federal Regulations as well as other pertinent laws and regulations.
- Terms and conditions of a programmatic nature, for example, include restricting work on a part of the project until specific milestones are met, restricting certain activities until qualified personnel are hired, and specifying the frequency & content of progress reports.
- Terms and conditions of an administrative nature may include requirements which:
  - Are not in a regulation because the requirement was implemented after the regulation was last changed. e.g., recycled paper, the 8% DBE plan, or
  - The requirement is added to emphasize a requirement for a particular project, recipient, or group of recipients, e.g., the approved indirect cost rate.

VIEWGRAPH # 5 (Continued)
TITLE: Conditions in the Assistance Agreement

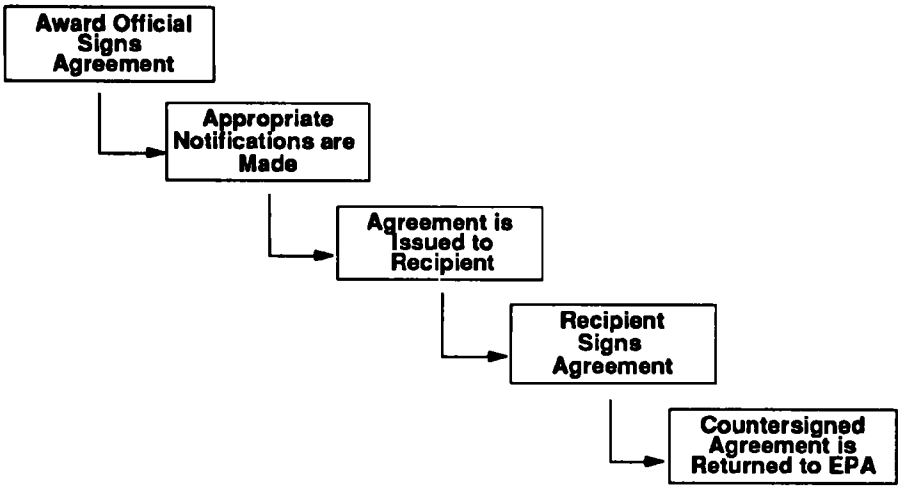
KEY POINTS:

- Terms and Conditions need to be clear and specific.
- In the case of Cooperative Agreements, EPA's "substantial involvement" is spelled out either in the terms and conditions or in the approved application's narrative/workplan, which becomes part of the award. For Headquarter's awarded Cooperative Agreements, the "substantial involvement" must be included in the Terms and Conditions. (See Module II for examples of "substantial involvement.")

High Risk Applicants

- In some cases, EPA may determine that an applicant is a "High Risk" and should, therefore, be subject to certain "Special Conditions."
- An applicant is considered "high risk if it:
  - Has a history of unsatisfactory performance;
  - Is not financially stable;
  - Has a management system which does not meet the management standards set forth in EPA administrative regulations;
  - Has not conformed to the terms and conditions of a previous award; or
  - Is otherwise considered "not responsible" by the Award Official.
- The following Special Conditions may be included in the assistance agreement:
  - Paying on a reimbursement basis;
  - Withholding authority to proceed beyond one phase without proof of acceptable performance;
  - Requiring the recipient to furnish specially detailed financial reports;
  - Providing additional project monitoring;
  - Requiring the recipient to obtain technical or management assistance; or
  - Establishing additional prior approvals.

EXECUTION OF
THE ASSISTANCE AGREEMENT



VIEWGRAPH # 6

TITLE: **Execution of the Assistance Agreement**

KEY POINTS:

- Executing an agreement involves obtaining signatures from both parties to the agreement. This illustration describes the primary steps involved in fully executing an assistance agreement.
- When the Award Official signs the assistance agreement, EPA assumes its share of the legal obligation and incurs a fiscal obligation as well.
- Immediately after the Award Official signs the agreement, the GMO enters the signature date into the Grants Information Control System (GICS).
- Each day, the Grants Information and Analysis Branch pulls a GICS report showing awards entered since the day before and sends the report to the Office of Congressional Liaison (OCL).
- The OCL notifies the appropriate Congressional representative or designee.
- Once the five-day Congressional notification requirement is met, the GMO mails the award offer to the recipient.
- In emergencies, the five-day hold (workdays) for Congressional notification may be waived pursuant to OCL procedures.
- Once a recipient signs an agreement and sends it back to the GMO, the recipient assumes a legal obligation to perform all of the activities listed in the agreement, in the timeframe agreed to, and for the dollar amount specified.

PROJECT OFFICER ROLES AND RESPONSIBILITIES

- **PREPARE FUNDING PACKAGE**
- **OBTAIN PROGRAMMATIC CONCURRENCES**
- **ESTABLISH THE OFFICIAL PROJECT FILE**
- **REVIEW THE AWARD DOCUMENT**

VIEWGRAPH # 7
TITLE: Project Officer Responsibilities

- In this phase, the PO is responsible for:
  - Preparing a funding package consisting of the: Decision Memorandum; Funding Order (EPA Form 5700-14), if required by the Grants Management Office; and Commitment Notice (EPA Form 2550-9), if required by the Grants Management Office.
  - Obtaining the necessary programmatic concurrences and signatures on the funding package and sending the package to the next level in the concurrence chain.
  - Obtaining Office of International Activities' approval for all international awards.
  - Obtaining the Office of Research and Development's Office of Health Research approval for all projects involving human subjects.
  - Establishing an official file for the project (see Appendix S).

GRANTS MANAGEMENT OFFICE ROLES AND RESPONSIBILITIES

- **REVIEW FUNDING PACKAGES**
- **PREPARE AWARD DOCUMENT**
- **ASSURE COMPLIANCE WITH CONGRESSIONAL NOTIFICATION**
- **SEND AWARD OFFER TO APPLICANT**

VIEWGRAPH # 8
TITLE: Grants Management Office Roles and Responsibilities

KEY POINTS:

- In this phase, the GMO is responsible for:
  - Ensuring that all elements of the application and funding package meet legal and regulatory requirements.
  - Reviewing the funding package and assuring it is complete and is signed by authorized officials.
  - Assuring that there is a Commitment Notice and verification of available funds.
  - Assuring the agreement contains all required administrative and program conditions, and any Special Conditions for a "High Risk" recipient.
  - Preparing the award/amendment document (EPA Form 5700-20A/B).
  - Forwarding the award package to the Award Official for signature.
  - Assuring compliance with the Congressional Notification requirements.
  - Verifying the Indirect Cost Rate.
  - Mailing the award offer to the applicant.
  - Confirming the statutory authority and delegation of Authority.
  - Assuring appropriate funding mechanism.

OTHER PLAYERS' ROLES AND RESPONSIBILITIES

- **APPLICANT/RECIPIENT**
- **FINANCIAL MANAGEMENT**
- **SENIOR RESOURCE OFFICIAL**
- **OGC/ORC**
- **MBE/WBE COORDINATOR**

VIEWGRAPH # 9
TITLE: Other Players' Roles And Responsibilities

KEY POINTS:

Applicant/recipient Roles and Responsibilities

- In this phase, the applicant is responsible for signing the award offer, or requesting a time extension, within 3 weeks of receipt. If the applicant does not sign the award within 3 weeks, the Award Official may withdraw the offer (see 40 CFR Part 30 and EPA policy.)

Financial Management Office Roles and Responsibilities

- The FMO will record an obligation in the Integrated Financial Management System (IFMS) **immediately after receiving the signed agreement from the Award Official.**

Senior Resource Official

- The SRO will be reviewing and concurring on funding recommendations for awards over $1 million for project awards, and $5 million for Continuing Environmental Program grants and State Revolving Fund grants.

Office of General Counsel/Regional Counsel

- OGC/ORC may have to become involved in contracts versus assistance decisions, eligibility of activities, etc.

Minority Business Enterprise (MBE) Coordinators

- If not already done, the MBE Coordinators will have to negotiate the Fair Share percentage if the award includes funds for equipment, supplies, or construction.

MODULE V

MODULE V

PROJECT ADMIN & MGT

OVERVIEW

PO RESPONSIBILITIES IN THIS PHASE INCLUDE:

- **MONITORING RECIPIENT PERFORMANCE**
- **REVIEWING REPORTS**
- **PROVIDING TECHNICAL ASSISTANCE**
- **REVIEWING MODIFICATION (AMENDMENT) REQUESTS**
- **HANDLING DEVIATIONS/DISPUTES**
- **RESPONDING TO NONCOMPLIANCE BY RECIPIENT**

VIEWGRAPH #1
TITLE: Overview

KEY POINTS:

- This module discusses the general responsibilities of GMOs, POs, and SFOs during project administration.
- Generally, the GMO serves as a source of administrative oversight for all EPA assistance agreements. However, the GMO also serves as the liaison between the Project Officer and SFO, and the recipient's project manager and administrative staff with regard to the administrative aspects of assistance.
- The Project Officer serves as EPA's technical manager and liaison with the recipient's project manager on all matters relating to project performance.
- The Project Officer serves as a source of programmatic oversight (on-site reviews; review/approval of progress reports, FSRs, payment requests), and provides technical assistance if needed.

MONITORING RECIPIENT PERFORMANCE

- **On-Site:**
  - **Performance Reviews**
  - **Technical Assistance**
- **In-House:**
  - **Reports**
  - **Payment vs. Progress**
  - **Audit Follow-up**

VIEWGRAPH # 2
TITLE: **Monitoring Recipient Performance**

KEY POINTS:

- The overall management of assistance agreements is a cooperative effort among the POs, GMOs, and SFOs. During project/program performance, these monitoring duties must be performed through the closeout of the assistance agreement.
- Some monitoring activities may be the responsibilities of more than one EPA office to help ensure that potential problems are identified and proper corrective actions are taken. Examples are:
  - Monitoring the project or budget period end dates to ensure that the agreement is extended, if necessary, before the budget or project period expires.
  - Monitoring recipient performance.
  - Responding to allegations of mismanagement by recipient employees or others.
  - Responding to audit reports on an assistance agreement.
- Besides audits, EPA performs a variety of other recipient monitoring activities, both on-site and "in-house" (at Headquarters or a Regional Office).

VIEWGRAPH # 2 (Continued)

TITLE: Monitoring Recipient Performance

KEY POINTS:

On-Site Reviews include the following:

- Mid-year and end-of-year reviews to evaluate recipient performance. These reviews are required under the "Performance Based Assistance Policy" for Continuing Environmental Program Grants, and are strongly encouraged for the other programs.
- Technical assistance reviews are used to help ensure the highest quality recipient management practices, and to avoid future audit findings and difficulties by ensuring recipient compliance with EPA regulations. These reviews also assist the recipient in implementing changes to their systems and processes in response to changing Federal requirements and to follow up on these changes, and to clarify the specific regulations that govern the recipient's cooperative agreement

In-House Reviews include:

- *Reports*:
  - Financial Status Reports: The SF 269, "Financial Status Report" must be reviewed to ensure that the recipient uses EPA funds properly. This review is done by the GMO as well as the PO. The PO should review the report in connection with the progress reports. If there appears to be a discrepancy between the financial information on the SF 269 and progress on the project/program, the PO should determine if there is in fact a problem, or if the discrepancy can be satisfactorily explained.
  - Progress Reports: The frequency of these reports will vary with the program. The frequency will usually be required in a regulation or by program policy, but the reports should not be required more often than the program needs. (However, they cannot be required more often than quarterly.) The content of the report will also vary with the program. Each program office must determine what information they need to adequately monitor the recipient's technical and financial progress.

VIEWGRAPH # 2 (Continued)
TITLE: Monitoring Recipient Performance

KEY POINTS:

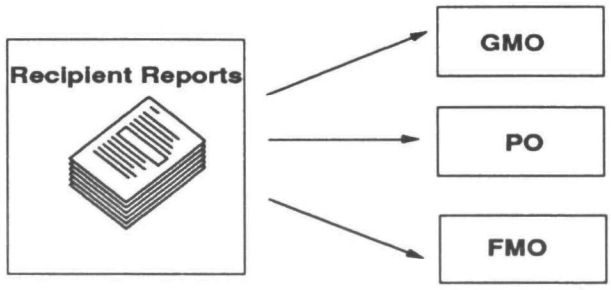
o The PO should review the recipient's progress against the rate of expenditure, and if there appears to be a problem, notify other EPA offices to determine what steps need to be taken to correct the problem. (The progress report format should require the recipient to provide information on the rate of expenditure versus progress on the project, actual accomplishments, and any problems encountered during the performance period which may interfere with meeting program/project objectives.)

o POs can obtain information on the funds disbursed for specific assistance agreements from the Integrated Financial Management System (IFMS). While a report from IFMS will only indicate past disbursements, the report can help the PO by providing information along with the progress reports to keep track of the project/program. A copy of this report can be obtained from the Service Finance Office (or anyone else with access to IFMS).

- Payment Requests: Under the reimbursement payment system, Regional POs should review the request and determine that payment should be made. For Headquarters awards, the Financial Management Center, Las Vegas performs this function. Under the ACH payment system, the PO will not be informed before the draw down is made.

- *Communications*
  - Keep in touch with the recipient. This is the best way to keep aware of what is going on in the project. Telephone calls, however, do not substitute for on-site visits, but may be all that can be done when resources do not permit on-site reviews.
- *Audit Follow-up*
  - EPA uses its Management Audit Tracking System (MATS) to ensure complete and timely follow-up on the resolution of all audit (or other review) findings and the completion of all corrective actions.

RECIPIENT REPORTS



VIEWGRAPH # 3
TITLE: Recipient Reports

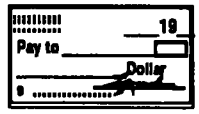
KEY POINTS:

- A recipient must submit reports to EPA indicating the use of funds, the status of accomplishments, and recipient compliance with administrative and program requirements.
- The GMO is responsible for obtaining administrative reports required by the agreement, and will follow up if the reports are not received. Some of these reports may be sent directly to other EPA offices e.g., MBE/WBE reports to the MBE Coordinator, which means that the PO and others should let the GMO know if the report was received on time.
- The PO is responsible for obtaining and reviewing programmatic reports to determine their adequacy. If there are problems with the content of the report or the report is not received when required by the application, the PO should deal directly with the recipient. If the situation warrants, the PO should work with the GMO to discuss what further action may be necessary.
- The POs and others who receive a report should let the GMO know when the report is received. During closeout, the GMO will be asking the other offices if all reports were received when requested and met EPA requirements.

PO RESPONSIBILITIES FOR PAYMENT REQUESTS

- **Advance Payment (EPA-ACH or Treasury Check)**

- **Reimbursement Payment (Treasury Check)**



VIEWGRAPH # 4
TITLE: PO Responsibilities for Payment Requests

KEY POINTS:

- There are three payment methods available
  - Advance Payment, including Working Capital Advance;
  - Reimbursement; and
  - Combination Advance/Reimbursement.
- Under these payment methods, recipients will receive payment under one of two mechanisms:
  - *Electronic transfer of funds*. This includes the Automated Clearing House (ACH) mechanism for domestic entities only, and FEDLINE for international entities.
  - *U.S. Treasury check.*
- POs should not make promises regarding how a recipient is to be paid under their assistance agreement. Because each recipient must comply with the U.S. treasury and Office of Management and Budget cash management guidelines, recipients should contact the appropriate EPA Service Finance Office (SFO) directly for questions on how and when their payments will be processed.
- Payment methods are determined by the SFO, however, the SFO, GMO, and program may have to get together to determine the appropriate payment method/mechanism.
- Also, each SFO and GMO may have different arrangements for reviewing payment requests, e.g., the PO and the GMO may review reimbursement requests in some Regions, the GMO may review the requests in other Regions, or the SFO may review and process all payment requests.

VIEWGRAPH #4 (Continued)
TITLE: PO Responsibilities for Payment Requests

KEY POINTS:

ADVANCE PAYMENTS METHODS

Automated Clearing House Payment System

- If the recipient is on the ACH payment system, the PO and GMO will not generally see the requests for payment. The recipient sends the request directly to the SFO, and EPA has 24 hours to **disapprove** the draw down.
- If the PO wants to restrict the recipient's drawn downs (e.g., cannot draw down above a certain percentage until a specific task or product is delivered), the PO must make this a condition of the award **and inform the GMO and SFO** of the limitation.
- The PO may obtain a report from the Integrated Financial Management System (IFMS) through their budget office (or anyone else with access to IFMS) which may assist their program by providing amounts disbursed by the SFO for specific agreements. While this report shows only past disbursements, it can help the PO by providing information along with the progress reports to keep track of the project/program.
- If there is a question on payments under the ACH payment system, the GMO and PO must decide if there is a need to restrict future requests and if so, contact the SFO to decide on a course of action.

Working Capital Advance

- If a recipient cannot met the criteria for the ACH payment method and the EPA determines that the recipient lacks sufficient working capital, EPA may provide cash on a working capital advance basis. The advance covers the first funding period; thereafter, funds are disbursed on a reimbursement basis.

VIEWGRAPH # 4 (Continued)
TITLE: Payment Process

KEY POINTS:

REIMBURSEMENT PAYMENT METHOD

- If the recipient is under a reimbursement payment system (for other than construction grants), the recipient is to request payments on the SF-270, Request for Advance or Reimbursement.
  - The PO should review the recipient's request for payment to determine if programmatic progress is consistent with the request for funds. If there is any question, the PO should contact the GMO and both should decide what action, if any, is necessary.
  - For Headquarters awards, the PO and GMO do not see the payment request, and therefore, the PO must rely on the progress reports or an IFMS report to determine if progress on the project/program is consistent with the recipient's requests for payment.
- If a Wastewater Treatment Construction Grant recipient is requesting a reimbursement, they must submit the request for reimbursement on SF 271, "Outlay Report and Request for Reimbursement for Construction Programs." For Headquarters awards, the SFO performs this review and the PO and GMO do not see the payment request.
- The GMO reviews reimbursement payment requests for compliance with the cost sharing requirements of the agreement. For Headquarters awards the SFO ensures compliance with the cost sharing requirements.
- The SFO is responsible for:
  - Processing payment requests,
  - Ensuring that payments to the recipient are proper and are made within a reasonable time after receiving the payment request. (For ACH recipients, however, EPA has 24 hours to deny a request.)
- If the PO wants to restrict the recipient's request (e.g., cannot request above a certain percentage until a specific task or product is delivered), the PO must make this a condition of the award **and inform the GMO and SFO** of the limitation.

CHANGES REQUIRING PRIOR APPROVAL/
FORMAL AMENDMENT

- SITUATIONS WHICH APPLY TO ALL RECIPIENTS
- ADDITIONAL REQUIREMENTS FOR STATE, LOCAL AND INDIAN TRIBAL GOVERNMENTS
- * ADDITIONAL REQUIREMENTS FOR NONPROFITS

VIEWGRAPH # 5
TITLE: Changes Requiring Prior Approval/Formal Amendment

KEY POINTS:

- Recipients are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, certain post-award changes cannot be made without a formal amendment to the agreement.
- A recipient's request for a change must be accompanied by a narrative justification for the proposed revision, and must be submitted to the PO.
- The PO should notify recipients in writing of disapprovals (with a copy to the GMO) of requests for changes. This is necessary to answer any future claims against EPA because the recipient "thought" EPA had approved the change.
- The PO must forward to the GMO requests for changes requiring formal amendments. The PO must also include their recommendation for approval.

Changes Which Require a Formal Amendment

All recipients

- Any revision resulting in the increase or decrease in funds.
- Transfer of funds allotted for training allowances, i.e., from direct payments to trainees to other expense categories.
- Carryover of funds.

VIEWGRAPH # 5 (Continued)
TITLE: Changes Requiring Prior Approval/Formal Amendment

KEY POINTS:

- Rebudgeting funds from construction to nonconstruction activities, or vice versa.
- Revisions to the objectives of the project.
- Extensions to the period of availability of funds.

State, local government, and Indian Tribal Governments

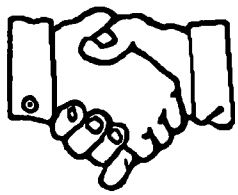
- Cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed 10% of the current total approved budget, whenever EPA's share exceeds $100,000. (If less than $100,000, the recipient does not need prior written approval, but should discuss with the PO before doing.) For example, for a grant with an EPA share of $150,000, the recipient transfers $15,000 from one budget category to another, there is no requirement for prior approval. If the recipient then transfers $18,000 from one category to another (whether from the same category as before or not), the recipient, **must** obtain prior approval from the Award Official.
- Under nonconstruction projects, contracting out or otherwise obtaining services of a third party to perform activities central to the purpose of the award. (The procurement of equipment, supplies, and general support services are approved in the budget section.)
- Changes in key project personnel, if key personnel are identified in the agreement. For research projects, this means a change in the project manager or principle investigator.

Universities of Higher Education and other Non-Profits

- Transfer of an award from one recipient to another.
- Rebudgeting funds for indirect costs to absorb increases in direct costs.

CHANGES WHICH DO NOT REQUIRE PRIOR APPROVAL/ FORMAL AMENDMENT

- **Minor Adjustments to Methodology or Approach**
- **Minor Adjustments to Project Budget**
- **Staff Changes**



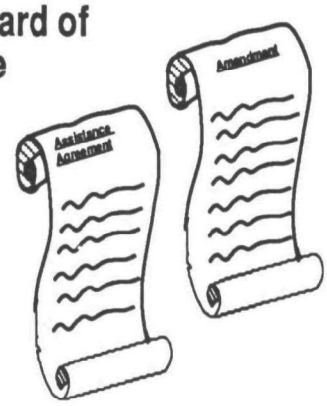
VIEWGRAPH # 6
TITLE: Changes Which Do Not Require Prior Approval/ Formal Amendment

KEY POINTS:

- Recipients may need to change their projects to respond to changed conditions. Neither a formal amendment nor prior written approval is necessary for minor changes that are consistent with the project objective and within the scope of the agreement. For example, recipients may, without prior written approval:
  - Make minor changes to the methodology, approach, or other aspects of the project to meet objectives or to expedite completion.
  - Adjust their project budgets (except for adjustments requiring formal amendments) provided they use the funds in accordance with the approved workplan/narrative, EPA regulations, and applicable cost principles.
  - Changes in the staff (other than key personnel), provided they will not affect the objectives of the project.
- However, the recipient should discuss these changes with the PO because EPA is not obligated to pay for any changes that result in cost overruns.

TRANSFERRING AN AWARD

- **Transfer By Award of New Assistance Agreement**
- **Transfer By Amendment**



VIEWGRAPH # 7
TITLE: Transferring an Award

KEY POINTS:

- Recipients may request that EPA transfer a project to another organization for a number of reasons, e.g., transfer of the Project Manager to another organization, reorganization, changes in the recipient organization's name.
- There are two ways to transfer an award (procedures for each may be found in Chapter 34 of the Assistance Administration Manual).
  - Terminate the existing award and make a new award. This is called a "novation" and the PO should contact the GMO if this is to be used.
  - Amend the existing award.
- If a legislative or other legal action (e.g., merger, divestiture, reorganization, or recipient name change) affects the status of the recipient, the Award Official may transfer the award to the new recipient or change the recipient's name by issuing an amendment.

DEVIATIONS

Deviation Requests Include:

- **Name, Assistance Identification Number, Agreement Date, and Award Amount**
- **Section of Regulation From Which a Deviation is Needed**
- **Description of Circumstances and Justifications**
- **Statement as to Whether Similar Deviation Has Been Made Previously for the Project in Question**

VIEWGRAPH # 8
TITLE: Deviations

KEY POINTS:

- Recipients are required to comply with all EPA requirements. In some cases, however, it may be necessary to "waive" (deviate) from a regulatory provision. **EPA does not have the authority to deviate from statutory or Executive Order requirements.**
- The Director, Grants Administration Division is the person delegated by the Administrator to approve or disapprove deviations from regulatory provisions.
- Recipient deviation requests for Regional awards must be submitted in writing to the Region or delegated State agency, as appropriate. The Region (generally the GMO), with input from the PO and the delegated State agency, as appropriate, then submits the request to the Director, GAD for signature.
- For deviations from Headquarters awards, the recipient sends the request directly to the GMO, which processes and submits the request to the Director, GAD for signature.
- **Deviation requests should be submitted as soon as the need for the deviation is known, NOT AFTER THE FACT.**
- Each request for a deviation must include:
  - The name of the applicant or recipient, the assistance identification number of the application (if available) or award, the date of the award, and the dollar value of the application or award and the amount in question.

VIEWGRAPH # 8 (Continued)
TITLE: Deviations

KEY POINTS:

- The section(s) of the regulation from which a deviation is requested.
- A complete description of the circumstances, a careful analysis of the situation, justification for the deviation, an explanation of what the deviation will do, and any pertinent background information, including a copy of the applicant's or recipient's request.
- A statement as to whether the same or a similar deviation has been previously requested for the same project, and if so, an explanation as to why the previous request was made and the outcome.
- If a deviation is requested for a project administered in a Regional Office, the deviation must also contain the Region's recommendation, including the delegated State's recommendation, if appropriate, and the name of a contact in the Regional Office who is most familiar with the request.

• GMO internal procedures may vary, so PO's should contact their GMO to find out the required steps.

• The applicant may request a deviation before the agreement is awarded. If a deviation is approved before award, the approval will be contingent upon the approval of the application and award of the assistance agreement.

• The Award Official must incorporate the provisions of any approved pre-award deviation in the agreement.

• The GMO must retain a copy of each deviation decision in the official assistance file. The PO should also keep a copy in the project file.

• The Director, Grants Administration Division may reconsider the decision if that decision was based on incomplete information.

DISPUTES

- **Responsibility for Disputes Resolution**
- **Some EPA Actions not Subject to Review**

VIEWGRAPH # 9
TITLE: Disputes

KEY POINTS:

- Whenever possible, disputes between EPA and recipients should be resolved at the lowest level possible.
- Each Award Official (Regional and Headquarters) may designate one or more Disputes Decision Officials (DDO). The Disputes Decision Official is responsible for deciding disagreements between EPA and recipients (they may also decide disputes with applicants).
- The most frequent disputes are a result of recipient disagreements with audit findings.
- The following EPA actions cannot be disputed:
  - Denials of deviation requests (40 CFR Parts 30 and 31);
  - Bid protest decisions (40 CFR Parts 31 and 33);
  - National Environmental Policy Act decision (40 CFR Part 6);
  - Audit Resolution Board decisions (EPA Order 2750); and
  - Debarments/suspensions (40 CFR Part 29).
- For Headquarter awards, the disputee may request that the appropriate Assistant Administrator review the dispute and render the Agency's final decision. These requests must be sent directly to the Assistant Administrator.

VIEWGRAPH #9 (Continued)
TITLE: Disputes

KEY POINTS:

- For disputes of Regional awards, if a recipient disagrees with a decision made by a Disputes Decision Official, the disputee may request a review by the Regional Administrator. The Regional Administrator's decision is final unless the disputee requests a **discretionary** review by the Assistant Administrator of the affected program. If the Assistant Administrator does not elect to review the dispute, the Regional Administrator's decision is the final Agency action. If the Assistant Administrator reviews the dispute, the Assistant Administrator's decision is the final Agency action.

EPA RESPONSE TO RECIPIENT PERFORMANCE

- **NONCOMPLIANCE AND HIGH RISK**
- **PERFORMANCE-BASED ASSISTANCE POLICY**

VIEWGRAPH # 10
TITLE: EPA Response to Recipient Performance

KEY POINTS:

- EPA officials are faced with a wide range of potential problems involving participants in the assistance process. The participant may be an assistance recipient, a contractor, a subcontractor, or a supplier to a recipient. In some cases, the problem may involve a technical matter which can easily be resolved by informal discussions with the participant. At other times, the matter may involve nonperformance, poor performance, or a criminal matter which places the Agency's assistance programs at significant risk.
- To deal with noncompliance or high risk participants, Award Officials may impose special conditions on the award, find a person or organization non-responsible to receive an award, issue stop work orders, withhold payment of funds, terminate or annul an award, or initiate an investigation to determine if further action is necessary. Further, after all administrative remedies are exhausted, the Director, OGD, may suspend and/or debar any person or organization from participation in all EPA assisted activities for a specified period of time.
- For Continuing Environmental Program grants, EPA developed a "Policy on Performance-Based Assistance" to ensure a consistent effort within the Agency to assess recipient performance against negotiated commitments, to reward accomplishments, and to correct problems (See Appendix L for a copy of the policy.)
- Because the remedies for recipient noncompliance may have ramifications outside the Agency, it is important that any Agency action be coordinated among the various offices concerned. Principal participants in the decision to take an action are the program office, GMO, and the Office of General Counsel or Office of Regional Counsel. The Office of Inspector General (OIG) is also a key participant in suspension or debarment actions or where a matter may involve an audit or potential criminal wrongdoing.

PROJECT OFFICER ROLES AND RESPONSIBILITIES

- **TECHNICAL EXPERTISE**
- **DAY-TO-DAY MANAGEMENT OF THE AGREEMENT**
- **FOCAL POINT FOR PROGRAMMATIC ISSUES**

VIEWGRAPH # 11
TITLE: Project Officer Responsibilities

KEY POINTS:

- In this phase, the PO is responsible for:
  - Monitoring all activities and the recipient's progress on the project.
  - Reviewing progress reports and other work products to assure that the recipient is complying with the applicable regulations and the programmatic terms and conditions in the agreement. These products should be reviewed for timeliness and completeness. The PO must also track the receipt of programmatic reports and work products and inform the GMO when they are received so that the GMO can keep track of reports and work products in the grant.
  - Providing comments to the recipient on the progress reports and other work products and sending copies to the GMO if funding is potentially affected.
  - Providing technical assistance to recipients when requested or required by terms and conditions of the award.
  - Maintaining the official technical project file and ensuring that it is complete.
  - Maintaining a record of communications with the recipient and providing, as appropriate, the GMO or other EPA offices with copies of pertinent correspondence to and from the recipient.
  - Advising the GMO whenever anything occurs which could endanger the successful completion of the project, and working with these offices to decide what actions need to be taken to assure that the project will be completed as designed , that funds are spent properly, and, if necessary, what sanctions would be appropriate.

VIEWGRAPH # 11 (Continued)
TITLE: Project Officer Responsibilities

KEY POINTS:

- Reviewing requests for modifications (time extensions, additional funding , etc.) and recommending to the GMO whether the agreement should be changed.
- Recommending to the GMO whether an agreement should be terminated.
- Reviewing the Financial Status Reports (SF 269 or 269a).
- Meeting with the GMO to discuss administrative/financial problems and issues on an "as needed" basis.
- Conducting periodic reviews to assure that the recipient is complying with the terms and conditions of the agreement. The PO should provide the GMO a copy of the evaluations.
- Communicating regularly with any other program staff with responsibility for aspects of the project/program to keep apprised of the progress on issues which need resolution.
- Assisting the recipient, where appropriate, with the development of an Action Plan for conducting subsequent years of the project.
- Providing input to their GMO on recipient's requests for any rebudgeting or other actions which require EPA prior approval.
- Notifying the GMO if the recipient is not complying with the terms & conditions of the agreement.

GRANTS MANAGEMENT OFFICE
ROLES AND
RESPONSIBILITIES

- **ADMINISTRATIVE EXPERTISE**
- **ASSURE ADMINISTRATIVE REQUIREMENTS ARE MET**
- **FOCAL POINT FOR ADMINISTRATIVE ISSUES**

VIEWGRAPH # 12
TITLE: Grants Management Office Roles and Responsibilities

KEY POINTS:

- In this phase, the GMO is responsible for:
  - Maintaining the official administrative file and ensuring that the file contains all required materials, records, and documentation.
  - Assuring that all reports and work products required by the agreement are received in EPA . Some reports may go directly to the PO (e.g., progress reports), or the FMO (e.g. Federal Cash Transaction Reports) but the GMO has to ensure that all reports required by the agreement have been received. Some GMOs may ask the POs to send a memorandum certifying that all programmatic reports and work products were received on time and were of acceptable quality.
  - Reviewing the Financial Status Reports and resolving any discrepancies.
  - Monitoring the financial and management aspects of awards through reviews of reports, correspondence, site visits, or other appropriate means.
  - Ensuring that the recipient complies with the applicable administrative requirements, including certifications, procurement, and indirect cost agreements.
  - Conducting oversight reviews of recipient's administrative systems, e.g., procurement, property, and general administrative.

RECIPIENT ROLES AND RESPONSIBILITIES

- **COMPLYING WITH ALL REQUIREMENTS IN THE AGREEMENT**

VIEWGRAPH # 13
TITLE: Recipient Roles And Responsibilities

KEY POINTS:

- In this phase, the recipient is responsible for:
  - Expending and accounting for funds in accordance with the agreement, program regulations, and statutes.
  - Accounting for total project costs and segregating allowable and unallowable costs.
  - Conducting procurements in accordance with the appropriate procurement rules, including ensuring that debarred or suspended bidders are not awarded a contract using Federal funds.
  - Complying with the appropriate Disadvantaged Business Utilization requirements and ensuring that their subcontractors comply with the requirements.
  - Recording the receipt and expenditure of program income as a project transaction.
  - Complying with the appropriate property purchase, management, and disposition requirements.
  - Complying with EPA requirements and the Uniform Relocation Acquisition Assistance and Real Property Acquisition Act, if real property is purchased under the agreement.
  - Requesting the Award Official's required approval for a formal assistance amendment.
  - Requesting the PO's approval for an informal amendment.
  - Complying with all applicable reporting requirements, including submitting progress reports, Financial Status Reports, MBE/WBE reports.

OTHER OFFICE ROLES AND RESPONSIBILITIES

- **FINANCIAL MANAGEMENT OFFICE**
- **OFFICE OF GENERAL COUNSEL**
- **MBE/WBE COORDINATORS**

VIEWGRAPH # 14
TITLE: Other Office Roles And Responsibilities

KEY POINTS:

Financial Management Office (FMO)

- Processing requests for payments.
- Complying with any request from the GMO to restrict payment for appropriate programmatic or administrative reasons. For instance, the PO may want to review and approve the results of one part or activity of the work before allowing the recipient to draw down on additional funds.

Office of General Counsel/Regional Counsel

- The Office of General or Regional Counsel may need to be involved from time to time as legal issues arise.

MBE/WBE Coordinator

- The MBE/WBE Coordinator ensures that, when required, recipients send in completed MBE/WBE reports (SF 334, "MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance")

MODULE VI

CLOSEOUT

CLOSEOUT OF ASSISTANCE AGREEMENTS

BY THE END OF THIS MODULE YOU WILL BE ABLE TO:

- **Understand the Process For Closeout of Assistance Agreements**
- **Describe the Roles and Responsibilities During Closeout**

VIEWGRAPH # 1

TITLE: Closeout of Assistance Agreements

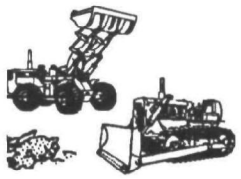
KEY POINTS:

- This module describes the major steps of the closeout process for EPA program and project-type assistance agreements and indicates unique closeout procedures for: (1) Waste Water Treatment Construction grants (WWT construction grants), (2) Continuing Environmental Program grants, and (3) Superfund Cooperative Agreements (Superfund CAs).
- This module also describes the specific roles and responsibilities of EPA staff and recipients during closeout.

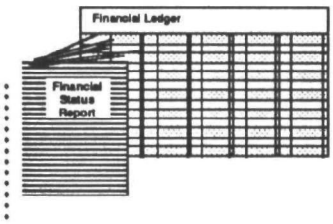
PURPOSE OF CLOSEOUT

Proper Closeout Ensures the Completion of All:

- **Technical Work**



- **Administrative Work**



VIEWGRAPH # 2

TITLE: **Purpose of Closeout**

KEY POINTS:

- The closeout process is a systematic method of ensuring that all technical work (e.g., product development, construction) and administrative requirements (e.g., review of FSRs) have been finalized.
- Closeout is initiated when a project ends due to completion or termination. A project may be terminated because of insufficient funds, non-funding of a renewal, or decision by the recipient or EPA not to continue the project/program.
- Closeout ensures a final accounting of expenditures and an assessment by the PO that all technical work has been completed and is satisfactory.
- Closeout also ensures that any remaining unobligated funds are deobligated.
- A task force developed new agency closeout policy on all EPA programs. A final policy was issued August 27, 1992, and the Assistance Administration Manual will be updated. (See Appendix T.)

ROLES AND RESPONSIBILITIES

Category	Recipient Role	EPA Role
Technical Issues	• Submits Final Technical Report/Product	• PO provides comment to recipients • PO Notifies GMO of acceptance or rejection
Financial Issues	• Submits final FSR and/or final payment request	• FMO Settles Billings and Payments • GMO & PO Review and Approve Financial Status Report • GMO Amends Agreement or issues Assistance Adjustment Notice • GMO & FMO Deobligate balances • GMO & PO Assure All Audit Exceptions Are Resolved
Legal Issues	• Completes Cost Recovery Requirements (Superfund) • Provides Notification of Settlements (Superfund)	• GMO & PO Resolve Any Disputes
Institutional Issues (Superfund Clean ups)	• Provides Assurance that Institutional Controls, if Required, are in Place	• GMO Documents Closure in Files • GMO, PO, & FMO maintain Official Records
Property	• Requests disposition Instructions	• PO disposition of property • GMO Provides Disposition Instructions
Inventions	• Submits inventions report	• OGC Resolve patent interest • GMO provides instructions

VIEWGRAPH # 3

TITLE: Roles and Responsibilities

KEY POINTS:

- This viewgraph provides an overview of the recipient's and EPA's roles and responsibilities in the closeout requirements for assistance agreements.
- All assistance agreements are subject to audit. However, audit is not a requirement prior to closeout.

TIMING OF CLOSEOUT

TYPE OF AGREEMENT	TIMING OF CLOSEOUT
PROJECT GRANTS, INCLUDING WTT CONSTRUCTION GRANTS	When Project Ends
CONTINUING ENVIRONMENTAL PROGRAMS	When previous Continuation Agreement Ends
SUPERFUND	
Pre-Remedial CA	When PA & SI Activities Are Completed
Single Site CA	When Work is Completed
Multi-Site CA	When Work is Completed at Each Site/Activity and upon Completion of all Site Activities
Core Program CA	When Managerial and Administrative Responsibilities Have Been Completed
All	When project is completed, terminated, or annulled

VIEWGRAPH # 4

TITLE: Timing of Closeout

KEY POINTS:

- Formal closeout can occur only when all parties are satisfied with the final product, all eligible costs have been accepted, all repayments have been received, all terms and conditions or Special Conditions have been met. If an audit is underway prior to closeout, all issues must be resolved prior to closeout.
- The timing of closeout depends primarily on the type of agreement. The viewgraph illustrates when closeout of various types of agreements should take place.
- Closeout of most non-Superfund project grants, including WWT Construction grants, begins when the project period has expired.
- Closeout of Continuing Environmental Program grants begins on the date the previous, most recent, Continuation Agreement expires.
- Closeout of Superfund Cooperative Agreements occurs at the following times:
  - Pre-remedial - when all preliminary assessment/ site inspection (PA/SI) activities have been completed or terminated at all sites.
  - Single-Site CA - when all activities covered by the statement of work (SOW) are completed or terminated at that site.

VIEWGRAPH # 4 (CONTINUED)
TITLE: TIMING OF CLOSEOUT

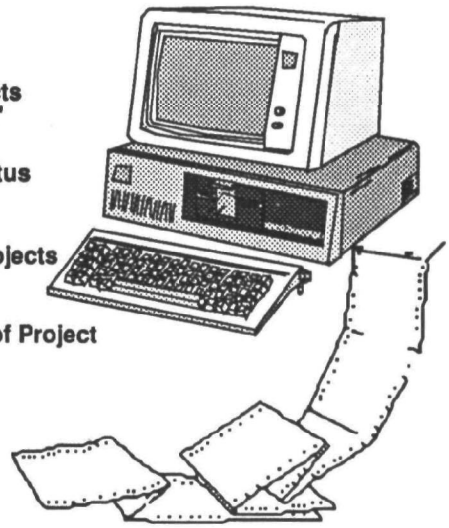
KEY POINTS:

- Superfund Multi-Site Cooperative Agreement (MSCA) - is somewhat different from other CAs.
  - o Closeout of an individual site covered by the MSCA occurs when all activities at that site are completed or terminated.
  - o Closeout of the MSCA occurs when all activities at all sites covered by the SOW have been completed or terminated.
- Superfund Core Program Cooperative Agreements (CPCAs) - when the State has completed the activities specified in the SOW.

INITIATING CLOSEOUT

To Initiate Closeout, GMOs Must:

- **Obtain "Status Report of Projects Completed But Not Closed Out"**
- **Ensure the Accuracy of the Status Report**
- **Send "Reminder Letter" For Projects Scheduled to End in 90 Days**
- **Update GICS When the Status of Project Changes**



VIEWGRAPH # 5

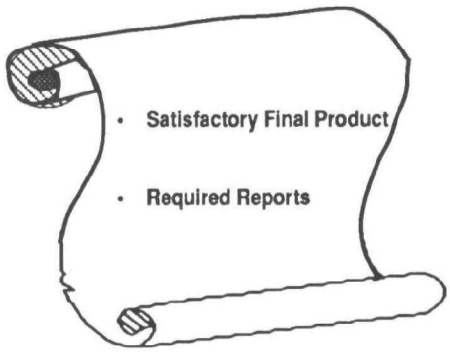
TITLE: Initiating Closeout

KEY POINTS:

- Monthly, the GMO should obtain and review the "Status Report of Projects Completed But Not Closed Out" through the Grants Information Control System (GICS).
- 90 days prior to the project expiration date, the GMOs are to send a "Reminder Letter" to remind the recipient and Project Officer of the closeout requirements. The GMOs will update GICS when the status changes.
- The PO informs the GMO in writing (for file documentation) if the project should be closed out or extended.

DELIVERY OF PRODUCTS AND REPORTS

THE RECIPIENT MUST DELIVER:



VIEWGRAPH # 6

TITLE: Delivery of Products and Reports

KEY POINTS:

- The PO must provide the GMO with written confirmation that:
  - Project is completed;
  - Final report/product(s) were submitted and are satisfactory and comply with Agency Peer and Publication Review requirements.
  - The PO must inform the GMO how property purchased under the agreement, if any, should be handled. (See Appendix U for property disposition requirements.)
- Other reports:
  - Invention Report - EPA Form 3340-3: If the project resulted in any inventions being produced, the recipient must report them on this form to the Award Official. The PO should be aware of any inventions, and should remind the recipient to submit this report;
  - Request for final payment: The PO should remind the recipient to submit a final SF 270, "Request for Payment," or SF 271, "Outlay Report and Request for Reimbursement." In Headquarters, the GMO will notify the recipient through an Assistance Adjustment Notice to request final payment, and
  - MBE/WBE Reports - SF 334: The recipient must submit a final report on their contracting with MBE/WBE firms.
- If the recipient used any Federally owned property, the recipient must ensure the proper disposal of this property before closeout can be completed. Once the GMO receives the recipient's list of Federally owned property, it must notify the recipient of property disposition requirements.

VIEWGRAPH #6 (Continued)
TITLE: Delivery of Products and Reports

KEY POINTS:

- Recommended disposition of funds: remaining funds are treated differently for Regional and Headquarters administered awards. Regional POs must inform their GMO how the program recommends handling any remaining funds. In Headquarters, any remaining funds will be deobligated.
- If a recipient owes EPA funds, the recipient has 30 days to pay this debt. The GMO will inform the FMO of the debt in order that IFMS can establish an accounts receivable. The assistance agreement cannot be closed out until the debt is paid.
- After receiving and reviewing all deliverables, the GMO will prepare a closeout letter/amendment (using the Assistance Adjustment Notice (EPA Form 5700-42), indicating the disposition of any unused funds. At this time, the GMO notifies the FMO to deobligate any unobligated balances.

<u>Peer and Publications Review Requirements.</u>

- EPA encourages the independent publication of the results of its assistance research in appropriate scientific journals as an important method of recording and reporting scientific information. Any journal article so published must contain a disclaimer that even though it has been funded with EPA funds, it has not been subjected to the Agency's peer and policy review and does not reflect the views of EPA (See Appendix V, page 7 for the exact wording of the disclaimer).
- The recipient should send a courtesy copy of the paper to the EPA PO who is responsible for forwarding it to the appropriate Office Director, Associate, Assistant, or Regional Administrator, and the Science Advisor. EPA Order 2200.4, "Review Process for Scientific, Informational, and Educational Documents," identifies which documents are exempt from this process (e.g., Congressional testimony; press releases; legal opinions; Requests for Proposals, etc.) and which documents must go through the process (all scientific, informational, or educational publications designed for public distribution and created by an EPA employee, contractor, recipient, or consultant unless specifically exempted by the Order.)

VIEWGRAPH # 6 (Continued)
TITLE: Delivery of Products and Reports

KEY POINTS:

- **The PO is responsible for insuring that adequate EPA review consistent with the rights and data clauses of EPA assistance agreements is conducted, including the approvals by appropriate Associate, Assistant, or Regional Administrators, the Science Advisor, and the Office of Public Affairs, if necessary.**
- For all Reports accepted for publication, the Project Officer submits a Technical Data Report (EPA Form 2220-1) to the appropriate GMO and submits a Technical Data Report and two copies of the Final Progress Report to the Headquarters library.

PROJECT OFFICER ROLES AND RESPONSIBILITIES

- **CERTIFY ALL WORK PRODUCTS SUBMITTED**
- **RECOMMEND DISPOSITION OF PROPERTY**
- **RESPOND TO OIG QUESTIONS**

VIEWGRAPH # 7
TITLE: Project Officer Responsibilities

KEY POINTS:

- In this phase, the PO is responsible for:
  - Certifying to the GMO within 90 days of project completion, that all project activities were satisfactorily completed and all work products submitted as required in the agreement.
  - Providing assistance as necessary to recipients and the GMO to assure that the agreement is closed out in a timely manner.
  - Discussing equipment disposition and closeout of technical requirements with the recipient at least 30 days prior to project completion.
  - Obtaining assistance and advice, if necessary, on property disposition issues (including transfer or reimbursement issues) or on any follow-up action relative to incomplete outputs, including the need for sanctions.
  - If there is an audit of the project, the PO will be required to respond to any programmatic issues and may be the responsible program person to ensure that the recipient complies with any programmatic audit recommendations.

GRANTS MANAGEMENT OFFICE ROLES AND RESPONSIBILITIES

- INITIATE CLOSEOUT
- INFORM OIG OF PENDING CLOSEOUT, IF REQUIRED
- DEOBLIGATE FUNDS
- RESPOND TO OIG QUESTIONS

VIEWGRAPH # 8
TITLE: Grants Management Office Roles and Responsibilities

- In this phase, the GMO is responsible for:
  - Initiating the closeout process by sending the recipient and PO a reminder letter 90 days before the project period expires.
  - Informing the Office of Inspector General of pending closeouts of Wastewater Construction Grants and Superfund projects.
  - Taking necessary actions to close out awards when all project work in the agreement is completed.
  - Issuing an amendment/Assistance Adjustment Notice to deobligate remaining funds.
  - If there is an audit of the project, the GMO will respond to any administrative findings and recommendations. If there are administrative recommendations affecting the recipient, the GMO will be responsible for following up to ensure that the recipient complies with the recommendations.

OTHER PLAYER'S ROLES AND RESPONSIBILITIES

- **RECIPIENT**
- **SFO/FMO**

VIEWGRAPH # 9
TITLE: Other Player's Roles And Responsibilities

KEY POINTS:

- In this phase, the **recipient** is responsible for:
  - Responding to any inquiries from the PO and GMO.
  - Submitting technical, financial, and administrative reports as required.
  - If an audit is conducted, providing the auditors with all necessary information, documentation, etc. related to the agreement.
- In this phase, the **SFO** is responsible for:
  - Reviewing the Integrated Financial Management System (IFMS) record and working with the GMO to resolve any differences between the final Financial Status Report and IFMS balance.
  - Deobligating from IFMS any remaining balance and reducing the Automated Clearinghouse or payment records, as necessary.
  - Responding to any financial audit questions during an audit.

VIEWGRAPH #10
TITLE: Dos and Don'ts

KEY POINTS:

MODULE VII

AUDIT

AUDITS

THIS MODULE WILL:

- **DESCRIBE THE BASIC AUDIT PROCESS**
- **DESCRIBE THE POs ROLE IN THE AUDIT PROCESS**

VIEWGRAPH #1
TITLE: Audits

KEY POINTS:

- The Inspector General Act authorizes the Inspector General (IG) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Agency. To meet its responsibilities, the IG must have the cooperation of Agency personnel.
- Title 18, United States Code, Section 1516 states that whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor shall be fined or imprisoned. Therefore, it is imperative that all personnel recognize their obligation to make full disclosure of information pertaining to instances of waste, fraud, or abuse.
- The next few slides will provide an overview of EPA's audit process, identify some of the key individuals involved in conducting and resolving audits, how to survive an audit, and the PO's responsibilities during the audit and during audit resolution.

EXERCISE:

Discuss the following questions based on the audit experience of the class members.

- How can an audit help us perform our jobs?
- What does an auditor look for during an audit?

TYPES OF AUDITS

- Internal Audits
- External Audits

VIEWGRAPH # 2

TITLE: Types of Audits

KEY POINTS:

- Internal audits **are performance audits that examine the programs or operations of Federal agencies.** *(However, as part of an internal audit, State agencies or assistance recipients may be evaluated to provide further information about the performance of a Federal agency.)* Internal audits are used to test the adequacy of an organization's regulatory compliance and financial reporting. Additionally, they are used to test the effectiveness of its resource management, operating procedures, program results, and financial operations. Internal audits may evaluate the entire organization or only one or two of an organization's programs or operations. Internal audits of EPA are conducted by the U.S. General Accounting Office (GAO) or EPA's Office of the Inspector General (EPA OIG).
- External audits **are audits that examine a Federal agency's assistance recipients.** These audits are conducted by the EPA OIG or its contractor, or, in the case of Single Audits, by the recipient. They may be performed before, during, or after the completion of a project. Examples of external audits include single audits, pre-award audits, interim and final cost audits, and indirect cost audits.
  - Single audits are financial and compliance audits of State and local governments or universities and nonprofits that are performed in accordance with OMB Circular A-128 (for States, local governments, and Indian tribes), or OMB Circular A-133 (for universities and other nonprofits).

VIEWGRAPH # 2 (Continued)

TITLE: Types of Audits

KEY POINTS:

- Pre-award audits are reviews conducted to evaluate prospective cost or pricing data.
- Interim and final cost audits are reviews conducted to assess the allowability of costs claimed under the assistance agreement or contract and to ensure compliance with the applicable requirements and award conditions.
- Indirect cost audits are reviews conducted to determine whether the prospective indirect cost rate properly allocates allowable costs.

- **Audits of recipients may be requested by the program office, GMO, or Award Official when considered necessary.** These requests should be made on EPA Form 5700-29, "Assistance Audit Request." The PO may submit the form directly to the appropriate Divisional Office of the Assistant Inspector General of Audits (DIGA), but to the extent possible, the POs should coordinate requests for audits with the GMO.
- EPA is authorized to audit the financially-assisted activities of any recipient organization. However, it is Federal policy to place maximum reliance on a recipient's own audits (i.e., Single Audits) if they are carried out in accordance with applicable Federal audit standards.

AUDIT OFFICIALS

- **Inspector General**
- **Agency Audit Follow-up Official**
- **Disputes Decision Official**
- **Audit Follow-up Coordinator**
- **Action Officials**
- **Award Officials**

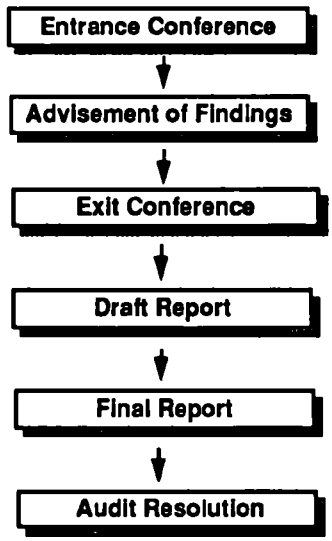
VIEWGRAPH # 3

TITLE: Audit Officials

KEY POINTS:

- On behalf of EPA's **Inspector General,** the Office of the Assistant Inspector General for Audits (OAIGA) arranges for and monitors the audits of EPA's financial assistance program activities.
- The Agency Audit Follow-up Official is responsible for Agency-wide audit resolution and implementation of required corrective actions. The Assistant Administrator for Administration and Resources Management is the Agency Audit Follow-up Official.
- The **Audit Follow-up Coordinator** (AFC) is responsible for the day-to-day activities that relate to audit management, response, and resolution. These individuals are designated by the Regional Administrators or Assistant Administrators.
- The **Disputes Decision Official** (DDO) is responsible for resolving all action regarding recipients. This person also serves as the Action Official for grant reports.
- The **Action Official** is responsible for responding (on behalf of the audited organization) to the draft and final reports and for all actions required to deal with the specific OIG report. For grants, it is the Disputes Decision Official.
- The **Award Official** is responsible for designating the Disputes Decision Official.

THE AUDIT PROCESS



VIEWGRAPH # 5

TITLE: The Audit Process

KEY POINTS:

- At the entrance conference, the auditors explain the purpose and scope of the audit and receive comments from the organization being audited regarding potential audit areas. All personnel with extensive knowledge of the area being audited should be at the entrance conference. The OIG will ask the AFC for the program and GMO contacts for this audit, and will provide a list of key audit personnel.
- During the audit, the auditors provide the organization with feedback about preliminary findings and developing issues. If the organization believes that any of these findings are invalid, based on factual information, it should discuss this with the auditors. Further, significant or sensitive findings should be brought to the attention of the organization's senior management immediately.
- At the exit conference, the auditors discuss the audit findings with the organization to clarify any questions they may have about the audit.
- Shortly after the audit is completed, a draft report is issued. The report contains the auditor's findings and documentation to support these findings.

VIEWGRAPH # 5 (cont.)

TITLE: The Audit Process

KEY POINTS:

- After receiving the draft report, the organization is expected to provide a written response to the audit findings contained in the draft report within 30 days. The organization's response should concur with the findings or provide an explanation for its disagreement. If the organization has planned or implemented corrective actions, these should be documented in the response as well.
- After the exit conference, the auditors develop a draft audit report containing their findings and recommendations. After receiving this report, the organization's management has 90 days, if the findings are over $100,000, to provide OIG with a response that either documents concurrence with the audit report or proposes alternative corrective actions for addressing the findings.
- Audit resolution occurs either when a "final determination" is issued (in the case of an external audit), or when a "final response" is issued (in the case of an internal audit). For EPA OIG audits containing significant findings of $100,000 or more, the Action Official must obtain the concurrence of the EPA OIG on proposed corrective action.
- Under the Inspector General Act Amendments, EPA management must track audit follow-up actions until all corrective actions identified in its management decision are complete. Further, EPA management must report to Congress semi-annually on the status of audit resolution and follow-up activities, as well as provide an explanation for audits not resolved within 180 days and final actions that have remained incomplete for one year or more. Currently, EPA's Resource Management Division prepares the semi-annual report to Congress on audit resolution and implementation of corrective action.

SURVIVING AN AUDIT

- **DOCUMENTATION**
- **COURTESY**
- **PREPARATION**
- **COMMUNICATION**

VIEWGRAPH # 6
TITLE: Surviving an Audit

KEY POINTS:

- To help make the audit process proceed as smoothly as possible, POs should keep the following in mind:

  Documentation:

  - The PO must document in the official Project File all decisions, communications, memos, etc. from the beginning of the agreement (see Appendix S). The auditors will assume that the PO has approved all actions taken by the recipient unless there is some documentation in the file to show otherwise.
  - Be responsive to requests for information. Make all documents available to the auditors. Remember, everything in the file is subject to review, e.g., records, memos, and telephone messages.

- The following are some guidelines to follow when interacting with the auditors:

  Courtesy.

  - Maintain good working relationships with the auditors.
  - Use audit as an opportunity to identify and address weaknesses.

VIEWGRAPH #6 (Continued)
TITLE: Surviving an Audit

KEY POINTS:

Preparation.

- Determine what auditors will look for.
- Cooperate & demonstrate steps already taken to resolve issues or agree to take corrective actions.
- Demonstrate knowledge of program.
- Ask other POs who have been through an audit what to expect during an audit.

Communication.

- Answer all questions.
- Tell auditors what action(s) you have taken to improve problem areas.
- Be truthful. Discuss all problems and issues; give auditors all data they request.
- Advise auditors of matters which you believe they should review during the audit.

VIEWGRAPH #7
TITLE: Dos and Don'ts

KEY POINTS:

ASSISTANCE
PROJECT OFFICERS
TRAINING COURSE

MODULE VIII

INTERAGENCY AGREEMENTS

DEFINITION OF AN IAG

AGREEMENT BETWEEN EPA AND A FEDERAL AGENCY, STATE, OR LOCALITY.

IAGS PROVIDE:

- **GOODS OR SERVICES IN EXCHANGE FOR FUNDS,**
- **MISSION SUPPORT OR ENVIRONMENTAL POLICY WITHOUT EXCHANGE OF FUNDS**

VIEWGRAPH # 1

TITLE: **Definition of an IAG**

KEY POINTS:

- The acronym "IAG" is used as an abbreviation for both:
  - **Federal interagency agreements,** and
  - **Intergovernmental agreements** between a Federal agency and a State or local government.
- There are 2 participants in IAGs:
  - "Ordering Agency," which pays for the goods or services, and
  - "Servicing Agency," which provides the goods or services.
- IAGs are not assistance agreements. They are used for different purposes. IAGs and assistance agreements are alike in the monitoring requirements for POs.
- IAGs are subject to the "Servicing Agency's" rules and regulations and to any special conditions the "Ordering Agency" places on the IAG, e.g., MBE/WBE requirements, Superfund audit.
- **EPA can provide funds to States and local governments only under an assistance agreement.**

VIEWGRAPH # 1 (Continued)
TITLE: Definition of an IAG

KEY POINTS:

THERE ARE FOUR (4) TYPES OF IAGS

Federal Interagency Agreements

- Written agreements between Federal agencies under which goods and services are provided in exchange for funds, or where services are exchanged without payment. (See Appendix W for a sample IAG.)
- IAGs where funds are exchanged involve either:
  - One agency providing goods or services to another agency, or
  - Both agencies having a mutual need for the goods or services and sharing in the costs incurred.
- IAGs may be awarded to any Federal agency, including bureaus and offices within an Agency. Government-owned, contractor-operated facilities (GOCOS) such as the Department of Energy's labs, (e.g., Lawrence Livermore) are considered components of the Federal government and, therefore, eligible to receive IAGs. (The District of Columbia is not a Federal agency.)

"Policy Agreements or Memorandums of Understanding"

- These are IAGs where no funds change hands. These agreements set forth basic policies and procedures governing the relationship between the agencies (i.e., their respective roles and responsibilities) to accomplish a joint goal or project. An example is the agreement between EPA and the Department of Energy, whereby EPA will lead a Superfund cleanup at a Federal facility.

Intergovernmental Agreements

- These are agreements between a Federal agency and a State or local government under which the **State or local government reimburses the Federal agency** for the costs of providing a specific technical service, e.g., statistical studies and compilations, technical tests and evaluations, training, surveys, reports, documents, and data.

VIEWGRAPH #1 (Continued)
TITLE: Definition of an IAG

KEY POINTS:

International Agreements.

- These are under which work will be conducted for a foreign government or international organization. EPA uses the EPA IAG form for these agreements.
- The Office of International Activities (OIA) must be involved as soon as practicable after the need for foreign agreements is known.
- **The OIA must approve every international agreement.** The OIA is responsible for obtaining State Department and the Trade Development Agency's approval when the IAG includes international activities. OIA must also obtain the Office of General Counsel's approval.
- IAGs **cannot be used to provide funds directly** to a foreign government or international agency. Funds may be transferred to these agencies only under an assistance agreement between EPA and the foreign entity. However, EPA can use one of our Cooperation Authorities to join with other federal agencies to provide goods or services to foreign governments through contracts or assistance agreements as long as both EPA and the other agency have responsibility/authority for the proposed project. For example, EPA provided waste water treatment equipment for Poland by transferring the funds to the Corps of Engineers which did the purchasing.
- EPA **can accept** funds directly from the foreign governments and organizations to provide services to those entities (funds-in). These "foreign"agreements are authorized by the Foreign Assistance Act and must be approved by the Trade Development Agency.

AUTHORITY

- **ECONOMY ACT OF 1932**
- **COOPERATION AUTHORITIES**
- **INTERGOVERNMENTAL COOPERATION ACT**

VIEWGRAPH # 2
TITLE: Authority

KEY POINTS:

THE ECONOMY ACT OF 1932

- The Act is the general authority which authorizes Federal agencies to exchange goods and services and to reimburse one another.
  - The primary purpose of the Act is to allow an agency to obtain goods or services from another agency to improve economy and efficiency in the government.
  - This Act is often used to fund IAGs which bolster one agency's capability to conduct an activity in a specific area with another agency's expertise.
  - To use the Economy Act, **both Federal agencies must be inherently responsible for conducting the proposed activities and authorized to use their appropriation for the work.** Under these IAGs, EPA provides the service or goods with its own staff or through agency contracts.
  - The "Ordering Agency" (Agency who paying for the service or goods received) must also determine that the work does not conflict with any other agency's authority or responsibility.
  - If the work involves the use of a commercial or industrial activity operated by the "Servicing Agency" (Agency providing the goods or service), the "Ordering Agency" must also determine that the acquisition conforms to the "contractor versus government performance" requirements of the Federal Acquisition Regulation, which explains when the Federal government may compete with the private sector.

VIEWGRAPH #2 (Continued)
TITLE: Authority

KEY POINTS:

COOPERATION AUTHORITIES

- EPA also has authority to enter into IAGs with other Federal agencies under "cooperation" provisions of our program statutes, e.g., §103 of the Clean Air Act, and §104 of the Clean Water Act. If the receiving agency will use any of the funds to fund a grant or cooperative agreement, EPA's IAG must identify EPA's statutory authority to award a grant or cooperative agreement.

INTERGOVERNMENTAL COOPERATION ACT

- The Intergovernmental Cooperation Act is the general authority which allows State and local governments to obtain goods/services from the Federal government. It authorizes, in part an Intergovernmental Agreement between a Federal agency and a State or local government under which the Federal agency provides technical services it is especially capable to perform in exchange for reimbursement. The Office of Management and Budget Circular A-97 provides detailed guidance for these agreements.
- Intergovernmental agreements can involve services from an EPA contract only if:

  - The State or local government certifies that the services are not reasonably and quickly available through ordinary business channels; and
  - The services performed under the contract are regular and continuing activities performed by the agency (i.e., almost as if the contractor were doing regular work of the agency, such as, contractors working on site at EPA labs.)

    For example, GAD recently had a request from a State to allow it access to one of EPA's PC maintenance contracts, however, this is not fundable because it is a service not normally provided by EPA and it is readily available through ordinary business channels.

IAG GUIDANCE

- **COMPENDIUM**

- **PRINCIPLES OF FEDERAL APPROPRIATIONS LAW**

VIEWGRAPH # 3

TITLE: IAG Guidance

KEY POINTS:

- There are no EPA regulations which apply to the development and management of an IAG. Instead, EPA uses:

  - The IAG Compendium, "Interagency Agreement Policy and Procedures Compendium" The Compendium is a compilation of information pertaining to IAGs. It includes information in general terms that apply to all EPA programs and offices that use IAGs. It is specifically directed to EPA program administrative and financial staff who have an active part in developing and administering IAGs.

  - Appropriations law. Many IAG issues revolve around interpretation of appropriations law. For example, EPA can not use an IAG to augment EPA's appropriations. We must use funds only for the purpose they were appropriated and only as long as they are available. The Comptroller General's "Fundamentals of Appropriations Law" (the Red Book) provides guidance in making these determinations.

- All IAG EPA-wide guidance is developed by the Grants Administration Division, Grants Information and Analysis Branch. Program offices may develop office-specific procedures where appropriate.

AVAILABILITY OF FUNDS

- **APPROPRIATION UNDER THE ECONOMY ACT**

- **PROJECT PERIOD FOR COOPERATION PROVISIONS**

VIEWGRAPH # 4
TITLE: Availability of Funds

KEY POINTS:

ECONOMY ACT IAGS

- IAGs which cite the Economy Act for authority are subject to the limits of availability established in the appropriation (e.g., Superfund, ACC, Research, etc.) from which the funds come.
  - If the funds are used for personnel, travel, or other expenses (e.g., supplies), the funds expire when the appropriation expires or when the project period ends, whichever comes first. This is true even if the planned work is not complete.
  - If the funds are obligated to a contract, they are available for expenditure until the contract or the project period ends, whichever comes first.

COOPERATION PROVISION IAGS

- IAGs which cite the cooperation provisions of EPA's statutes for authority are available until the project period ends. This includes funds used for personnel, travel, and other expenses, as well as funds used for contracts and grants and cooperative agreements.

CINCINNATI FINANCIAL MANAGEMENT CENTER

- **RECORDS OBLIGATIONS**
- **DEOBLIGATES UNUSED FUNDS**

VIEWGRAPH # 5
TITLE: Cincinnati Financial Management Center

KEY POINTS:

- The Cincinnati Financial Management Center (CFMC) is the Servicing Financial Office for all IAGs.
- **Funds-Out IAGS:** CFMC records obligations in the Integrated Financial Management System (IFMS). CFMC will not obligate funds until the other agency accepts the IAG and returns a signed copy of the forms to GAD. Because GAD provides copies of the signed IAG to CFMC, the IAG specialists will call at the end of the year to enlist your aid in getting documents returned from other agencies. If the other Agency does not accept an IAG before the end of the Fiscal Year, the process must be started again. Also, if the proposed IAG is using expiring appropriations, the funds will be lost unless the IAG is signed by both Agencies before the end of the Fiscal Year.
- **Funds-In IAGS:** CFMC establishes accounts and assigns account numbers for other agencies' funds.
- CFMC and GMOs work together to close out IAGs and deobligate unused funds.

PAYMENT/BILLING

- **PAYMENT SYSTEM**
- **POs MUST APPROVE PAYMENTS**
- **BILLING SYSTEM**
- **POs MUST PROVIDE COST INFORMATION**

VIEWGRAPH #6
TITLE: Payment/Billing

KEY POINTS:

- After EPA accepts funds-in IAGs, EPA must bill the Ordering Agency as EPA incurs costs. POs must assure that all charges to the project under a funds-in IAG are charged to the IAG account. POs must ensure that each funding document (e.g., travel order, contract, assistance agreement, and personnel charge) reflects the appropriate account number.
- EPA will bill the other Agency in accordance with the terms of the IAG, but at least quarterly.
- POs must prepare a Report of Reimbursable Services Rendered (EPA Form 2550-8) to allow EPA to bill the Ordering Agency. When completed, the PO sends the Form to CFMC.
- Payments under IAGs are made under one of the following systems. EPA may use either system, depending upon the other Agency's payment system.

Reimbursement:

- Reimbursement is the most frequently used method of payment. Under this method, the billing agency (i.e., Servicing Agency) submits an itemized bill to the Cincinnati Financial Management Center (CFMC) on a SF 1080/1081, or the On-Line Payment and Collection system (OPAC).

VIEWGRAPH #6 (Continued)
TITLE: Payment/Billing

KEY POINTS:

- SF 1080/1081 billing system: **Agencies not using the OPAC billing system use an SF 1080 or SF 1081 to request payment.** (The Department of Defense uses a SF 1080, and other Agencies use the SF1081.) When CFMC receives a payment request, they will send the EPA PO an IAG Invoice Approval Form (EPA Form 2550-21). The PO must sign and return to CFMC the EPA Form 2550-21 (IAG Invoice Approval) before CFMC will release a payment (through a Treasury check).
- OPAC billing system: The OPAC is an on-line system maintained by the Department of Treasury that allows agencies to obtain funds as soon as they are needed. Treasury immediately transfers payments under this system to the Servicing Agency. CFMC charges the bill to the appropriate IAG and sends the PO an EPA Form 2550-21 to approve the request before CFMC will make the payment. If there is a problem with the bill, EPA has 90 days to charge back to the account.

Advance:

- Agencies with Working Capital funds may request payment in advance. In this case, the Servicing Agency may bill for the entire amount of the IAG as soon as the obligation is recorded in IFMS. It must then submit quarterly cost reports to CFMC. POs should assure they receive copies of these reports from CFMC.

EPA REQUIREMENTS

- **ASSISTANCE VS ACQUISITION**
- **TRAVEL**
- **MBE/WBE**
- **SUPERFUND COST RECOVERY AND AUDIT**
- **INDIRECT COST**

VIEWGRAPH # 7
TITLE: EPA Requirements

KEY POINTS:

- When an IAG includes funds for a grant or cooperative agreement, the PO must:
  - Provide a statement that the proposed project is not for the direct use and benefit of the Federal government and is consistent with the requirements of the Federal Grant and Cooperative Agreement Act.
  - Ensure that if the IAG is a "funds-in" IAG, the other Federal agency provides a similar statement.
- When an IAG budget includes funds for travel, the PO must submit a statement that the funds are not intended to augment EPA's travel ceiling and that the travel is necessary to carry out the project.
- In accordance with EPA's Appropriation Act, **each "funds-out" IAG which includes funds for extramural agreements (i.e., contracts, grants, or cooperative agreements) must include a condition requiring the receiving agency to follow EPA's Disadvantaged Business Utilization plan.** In the event an agency claims they will not accept this condition, contact either the Grants Information and Analysis Branch, Grants Administration Division, or the Office of Small and Disadvantaged Business Utilization.
- IAGs which include Superfund monies must include a condition on record keeping and cost recovery. Also, all Superfund expenditures by other agencies must be audited by their IAG annually.
- If an IAG budget includes indirect costs, the IAG must include an indirect cost condition.

PROGRAM OFFICE RESPONSIBILITIES

- ASSURE WORK IS CONSISTENT WITH EPA'S MISSION
- ASSIGN PROJECT OFFICERS
- NEGOTIATE SCOPE OF WORK, FUNDING AND BUDGET
- OBTAIN NECESSARY APPROVALS
- PREPARE FUNDING PACKAGE
- ASSURE PERFORMANCE
- REVIEW AND APPROVE PAYMENT REQUESTS
- CLOSE OUT AGREEMENTS

VIEWGRAPH # 8
TITLE: Program Office Responsibilities

KEY POINTS:

- Activities under IAGs must be consistent with EPA's mission and statutory authority. **EPA cannot use an IAG to acquire authority it does not already have.**
- Each IAG should be for a distinct project with a clearly defined objective or work product. The Program Office must assign a PO to negotiate the work EPA and the other agency will perform. Both agency's POs should negotiate the estimated cost the IAG. The estimate must reflect all costs necessary to carry out the project, e.g., personnel, equipment, extramural agreements, travel, and indirect cost.
- After the scope of work is determined, the PO must prepare a Decision Memorandum which:
  - Summarizes EPA's objectives to be met through the proposed IAG and certifies that the proposed IAG is consistent with the EPA program office's mission.
  - States the IAG is the best means for achieving the objective and, if the Economy Act is the statutory authority for the agreement, how the IAG will enhance government economy and efficiency.
  - Assures all technical and scientific measures will be performed in accordance with an approved Quality Assurance Plan and, if required, include a Quality Assurance form signed by the Quality Assurance Officer.

VIEWGRAPH # 8 (Continued)
TITLE: Program Office Responsibilities

KEY POINTS:

  - Includes a statement that any proposed travel funds are necessary for the project, not intended to augment either agency's travel ceiling, and the travel would not occur except for the other agency's project.
  - Includes a statement that any funds to be used on an assistance agreement will not be for work that is for the direct benefit or use of the Federal government.

- The Decision Memorandum must be signed by the Decision Official (the individual in the program office delegated the responsibility for approving the office's use of funds -- generally the Allowance Holder.)
- If the IAG includes international activities, the PO must obtain the approval of the Office of International Activities.
- For funds-out IAGs, the program office must prepare a Commitment Notice which approves funds for the IAG. GMO staff will verify (prevalidate) the commitment in the IFMS Automated Document Control Register (ADCR) before award.
- If the IAG includes funds for a detail for an EPA employee for more than 120 days, the package must include a completed Personnel Action form (SF 52).
- The PO must prepare EPA Form 1610-1 for each IAG. (GMOs will assist in preparing this form).
- The PO must determine and provide any special conditions which the GMO will add to the IAG, e.g., reporting.
- The PO must determine the method of payment. Generally, payment is made by reimbursement, i.e., after costs are incurred. In some cases, however, it may be necessary to make advance payments. In such cases, the funding package must include a justification for advance payment. If the agreement is "funds-in" the PO should discuss payment method with the other agency's Project Manager.
- The PO must assure products to be produced under an IAG are provided in a timely manner.
- Although the relationship under an IAG is with another Federal agency, inadequate performance should be considered in deciding whether to undertake future cooperative efforts with that agency.

GMO RESPONSIBILITIES

- PREVALIDATE COMMITMENT
- PREPARE AWARD
- SIGN IAG AND DISTRIBUTE
- MONITOR PROJECT TO ASSURE TIMELY COMPLETION AND CLOSEOUT

VIEWGRAPH # 9
TITLE: GMO Responsibilities

KEY POINTS:

- In reviewing funding packages, the GMO will:
  - Assure that all required information is included;
  - Proper authorities are cited; and
  - Prevalidate the funds, if appropriate.
- When corrections or changes are required, the GMO will often make the changes after discussing them with POs.
- When clearances by other offices (such as Office of International Activities) are required, the GMO will assure that the clearances are included.
- The GMO will ensure that information on IAGs is included in the Grants Information and Control System (GICS). GMOs can provide reports on IAGs in many forms. If a program wants a report, they can contact their GMO.
- The GMO staff will prepare a transmittal letter and submit the documents to the Action Official for signature, send the IAG to the other Agency for signature, and distribute copies (e.g., PO, Budget, other Agencies, Cincinnati).
  - In Headquarters, the Action Official is the Chief, Grants Information and Analysis Branch, GAD.
  - In the Regions, the Action Official is the Regional Administrator or their designee.
- The GMO staff maintains the official IAG file, and the PO maintains files which document their project management activities.
- When IAGs are completed, the GMO will work with the PO to assure that the IAG is closed out in a timely manner.

APPENDIX A

APPENDIX A

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT

Public Law 95-224
95th Congress

An Act

To distinguish Federal grant and cooperative agreement relationships from Federal procurement relationships, and for other purposes.

Feb. 3, 1978
[H.R. 7691]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Federal Grant and Cooperative Agreement Act of 1977".

Federal Grant and Cooperative Agreement Act of 1977.
41 USC 501 note.

FINDINGS AND PURPOSE

41 USC 501.

SEC. 2. (a) The Congress finds that—

(1) there is a need to distinguish Federal assistance relationships from Federal procurement relationships and thereby to standardize usage and clarify the meaning of the legal instruments which reflect such relationships;

(2) uncertainty as to the meaning of such terms as "contract", "grant", and "cooperative agreement" and the relationships they reflect causes operational inconsistencies, confusion, inefficiency, and waste for recipients of awards as well as for executive agencies; and

(3) the Commission on Government Procurement has documented these findings and concluded that a reduction of the existing inconsistencies, confusion, inefficiency, and waste is feasible and necessary through legislative action.

(b) The purposes of this Act are—

(1) to characterize the relationship between the Federal Government and contractors, State and local governments, and other recipients in the acquisition of property and services and in the furnishing of assistance by the Federal Government so as to promote a better understanding of Federal spending and help eliminate unnecessary administrative requirements on recipients of Federal awards;

(2) to establish Government-wide criteria for selection of appropriate legal instruments to achieve uniformity in the use by the executive agencies of such instruments, a clear definition of the relationships they reflect, and a better understanding of the responsibilities of the parties;

(3) to promote increased discipline in the selection and use of types of contract, grant agreement, and cooperative agreements and to maximize competition in the award of contracts and encourage competition, where deemed appropriate, in the award of grants and cooperative agreements; and

(4) to require a study of the relationship between the Federal Government and grantees and other recipients in Federal assistance programs and the feasibility of developing a comprehensive system of guideline for the use of grant and cooperative agreements, and other forms of Federal assistance in carrying out such programs.

DEFINITIONS

41 USC 502.

SEC. 3. As used in this Act, the term—

(1) "State government" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State, and any multi-State, regional, or interstate entity which has governmental functions;

(2) "local government" means any unit of government within a State, a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, other interstate government entity, or any other instrumentality of a local government;

(3) "other recipient" means any person or recipient other than a State or local government who is authorized to receive Federal assistance or procurement contracts and includes any charitable or educational institution;

(4) "executive agency" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, an independent establishment as defined in section 104 of title 5, United States Code (except that it shall not include the General Accounting Office), a wholly owned Government corporation; and

(5) "grant or cooperative agreement" does not include any agreement under which only direct Federal cash assistance to individuals, a subsidy, a loan, a loan guarantee, or insurance is provided.

USE OF CONTRACTS

41 USC 503.

SEC. 4. Each executive agency shall use a type of procurement contract as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient—

(1) whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

USE OF GRANT AGREEMENTS

41 USC 504.

SEC. 5. Each executive agency shall use a type of grant agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

Transfers.

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

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

USE OF COOPERATIVE AGREEMENTS

SEC. 6. Each executive agency shall use a type of cooperative agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever— 41 USC 505.

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and Transfers.

(2) substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

AUTHORIZATIONS

SEC. 7. (a) Notwithstanding any other provision of law, each executive agency authorized by law to enter into contracts, grant or cooperative agreements, or similar arrangements is authorized and directed to enter into and use types of contracts, grant agreements, or cooperative agreements as required by this Act. Contracts, grant or cooperative agreements. 41 USC 506.

(b) The authority to make contracts, grants, and cooperative agreements for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research shall include discretionary authority, when it is deemed by the head of the executive agency to be in furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the Government, or on such other terms and conditions as deemed appropriate, title to equipment or other tangible personal property purchased with such funds. Scientific research.

STUDY OF FEDERAL ASSISTANCE PROGRAMS

SEC. 8. The Director of the Office of Management and Budget, in cooperation with the executive agencies, shall undertake a study to develop a better understanding of alternative means of implementing Federal assistance programs, and to determine the feasibility of developing a comprehensive system of guidance for Federal assistance programs. Such study shall include a thorough consideration of the findings and recommendations of the Commission on Government Procurement relating to the feasibility of developing such a system. The Director shall consult with and to the extent practicable, involve representatives of the executive agencies, the Congress, th General Accounting Office, and State and local governments, other recipients and other interested members of the public. The result of the study shall be reported to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate at the earliest practicable date, but in no event later than two years after the date of enactment of this Act. The report on the study shall include (1) detailed descriptions of the alternative means of implementing Federal assistance programs and of the circumstances in which the use of each appears to be most desirable, (2) detailed 41 USC 507. Contents. Consultation. Report to congressional committees.

descriptions of the basic characteristics and an outline of such comprehensive system of guidance for Federal assistance programs, the development of which may be determined feasible, and (3) recommendations concerning arrangements to proceed with the full development of such comprehensive system of guidance and for such administrative or statutory changes, including changes in the provisions of sections 3 through 7 of this Act, as may be deemed appropriate on the basis of the findings of the study.

GUIDELINES

41 USC 508.

SEC. 9. The Director of the Office of Management and Budget is authorized to issue supplementary interpretative guidelines to promote consistent and efficient use of contract, grants agreement, and cooperative agreements as defined in this Act.

REPEALS AND SAVINGS PROVISIONS

Repeal; effective date.

SEC. 10. (a) The Act entitled "An Act to authorize the expenditure of funds through grants for support of scientific research, and for other purposes", approved September 6, 1958 (72 Stat. 1793; 42 U.S.C. 1891 and 1892), is repealed, effective one year after the date of enactment of this Act.

41 USC 501 note.

(b) Nothing in this Act shall be construed to render void or voidable any existing contract, grant, cooperative agreement, or other contract, grant, or cooperative agreement entered into up to one year after the date of enactment of this Act.

41 USC 509.

(c) Nothing in this Act shall require the establishment of a single relationship between the Federal Government and a State or local government or other recipient on a jointly funded project, involving funds from more than one program or appropriation where different relationships would otherwise be appropriate for different components of the project.

Excepted transactions. 41 USC 501 note. Expiration date.

(d) The Director of the Office of Management and Budget may except individual transactions or programs of any executive agency from the application of the provisions of this Act. This authority shall expire one year after receipt by the Congress of the study provided for in section 8 of this Act.

Approved February 3, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-481 (Comm. on Government Operations).
SENATE REPORT No. 95-449 accompanying S. 431 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD:
Vol. 123 (1977): Sept. 27, considered and passed House.
Oct. 1, considered and passed Senate, amended, in lieu of S. 431.
Vol. 124 (1978): Jan. 19, House agreed to Senate amendment.

APPENDIX B

APPENDIX B

EPA ORDER 5700.1, "POLICY FOR DISTINGUISHING BETWEEN ASSISTANCE AND ACQUISITION"

EPA ORDER

Classification No.: 5700.1

Approval Date: 3/22/94

POLICY FOR DISTINGUISHING BETWEEN ASSISTANCE AND ACQUISITION

1. PURPOSE AND APPLICABILITY. The purpose of this policy is to clarify the criteria for and to achieve consistency in the selection and use of contracts, cooperative agreements and grants by all EPA offices and laboratories. This policy expands on the December 2, 1992 memorandum from the Assistant Administrator for Administration and Resources Management on "When to Use Contracts or Cooperative Agreements and Grants" and the EPA Assistance Administration Manual, Chapter 1.

This policy does not apply to interagency agreements because they are not considered assistance under the Federal Grants and Cooperative Agreement Act.

Please contact the Grants Administration Division's (GAD) Grants Policy and Procedures Branch regarding the contents.

2. BACKGROUND. Various Federal statutes authorize and/or direct the EPA Administrator to carry out specific environmental activities. These statutes may specify whether the activities may be accomplished in-house by using EPA staff or by funding outside parties (extramural funding). The latter includes financial assistance (grants and cooperative agreements) and acquisition (contracts). Certain activities may be undertaken in conjunction with another Federal department or agency, a State, or a local government by Interagency or Intergovernmental Agreements (IAG

The Federal Grant and Cooperative Agreement Act of 1977 (FGCAA or Act), PL 95-224, as amended (31 U.S.C. 6301 et seq.) established government-wide criteria for determining whether a grant or cooperative agreement or a contract is the appropriate legal instrument to use for an extramural funding activity. Guidance on implementing the Act was issued by the Office of Management and Budget (OMB) in 1978, (see 43 Fed. Reg. 36860 [August 18, 1978].

The Act was based on a congressional finding that executive agencies were not adequately differentiating between procu[illegible]

and assistance relationships. Specifically, Congress was concerned that agencies were misusing assistance agreements to circumvent competition and other procurement rules, and also applying unnecessarily burdensome contract paperwork requirements to non-procurement transactions. To address these problems, and ensure consistent and uniform agency practice, Congress defined in the Act the standards for determining the appropriate use of contracts and assistance agreements.

Under the Act, grants and cooperative agreements are both assistance agreements and are different from contracts. The only distinction between a grant agreement and a cooperative agreement is the degree of federal involvement.

Under section 4 of the Act, 31 U.S.C. 6303, an agency must use a contract if the principal purpose of an instrument is to acquire, by purchase, lease, or barter, property or services for the direct benefit or use of the federal government, or if the agency otherwise determines that use of a procurement contract is appropriate. Under sections 5 and 6 of the FGCAA, 31 U.S.C. 6304 and 6305, an agency may use an assistance agreement only if the principal purpose of an agreement is to transfer anything of value (e.g., money, equipment, services) to an eligible entity to accomplish a public purpose of support or stimulation authorized by statute. Where an agency will not be substantially involved with the recipient during the performance of an assistance agreement, a grant is the appropriate instrument. If substantial federal involvement is contemplated in the assistance relationship, the Agency must select a cooperative agreement.

Under section 10 of the Act, 31 U.S.C. 6307, OMB is authorized to allow exceptions from the Act's requirements in individual cases. OMB's policy is not to allow exceptions absent a clear demonstration that compliance with the Act would result in serious harm.

It is important to note that the FGCAA does not expand the Agency's authority to award assistance agreements. The Agency has no inherent authority to award assistance agreements; such authority must be found in the Agency's statutes and does not derive from the FGCAA. On the other hand, unless legislatively prohibited, every agency has inherent authority to enter into contracts as long as the procurement is related to the agency's mission.

3. POLICY. EPA offices and laboratories awarding extramural funds must determine whether to award a grant or cooperative agreement or a contract based on the principal purpose of the relationship between the parties.

If an office or laboratory's principal purpose in undertaking a project is to obtain a product or service for the direct benefit or use of the Agency, or any part of the Federal government including the legislative and judicial branches, a contract, rather than an assistance agreement, must be used. This is the case regardless of the benefit the project may have for the recipient organization, other non-federal entities, or the public. Offices and laboratories cannot satisfy the principal purpose test to allow the use of an assistance agreement merely by developing a scope of work describing a project as not being for EPA's direct benefit and use. To withstand an audit, there must be substance behind the written scope of work demonstrating that the project is, in fact, intended to support or stimulate a recipient to accomplish a public purpose authorized by statute.

Offices and laboratories may use a contract even where the principal purpose is to establish an assistance relationship, where the use of a contract is appropriate (i.e., when the office or laboratory determines that specific public needs can be satisfied best by using the procurement process). Offices and laboratories should retain documentation that supports their determination that use of a contract is appropriate. (For example, evidence that use of a contract would be substantially more cost-effective.) Such documentation may be part of the Decision Memorandum.

4. DEFINITIONS.

a. **Approval Official.** The individual having the responsibility and delegated authority in an EPA organization for determining whether to fund or reject an application for technical or programmatic reasons.

b. **Award Official.** The individual who signs the assistance agreement ensuring that all technical, legal, and administrative evaluations have been made and that the proposed agreement is awardable.

The Award Official for regionally administered programs is either the Regional Administrator, the Assistant Regional Administrator, or the Division Director, depending upon Delegation of Authority and any subsequent Redelegations. The Award Official

for grants and cooperative agreements at Headquarters is the Branch Chief, Grants Operations Branch, Grants Administration Division, Office of Grants and Debarment, Office of Administration and Resources Management.

c. **Decision Memorandum.** An EPA office or laboratory's memorandum to an Award Official containing the decision and justification for funding or rejecting an assistance proposal. This decision is signed by the Approval Official or his/her respective designee.

d. **Grants Management Offices (GMO).** The Headquarters and Regional units responsible for business management aspects associated with the review and negotiation of applications and the award and administration of funded projects from pre-application through audit resolution and final close out. In the Regions the GMOs report organizationally to the ARA; in Headquarters the GMO reports to the Director, GAD.

e. **Statutory Authority.** The section of authorizing legislation (such as Clean Water Act or Pollution Prevention Act, etc.) specifically stating that EPA or the Administrator may or shall make grants or provide financial assistance for the intended purpose. (Appears as Item #19 on EPA's Assistance Agreement.)

5. IMPLEMENTATION PROCEDURES: ROLES AND RESPONSIBILITIES

a. **Approval Official Responsibilities.** Each EPA approval official must determine whether a proposed relationship is one of acquisition or assistance. In making this determination, each EPA office and laboratory will use the criteria set forth in Section VI of this policy. In those limited occasions where the approval official has the responsibility of overseeing an award originating in another office, then the approval official's responsibility is limited to ensuring that the originating office states it has determined an assistance relationship exists based on the criteria set forth in this policy.

Offices and laboratories should review all contemplated projects as soon as possible for the purpose of determining whether the nature of the project activity is acquisition or assistance. If it is unclear whether a project is acquisition or assistance, the office or laboratory should request the responsible GMO/Award Official for assistance.

(2) The Decision Memo must state that the assistance instrument is appropriate based on the criteria outlined in this policy.

(3) In most instances, offices and laboratories must allow at least 60 days lead time (Superfund awards require 90 days) from receipt of application by the GMO to the award date. A much longer lead time may be needed to award a contract.

b. **Grants Management Office (GMO) Responsibilities.**

(1) The GMO, will review the determination of the office or laboratory and decide whether to concur. The GMO will make this decision in a timely manner and in conjunction with the Office of General Counsel, Grants and Intergovernmental Division (or Regional Counsel), if necessary.

(2) The GMO must return all completed assistance application packages that are acquisition activities to the office or laboratory and say why it cannot award the project as an assistance project.

(3) The GMO will provide training and information dissemination regarding the appropriate use of grants, cooperative agreements and contracts to staff and project officers to help the offices and laboratories determine the appropriate use of assistance funds and to ensure high quality application packages are produced.

c. **Award Official Responsibilities.**

(1) The Award Official ensures all technical, legal, and administrative evaluations have been made and that the proposed agreement is awardable. If a proposed agreement is awardable, the Award Official is responsible for making the official offer to the designated recipient by signing the award agreement.

6. DISTINGUISHING ACQUISITION AND ASSISTANCE RELATIONSHIPS.

a. **Criteria for Distinguishing Between Acquisition and Assistance.** The following criteria apply to all EPA awards of extramural funds, except where the authorizing legislation was enacted after the FGCAA and specifically supersedes the FGCAA or other provisions of law. In that case, the award instrument specified in the authorizing legislation must be used. Otherwise, the Agency must use the appropriate award instrument as required by the FGCAA. Approval Officials and Award Officials must determine in each instance the proper instrument to use, given the particular circumstances of the transaction.

The decision to use a contract or an assistance agreement must be based solely on the principal purpose of the relationship. If EPA's principal purpose is acquiring property or services from a recipient for direct Agency (or government) benefit or use, an acquisition relationship exists requiring the use of a contract.

If EPA is funding a recipient to support or stimulate activities that are not principally for the direct benefit or use of the Federal Government, and the award is authorized by federal statute, an assistance relationship exists and a financial assistance agreement (i.e., grant or cooperative agreement) may be used.

Note that substantial involvement during performance is not relevant in determining whether an acquisition or assistance mechanism is required. It is only after determining that an assistance agreement is appropriate that substantial involvement becomes a factor. In other words, the need for substantial involvement does not dictate the use of a cooperative agreement rather than a contract. The substantial involvement test is used to distinguish between a grant or a cooperative agreement.

b. Identifying Principal Purpose of Relationship

(1) **Direct Benefit or Use** - In applying the principal purpose test, offices and laboratories must determine whether the government is the direct beneficiary or user of the activity. If EPA provides the specifications for the project; or is having the project completed based on its own identified needs; or will directly use the report or result of the project (for example, by incorporating or relying on information developed by the project in writing EPA guidance or standards) then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of EPA and thus, a contract relationship exists. However, there may be cases where EPA expects to derive some incidental use or benefit from funded activities. Such incidental use or benefit does not preclude an award of assistance when the principal purpose is public support or stimulation. For such cases, an assistance vehicle may be still be appropriate.

Not every benefit to or use by the government is direct. Any extramural expenditure that furthers the Agency's goals or mission can be said to be of benefit or use to the government. But not every expenditure produces for the government a benefit or use that is direct, e.g. immediate, uninterrupted, or specific. If an expenditure will produce a benefit or use that is not direct, a contract is not required.

(2) **Support or Stimulation.** "Support or stimulation", although a relatively broad term, does not encompass every agency extramural award. Every award could be construed to serve a public support or stimulation function if this means that its ultimate goal is to serve the public welfare. However, an award that is not authorized by statute or is intended to acquire goods or services for the direct benefit or use of the government can not be an assistance agreement, regardless of how well it serves the public.

To find a public purpose of support or stimulation, the office or laboratory does not have to determine that the recipient needed the federal assistance to perform the activity; nor is it necessary to determine that the recipient, rather than the Agency initiated the proposed project. It is necessary to find that the project is being performed by the recipient, for its own purposes, which EPA is merely supporting with financial or other assistance.

(3) **Non-Profit vs. Profit Organizations.** Type of organization does not drive the decision to use one instrument or the other. A non-profit organization does not automatically qualify for an assistance relationship. Similarly, a profit-making organization does not automatically reflect an acquisition relationship (although a profit-making organization may be an assistance recipient only if the statutory grant authority so provides). The sole determinant of the proper mechanism is principal purpose. Other 'myths' in this area lead one to believe that research should always be funded by an assistance agreement and that universities automatically receive cooperative agreements. In fact, research can be funded by contract and universities can receive grants or contracts, as well as cooperative agreements.

c. **Acquisition and Assistance Examples.** Examples of activities that EPA may (per individual statutory language) fund through assistance agreements include:

(1) State continuing environmental programs, such as groundwater protection, pesticide enforcement, and public water system supervision;

(2) Constructing local waste water treatment plants;

(3) State and local government cleanup of hazardous waste sites;

(4) Environmental education projects;

(5) Conducting surveys, studies, and research, when the principal purpose is to stimulate or support development or dissemination of knowledge (not primarily for use of EPA;

(6) Training for non-Federal personnel where the recipient selects the trainees, specifies the plan for training, and provides the trainers.

(7) Assistance to associations of State officials, as follows:

As a general rule, an assistance agreement may not be used to support a conference or other services, the principal purpose of which is to provide advice, recommendations, or other information for EPA's direct use in developing or changing guidance, regulations, etc. Thus, for example, an office or laboratory cannot award an assistance agreement to a trade association or consulting firm to arrange and conduct a conference of EPA officials and members of the regulated community if the principal purpose is to enable EPA to obtain the views of the regulated community on a proposed new policy or changes in an existing one. If the office or laboratory needs help in putting on such a conference, it should use a contract to acquire logistical support services.

An exception to this general rule is assistance to associations of State officials who implement EPA programs. An assistance agreement may be used to provide funding to an association of State officials or agencies to hold a conference among its members and EPA officials to discuss issues in the implementation of a Federal effort that the States implement on a day-to-day basis under a formal delegation or as partners with EPA in a coordinated, national effort. Although EPA does derive benefits from such a conference and may subsequently decide to adopt recommendations or use information provided by the State officials at the conference, the principal purpose of the agreement is not to acquire services for the direct benefit or use of the Federal Government. The principal purpose is to support the association in helping its State members participate in developing the policies that they will carry out. State officials and agencies are in the unique role of sharing operational responsibility with EPA for implementation of environmental efforts. EPA may issue the guidance and regulations, but the States are at least equal partners in implementing them. They need, and clearly benefit from, an opportunity to discuss the policies they will be implementing before EPA adopts those policies. The same is also true of Tribal governments that are also partners of EPA in implementing EPA efforts.

At such a conference of EPA and State officials, EPA officials should not finally agree to adopt particular policy positions. EPA officials may tentatively agree on positions, or agree on draft or proposed positions, but any final decisions should be made solely by EPA after review, consideration, and modification by the Agency itself, e.g., by senior managers. The need for subsequent and well documented EPA review and decision should be made clear to conference participants. Such intervening steps between the Agency's receipt of recommendations or information and the Agency's adoption of final positions indicate that EPA does not directly use the State's information.

EPA may not treat an association to which it awards assistance as it would a contractor. Thus, an EPA office or laboratory may not direct an association in arranging the association's conference or in providing other services for EPA's benefit. The conference should be run by the association, not by EPA. The benefits of the assistance should flow primarily to the association and its State members, not to EPA. If the association is merely providing logistical support and other services to EPA in arranging an EPA conference, a contract should be used. This does not mean that EPA personnel may not be substantially involved in the performance of a cooperative agreement, so long as the purpose of the agreement is assistance and they do not give daily direction to the recipient or its contractor.

Examples of activities that MUST be funded through a contract (if not performed 'in-house' by EPA) include:

(a) Evaluation of performance of EPA efforts, projects, or grantee activity when the evaluation is required by or is for the direct use of the Agency;

(b) Surveys, studies, and research which gather specific information desired by EPA for its own use or for dissemination to the public as EPA materials;

(c) Training projects where EPA directs the selection of the trainers or trainees, or the content of the curriculum;

(d) Design or development of items to meet a direct EPA need;

(e) Conferences sponsored or initiated by EPA primarily to meet a specific EPA need or obtain information for use by EPA;

(f) Support the work of EPA Federal Advisory Committee Act (FACA) Committees, as appropriate;

(g) Provide technical, analytical, and application review services/advice for the direct benefit or use of EPA; such as information used to set guidelines;

(h) Evaluate or improve the internal operations of EPA;

(i) Provide support to EPA, with the statutory exception of the Senior Environmental Employee Program;

(j) Produce specific information that will be directly incorporated by EPA into technical, policy or regulatory decisions;

(k) Develop computer models (i.e. software) specifically for EPA use;

(l) Produce data for input into internal Agency computer data bases;

(m) Help (as allowed under EPA Order 1900.2) prepare required EPA reports to Congress;

(n) Help (as allowed under EPA Order 1900.2) prepare EPA guidance documents or manuals;

(o) Operate EPA facilities;

(p) Organize training or other conferences principally for federal employee benefit;

(q) Help perform policy analyses (as allowed under EPA Order 1900.2) for EPA offices;

(r) Provide logistic or other support to EPA employees carrying out technology transfer activities;

7. SELECTING BETWEEN A GRANT OR COOPERATIVE AGREEMENT.

After an office or laboratory determines that an assistance agreement rather than a contract is appropriate, it must then decide whether to use a grant or a cooperative agreement to provide the assistance. The office or laboratory must base this decision on the extent and nature of the Agency's involvement in the activities to be supported under the agreement.

a. **Grant Agreements.** EPA shall use a grant agreement whenever an assistance agreement is appropriate and the office or laboratory does not anticipate substantial involvement with the recipient during performance of the contemplated activities.

b. **Cooperative Agreements.** EPA shall use a cooperative agreement whenever an assistance agreement is appropriate and the office or laboratory anticipates substantial involvement with the recipient during performance of the contemplated activity.

(1) Generally, substantial Federal involvement is anticipated where a project is expected to entail:

a Intense monitoring by EPA;

b Joint operational involvement, participation, and/or collaboration between EPA and the recipient;

c EPA prior review or approval of project phases or the substantive provisions of proposed contracts found within the scope of the agreement;

d Agency involvement in the selection of key recipient personnel; or

e EPA collaboration regarding scope of work, organizational structure, staffing, mode of operation and other management process (assuming the principal purpose is not to acquire goods or services for the government, in which case a contract would be required).

(2) Anticipated substantial involvement during prformance does not include:

a Agency approval of recipient plans prior to award;

b Normal overview activities such as site visits, performance reporting, financial reporting and audit;

c Unanticipated agency involvement to correct deficiencies in project or financial performance;

d Agency review of performance after completion.

8. STATUTORY AUTHORITY for ASSISTANCE AGREEMENT.

A grant or cooperative agreement may be awarded only if EPA possesses statutory authority to provide financial assistance for the activity to be supported. If a statute authorizes the award of 'grants' or 'financial assistance' it is deemed to authorize the award of grants and cooperative agreements, whichever is consistent with the FGCAA.

Sometimes EPA provides assistance to one party that subsequently uses the funds for the benefit of others. EPA may use an assistance agreement with an eligible intermediary to provide assistance to the ultimate beneficiaries, who must also be eligible. The FGCAA does not indicate who is to receive support or stimulation. It does not require that the support or stimulation be only of the immediate party to the agreement. On the other hand, if the intermediary is not itself an eligible recipient, or if the intermediary is effectively serving as a contractor to EPA, then EPA should normally use a procurement contract to obtain the services of the intermediary in assisting eligible recipients.

9. IN-KIND ASSISTANCE. In addition to transferring money to an authorized assistance recipient, EPA offices and laboratories may use assistance agreements to transfer anything of value; such as, equipment or services, to a recipient. If it would be more efficient in terms of cost or time for EPA rather than the assistance recipient to purchase equipment or services, EPA may do so and provide the equipment or services to the recipient under the assistance agreement. This approach would be appropriate, for example, where a piece of equipment necessary for a grant assisted project can be purchased at a considerably lower price or be delivered much earlier using an existing EPA contract. Likewise, EPA may provide the services of an EPA contractor to an assistance recipient in lieu of money, where appropriate.

Offices and laboratories should provide the following documentation in their files when providing in-kind assistance:

a. a savings of cost or time is expected;

b. all charges are to the grants object class series; and

c. all other details are in accordance with the "in-kind" grant feature as defined by EPA regulations e.g. 40 CFR parts 30 & 31 and guidance.

10. FAILURE TO COMPLY. In certain circumstances, it may become apparent that an individual office, laboratory, or recipient failed to comply with this Order by awarding an assistance agreement where a contract was required.

Individuals discovering such situations are directed to consult with representatives from the EPA office or laboratory, the Award Official, and the Office of General Counsel to determine all necessary actions. It is GAD policy to allow completion of the assistance agreement where good faith effort was made to determine principal purpose in accordance with the FGCAA. GAD will seek to ensure that future funding decisions by the involved office or laboratory are consistent with the FGCAA. It is not EPA policy to terminate, annul, or require ratification for these awards unless there were or will be serious irregularities, e.g. conflict of interest or intentional misconduct.

MAR 22

Jonathan Z. Cannon

ACQUISITION AND ASSISTANCE CASE STUDIES

(These case studies do not depict actual EPA situations. However, they do illustrate commonly raised circumstances regarding acquisition and assistance.)

CASE STUDY #1

FACTS:

1. An EPA office has recently announced a new regulatory program. A trade association has submitted a proposal requesting EPA financial assistance for a national conference to inform its members about the new program and its requirements.

2. The trade association will run the conference, including developing the agenda and selecting the speakers. Association employees and members are among the featured speakers. EPA's role will consist of sending a few officials to the conference to speak, answering questions and monitoring the proceedings.

3. The proposal calls for funds to cover the travel expenses of the non-federal speakers and others who will participate in programs and workshops at the conference.

4. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION A: May the office use an assistance agreement to fund this conference?

ANSWER A: Yes. The principal purpose of the agreement is to support the trade association in training and educating its members, not to acquire services for the Government's direct use or benefit. Although EPA officials will speak at the conference and EPA derives some benefit from explaining its program, the principal purpose of the agreement is to provide information to the regulated parties.

QUESTION B: May the agreement pay for travel expenses of non-federal speakers and other participants in the conference?

ANSWER B: Yes. Participant support costs such as stipends, subsistence allowances, travel allowances, and registration fees for a conference, meeting, or training are allowable under an assistance agreement and are covered by OMB Circular A-122. However, travel costs for Federal personnel cannot be paid for through assistance agreements.

CASE STUDY #1 (continued)

QUESTION C: Could this award be made to a State or local entity covered by OMB Circular A-87 or an educational institution covered by Circular A-21?

ANSWER C: Yes, if there is no statutory prohibition to do so.

QUESTION D: Can this State recipient pay travel and other conference costs for state and other non-federal participants at this conference?

ANSWER D: Yes. A-87 and A-21 do not directly address "participant costs" as does A-122; they only address "selected items" of cost. However, both Circular A-87 and A-21 provide that if an item of cost is not addressed, a determination of allowability should be based on the treatment of similar items. Moreover, EPA believes it would not be appropriate to treat State and local government or educational institutions more restrictively than non-profit organizations in this regard. Therefore, consistent with Circular A-122, as long as not prohibited by the authorizing statute (e.g. Clean Water Act), a state or local recipient may pay travel and other allowable conference costs for participants at an EPA funded conference.

CASE STUDY #2

FACTS:

1. An EPA office has an assistance effort open to non-profit organizations. The EPA office would like a non-profit to provide technical skills to generate data and prepare a report for EPA's use concerning the effort.

2. The work being conducted falls within the statutory authority of the effort.

3. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: Can EPA fund this non-profit organization with an assistance agreement?

ANSWER: No. Even though the non-profit organization is eligible for funding, the principal purpose seems to be to acquire services for the direct benefit or use of EPA.

CASE STUDY #3

FACTS:

1. An EPA office wants to fund a training session for State personnel involved in permit writing and issuance. The office intends to use a cooperative agreement with a non-profit organization knowledgeable in the subject and expert in training.

2. The non-profit organization will run the training session, consulting with EPA on the agenda and the training methods, but not taking direction and supervision from an EPA office.

3. The audience is expected to consist primarily of personnel from State agencies. The course is designed for State personnel and a sufficient number of State (or non-federal) personnel will attend to make holding the training session for those personnel financially feasible and practicable. However, 15 percent of the audience will be EPA Regional personnel.

QUESTION: May the EPA office use a cooperative agreement to fund the training session?

ANSWER: Yes. It is reasonable to determine that the principal purpose is to train non-federal personnel and this training session would be feasible even if no federal participants attended. Conversely, if the training session would not be held but for the attendance of the federal personnel, the principal purpose test would not be met and a contract would be required because the training would not be feasible and practicable.

Here, the principal purpose of the agreement is to train non-federal personnel. That purpose is not changed by the attendance of some federal personnel. Of course, the travel and associated costs of the federal personnel attending the training cannot be paid for by the award. Principal purpose should not be determined based simply on a count of the participants, i.e., the principal purpose is not necessarily to train non-federal personnel any time at least 51 percent of the audience is non-federal.

CASE STUDY #4

FACTS:

1. An EPA HQ office wants to award a cooperative agreement to a non-profit organization to hold a conference. The proposal for the conference describes it as an "EPA conference". The agreement provides that EPA will develop the agenda, select the speakers, determine participant costs, and set registration fees.

2. The non-profit organization will help develop the agenda and will provide the programs and conference materials. The non-profit organization will plan and handle conference registration and hotel reservations, arrange the meeting space, and prepare and distribute publicity materials.

3. The non-profit will provide a five percent match and will use information obtained at the conference for educational purposes.

4. The speakers and the audience will be from federal, State, and local governments, plus private nonprofit and profit-making firms.

5. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: May the EPA office use a cooperative agreement to fund this conference?

ANSWER: No. The principal purpose apparently is to acquire the non-profit organization's services to enable the EPA office to hold an EPA conference based on the facts that EPA will develop the agenda, select the speakers, etc. Accordingly, a contract is required. Although the non-profit organization will perform numerous tasks, they are essentially ministerial duties and logistical support. The non-profit will assist EPA in accomplishing Agency objectives. The non-profit's use of information from the conference for educational purposes does not appear to be the principal purpose of the agreement. The provision of a match may suggest an assistance relationship, but in this case it <u>does not</u> outweigh the evidence of a procurement relationship.

CASE STUDY #5

FACTS:

1. EPA wants to award a cooperative agreement for research on the impacts of a treatment standard that the Agency is considering. Before issuing a regulation proposing use of the standard, EPA believes it needs more information to explain the proposal adequately for public comment.

2. The laboratory does not have clearly defined specifications for the research to be performed and will need to be substantially and frequently involved in technical decisions in the research.

3. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: May EPA use a cooperative agreement to fund this research?

ANSWER: No. Although the research may benefit others, EPA's principal purpose in funding the research is to obtain information EPA needs to draft a proposed regulation. Therefore, a contract is required.

CASE STUDY #6

FACTS:

1. An EPA laboratory is planning to issue a request for applications from universities and others for a cooperative research effort and has written a clear and precise description of the research and how it is to be carried out.

2. All sampling activities will be carried out according to established protocols, which describe in detail how the samples are to be taken and what chemicals are to be tested for in the samples. Recipient personnel will have to be trained in the use of the protocol by Laboratory staff.

3. Analysis of the resulting data (and any changes to the sampling protocols) will be carried out by EPA scientists. However, the recipient may propose additional uses for the data.

4. The recipient will be directed to "complete the processing of the ... analytical chemistry samples and transmit the information to EPA in computerized format".

QUESTION: A. Is a cooperative agreement the appropriate award instrument for this activity?

ANSWER: A. No. The activity described above is not assistance. From the information provided, the Laboratory's principal purpose is to acquire sampling and analyses support for the direct benefit and use of EPA. Since the sampling and analysis protocol is already developed, there is no evidence that the award would stimulate or support the recipient in carrying out a public purpose.

QUESTION B. What is the appropriate award instrument for this activity?

ANSWER B. The appropriate award instrument for this activity is a contract. The principal purpose of the activity described above fulfills an Agency need and further provides the laboratory with sampling and analytical services for the direct benefit and use of EPA.

CASE STUDY #7

FACTS:

1. An EPA laboratory has submitted to Headquarters an assistance package to conduct cooperative research regarding wood burning stoves.

2. The recipient will monitor emissions from the stove flues, analyze the data, and submit periodic reports to the EPA Project Officer. For emission levels detected outside of acceptable variances, the recipient will work jointly with EPA to modify the protocol and test the changes.

3. Bench and pilot studies plus the protocol have already been published. This research is an opportunity to prove the protocol in the field and will have a long-term, national impact on air quality, as the technology finds its ways into the manufacturing sector.

4. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: Is the planned activity described above an appropriate use of a cooperative agreement?

ANSWER: Yes. Although EPA will receive some benefit from the field research, the principal purpose of the above mentioned activity fulfills a public purpose of stimulation and support. This work is not merely a sampling and data collection activity. Even if the protocol survives the field tests intact, the principal purpose of this activity stimulates and supports research regarding wood burning stoves and satisfies a public purpose. This activity meets the criteria for selecting assistance as the appropriate award instrument. Further, the statement of work indicates joint operational collaboration and meets the criteria for"substantial involvement" by EPA and demonstrates the appropriate use of a cooperative agreement in this instance.

APPENDIX C

APPENDIX C

EPA INVOLVEMENT IN GRANTEE PERSONNEL AND CONTRACTOR SELECTION UNDER GRANTS AND COOPERATIVE AGREEMENTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SEP 24 1992

MEMORANDUM

SUBJECT: EPA Involvement in Grantee Personnel and Contractor Selection Under Grants and Cooperative Agreements

FROM: Sallyanne Harper, Acting Deputy Assistant Administrator for Finance and Acquisition

John H. Skinner, Deputy Assistant Administrator
Office of Research and Development

TO: ORD Office Directors
Laboratory Directors

The Office of Research and Development is currently shifting some of its extramural resources from contract to assistance instruments. Although the Inspector General and Congress have focused in recent months on inappropriate direction and control of contractor employees, the Agency must be aware of similar prohibitions in dealing with assistance recipients.

Under an assistance agreement, EPA transfers money, property, services or anything else of value to support or stimulate an activity to accomplish a public purpose rather than to acquire property or services for the direct benefit of EPA. This memorandum reaffirms the regulatory requirements regarding relationships between EPA employees and assistance recipients.

EPA's Code of Conduct states that EPA employees must not use their Government positions to "coerce, or appear to coerce, anyone to provide any financial benefit to themselves or others" (40 CFR 3.103(d)). The Code also states that EPA employees "must not take any action, whether specifically prohibited or not, which would result in or create the reasonable appearance of ... giving preferential treatment to any organization or person" (40 CFR 3.103(d)(2)). Additionally, our regulations for procurement under assistance state that "the recipient shall conduct all procurement transactions in a manner that provides maximum open and free competition" (40 CFR 33.230(a)). These regulations prohibit EPA staff from directing whom assistance recipients should hire or whom they should contract with under a grant or cooperative agreement.

While EPA has the responsibility to manage grants and cooperative agreements, EPA employees must make certain that they do not become involved in certain areas of personnel and recipient procurement. This memorandum sets forth when EPA employees may become involved in personnel and procurement actions of an assistance recipient, and when they may not, based on existing regulations.

o EPA employees may not:

  - o Consistent with the EPA Code of Conduct, take any action under a grant or cooperative agreement that would be a conflict of interest or result in an appearance of a conflict of interest.

  - o Direct the hiring, firing, promoting, disciplining, or rewarding of recipient personnel or contractors under grants or cooperative agreements. (In the Senior Environmental Employment Program, EPA employees may refer eligible senior citizens to recipients, and select persons to be enrolled by recipients.)

  - o Direct a recipient to award a contract to a specific individual or firm.

  - o Participate in the negotiation or award of a contract under a grant or cooperative agreement.

o EPA employees may:

  - o Approve the key personnel of the grantee organization and the project director or principal investigator.

  - o Review and comment on a grantee's procurement process or a particular procurement action.

  - o Participate in review panels to make recommendations on qualified offers and acceptable proposals based on published evaluation criteria.

  - o Upon request by a recipient organization, EPA employees may provide a reference for individuals who are employed by EPA contractors and who are being considered for employment by the recipient institution to work on EPA matters. In doing so, however, EPA employees should take great care to avoid even the appearance of undue influence in hiring decisions, especially EPA officials who have a role in selecting the assistance recipient or in defining the scope and amount of the assistance received.

In summary, it is inappropriate for Agency staff to direct or require the use of particular persons or firms by assistance recipients in the performance of a grant or cooperative agreement.

Should you have any questions on this memorandum, please contract Bruce Feldman in the Grants Administration Division on (202) 260-5268.

cc: David O'Connor
Harvey Pippen
Gary Katz
Clarence Mahan

APPENDIX D

APPENDIX D

40 CFR PART 30, "GENERAL REGULATION FOR ASSISTANCE AGREEMENTS FOR OTHER THAN STATE AND LOCAL GOVERNMENTS"

SUBCHAPTER B—GRANTS AND OTHER FEDERAL ASSISTANCE

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS FOR OTHER THAN STATE AND LOCAL GOVERNMENTS

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Appendices to Part 30

Appendix A—EPA Programs
Appendix B—Patents and Copyrights Clauses
Appendix C—Rights in Data and Copyrights
Appendix D—Part 30 Reporting Requirements
Appendix E—Part 30 Audit Requirements for State and Local Government Recipients

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 300f *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 9601 *et seq.*

Source: 48 FR 45062, Sept. 30, 1983, unless otherwise noted.

Subpart A—What is the Purpose and Scope of this Regulation?

§ 30.100 What is the purpose of this regulation?

(a) The U.S. Environmental Protection Agency (EPA) is responsible for protecting and enhancing the quality of the environment. To achieve these objectives, EPA may award assistance in the form of grants, cooperative agreements, or fellowships to support:

(1) State and local pollution control programs; (2) research, demonstration, or training projects; and (3) other projects that advance EPA's mission.

This regulation tells how to apply for and manage an EPA project, describes EPA involvement in the process, and identifies recipients' responsibilities. Other EPA assistance regulations supplement these. They are found in 40 CFR part 32 (Debarment), part 33 (Procurement Under Assistance Agreements), part 35 (State and Local Assistance), part 40 (Research and Demonstration), part 45 (Training) and part 46 (Fellowships).

(c) This regulation incorporates the requirements of Office of Management and Budget (OMB) Circulars and EPA Orders.

(d) Recipients must provide the reporting information required in this part to be eligible for EPA assistance awards.

NOTE: The OMB clearances required by the Paperwork Reduction Act are identified in Appendix D to this part.

§ 30.101 What is the scope of this regulation?

This regulation covers financial assistance awards made as grants or cooperative agreements under requirements of the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224). It does not cover direct EPA contracts under which EPA acquires property or services for its use.

§ 30.102 What laws authorize EPA to issue this regulation?

Reorganization Plan Number 3 of 1970 and the following statutes authorize the Administrator of EPA to issue this regulation.

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

(b) The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(c) The Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq.*);

(d) The Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(e) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*);

(f) The Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*); and

(g) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

[48 FR 45062, Sept. 30, 1983; 49 FR 38944, Oct. 2, 1984]

Subpart B—What Definitions Apply to this Regulation?

§ 30.200 What definitions apply to this regulation?

Allowable costs. Those project costs that are: eligible, reasonable, necessary, and allocable to the project; permitted by the appropriate Federal cost principles, and approved by EPA in the assistance agreement.

Applicant. Any entity that files an application or unsolicited proposal for EPA financial assistance under this subchapter.

Assistance agreement. The legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant or a cooperative agreement and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished; and any special conditions.

Award official. The EPA official with the authority to execute assistance agreements and to take other actions authorized by this subchapter and by EPA Orders.

Budget period. The length of time EPA specifies in an assistance agreement during which the recipient may expend or obligate Federal funds.

Consolidated assistance. An assistance agreement awarded under more than one EPA program authority or funded together with one or more other Federal agencies. Applicants for consolidated assistance submit only one application.

Continuation award. An assistance agreement after the initial award, for a project which has more than one budget period in its approved project period, or annual awards, after the first award, to State, Interstate, or local agencies for continuing environmental programs (see § 30.306).

Contractor. Any party to whom a recipient awards a subagreement.

Cooperative agreement. An assistance agreement in which substantial EPA involvement is anticipated during the performance of the project (does not include fellowships).

Cost sharing. The portion of allowable project costs that a recipient contributes toward completing its project (i.e., non-Federal share, matching share).

Environmentally related measurements. Any data collection activity or investigation involving the assessment of chemical, physical, or biological factors in the environment which affect human health or the quality of life. The following are examples of environmentally related measurements: (a) A determination of pollutant concentrations from sources or in the ambient environment, including studies of pollutant transport and fate; (b) a determination of the effects of pollutants on human health and on the environment; (c) a determination of the risk/benefit of pollutants in the enviroment; (d) a determination of the quality of environmental data used in economic studies; and (e) a determination of the environmental impact of cultural and natural processes.

Expendable personal property. All tangible personal property other than nonexpendable personal property.

Force account work. The use of the recipient's own employees or equipment for construction, construction-related activities (including A and E services), or for repair or improvement to a facility.

Foreign awards. An EPA award of assistance when all or part of the project is performed in a foreign country by (a) a U.S. recipient, (b) a foreign recipient, or (c) an international organization.

Formal amendment. A written modification of an assistance agreement signed by both the authorized representative of the recipient and the award official.

Grant agreement. An assistance agreement that does not substantially involve EPA in the project and where the recipient has the authority and capability to complete all elements of the program (does not include fellowships).

In-kind contribution. The value of a non-cash contribution to meet a recipient's cost sharing requirements. An in-kind contribution may consist of charges for real property and equipment or the value of goods and services directly benefiting the EPA funded project.

Nonexpendable personal property. Personal property with a useful life of at least two years and an acquisition cost of $500 or more.

Personal property. Property other than real property. It may be tangible (having physical existence), such as equipment and supplies, or intangible (having no physical existence), such as patents, inventions, and copyrights.

Program income. Gross income the recipient earns during its project period from charges for the project. This may include income from service fees, sale of commodities, trade-in allowances, or usage or rental fees. Fees from royalties are program income only if the assistance agreement so states. Revenue generated under the governing powers of a State or local government which could have been generated without an award is not considered program income. Such revenues include fines or penalties levied under judicial or penal power and used as a means to enforce laws. (Revenue from wastewater treatment construction grant projects under Title II of the Clean Water Act, as amended, is not program income. It must be used for operation and maintenance costs of the recipient's wastewater facilities.)

Project. The activities or tasks EPA identifies in the assistance agreement.

Project costs. All costs the recipient incurs in carrying out the project. EPA considers all allowable project costs to include the Federal share.

Project officer. The EPA official designated in the assistance agreement as EPA's program contact with the recipient. Project officers are responsible for monitoring the project.

Project period. The length of time EPA specifies in the assistance agreement for completion of all project work. It may be composed of more than one budget period.

Quality assurance narrative statement. A description of how precision,

accuracy, representativeness, completeness, and compatibility will be assessed, and which is sufficiently detailed to allow an unambiguous determination of the quality assurance practices to be followed throughout a research project.

Quality assurance program plan. A formal document which describes an orderly assembly of management policies, objectives, principles, organizational responsibilities, and procedures by which an agency or laboratory specifies how it intends to:

(a) Produce data of documented quality, and

(b) Provide for the preparation of quality assurance project plans and standard operating procedures.

Quality assurance project plan. An organization's written procedures which delineate how it produces quality data for a specific project or measurement method.

Real property. Land, including land improvements, and structures and appurtenances, excluding movable machinery and equipment.

Recipient. Any entity which has been awarded and accepted an EPA assistance agreement.

Standard operating procedure. A document which describes in detail an operation, analysis, or action which is commonly accepted as the preferred method for performing certain routine or repetitive tasks.

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Violating facility. Any facility that is owned, leased, or supervised by an applicant, recipient, contractor, or subcontractor that EPA lists under 40 CFR part 15 as not in compliance with Federal, State, or local requirements under the Clean Air Act or Clean Water Act. A facility includes any building, plant, installation, structure, mine, vessel, or other floating craft.

Unsolicited proposal. An informal written offer to perform EPA funded work for which EPA did not publish a solicitation.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38944, Oct. 2, 1984]

Subpart C—How do I Apply for and Receive Assistance?

§ 30.300 What activities does EPA fund?

EPA awards assistance to support various activities that protect the environment and reduce or control pollution. EPA groups these activities into the following types of assistance programs:

(a) State and local pollution control;

(b) Construction of wastewater treatment works;

(c) Research;

(d) Demonstration:

(e) Training;

(f) Fellowships;

(g) Special investigations, surveys or studies; and

(h) Consolidated assistance.

§ 30.301 To whom does EPA award assistance?

(a) EPA awards assistance only to applicants which are eligible under applicable statutes and regulations and which have the ability to meet the following criteria:

(1) Financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

(2) Resources to meet the project completion schedule contained in the assistance agreement;

(3) A satisfactory performance record for completion of projects and subagreements;

(4) Accounting and auditing procedures adequate to control property, funds, and assets, as required in subpart E of this part;

(5) Procurement standards that comply with part 33 of this subchapter;

(6) Property management systems for acquiring, maintaining, safeguarding, and disposing of property, as required in subpart E of this part; and

(7) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor

law, and other statutory requirements under subpart F of this part.

(b) EPA considers your submission of an assistance application as your assurance that you can and will meet these standards. EPA may conduct a preaward audit or other review to determine your capabilities.

(c) EPA must notify you in writing if it finds you unable to meet these standards. The written notice will state the reasons for the finding. You may appeal EPA's findings under the disputes procedures in subpart L.

(d) Individuals, agencies, or organizations voluntarily excluded, suspended, or debarred under 40 CFR part 32 are ineligible to receive assistance.

§ 30.302 How do I apply for assistance?

(a) You must submit a standard application to apply for EPA assistance.

(b) Before you file an application to perform unsolicited work, you may submit an unsolicited proposal. EPA will apprise you of your proposal's potential for funding.

(c) You can get program information and an application kit with instructions from the EPA grants office which is responsible for administering that program. Regional EPA grants offices provide and review applications and award assistance for State and local pollution control projects. State water pollution control agencies provide and review applications for grants for the construction of wastewater treatment facilities. EPA Headquarters provides and reviews applications for and awards research, demonstration, fellowships, training, special investigations, surveys, studies, and most training assistance.

(d)(1) For assistance agreements awarded for Fiscal Year 1984, you must develop and implement a quality assurance program acceptable to the award official if your proposal involves any environmental related measurements or data generation. Except as noted in paragraphs (d) (2) and (3) of this section, your application for financial assistance must include a quality assurance plan which meets the requirements in § 30.503. If you already have an EPA approved quality assurance plan, you need only reference that plan in your application, provided the plan covers the project in your application.

[48 FR 45062, Sept. 30, 1983; 49 FR 38944, Oct. 2, 1984, as amended at 53 FR 8076, Mar. 11, 1988]

§ 30.303 What steps must I take when filing a standard application?

(a) Before you file an application, you must complete the forms according to the instructions. At least one copy of the completed application must have an original signature of the person authorized to obligate you or your organization to the terms and conditions of EPA's regulations and assistance agreement.

(b) You must:

(1) Comply with your State's intergovernmental review process, if it established one under Executive Order 12372. See 40 CFR part 29 (48 FR 29288, June 24, 1983).

(2) Comply with the areawide review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334) if your project will be located in a metropolitan area. EPA programs that are subject to areawide review are listed in 48 FR 29304, June 24, 1983, and marked with an asterisk (*).

§ 30.304 Is the information I submit to EPA confidential?

(a) Generally, the information is not confidential. When EPA receives your assistance application or unsolicited proposal the information you submit becomes part of the Agency's records. As such, it is subject to EPA's disclosure of information policy (40 CFR part 2) which is based on the provisions of the Freedom of Information Act (5 U.S.C. 552) and on the provision for patents and rights in data and copyrights under subpart K of this part.

(b) If you submit data, documents, or parts of documents which you consider to be confidential, you should clearly identify them with the words "trade secret," "proprietary," or "business confidential." For further instructions on assertion of confidentiality claims, see 40 CFR part 2, subpart B.

§ 30.305 How do I find out if EPA approved or disapproved my application?

(a) If EPA approves your application, the award official will prepare and sign an assistance agreement and send it to you for signature. Your authorized representative must either sign and return the agreement to EPA within three calendar weeks after you receive it or request EPA to extend the time for acceptance. If you do not sign or request an extension within the three week period, the assistance agreement is null and void.

(b) If EPA disapproves your application, it will promptly notify you in writing. You may appeal EPA's disapproval under subpart L.

(c) Sometimes, EPA will defer your application. You will be notified in writing of this decision.

§ 30.306 How long will I have to complete my project?

(a) Your assistance agreement will state the length of your approved budget period(s) and project period. Subject to statutory provisions, your approved project period may include more than one budget period. In this case, you must submit a continuation application to EPA to request funding for each budget period after the initial one. EPA makes continuation awards subject to availability of funds and Agency priorities. (Assistance awards under 40 CFR part 35, subpart A, do not have project periods, but recipients of such awards may receive continuation awards.)

(b) The continuation application must include:

(1) A detailed progress report for the current budget period;

(2) A preliminary financial statement for the current budget period that includes estimates of the amount you expect to spend by the end of the current budget period and the amount of any uncommitted funds which you propose to carry over beyond the term of the current budget period;

(3) A budget for the new budget period;

(4) A detailed work plan revised to account for your actual accomplishments during the current budget period;

(5) An invention report, if applicable;

(6) Any other reports that the assistance agreement may require.

(c) If approved by the award official, you may carry over unexpended prior year funds: (1) In lieu of new funds; (2) to complete work started in prior years; or (3) to supplement the new award. You must meet all program and cost sharing requirements in each budget period to carry over funds.

(d) If EPA executes a continuation agreement, EPA will reimburse you for allowable costs you incur between the end of a budget period and date of award for the next budget period provided you submit a continuation application before the expiration of the prior budget period.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38944, Oct. 2, 1984]

§ 30.307 How much must I contribute to the funding of my project?

(a) The amount of cost sharing you must contribute depends upon the statutory and regulatory cost sharing provisions that apply to your specific assistance project (see 40 CFR parts 35 and 40). You must contribute at least a 5 percent share of the total allowable project costs for each budget period *unless;*

(1) A lesser amount is specified in the respective statute or regulation applicable to your project; or

(2) The assistance agreement is for a remedial planning action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(b) You may satisfy the requirement for cost sharing with cash or, when not prohibited by statute or regulations, with in-kind contributions. Your contribution may not be paid with Federal funds or with property or services received under another assistance agreement, unless authorized by statute. Additionally, your contributions must be:

(1) Negotiated before and specified in your assistance agreement;

(2) Verifiable from your records;

(3) Used exclusively for a single project; and

(4) Properly allocable to and allowable under the project.

(c) All project expenditures by the recipient shall be deemed to include the Federal share.

[48 FR 45062, Sept. 30, 1983; 49 FR 38944, Oct. 2, 1984]

§ 30.308 When may I begin incurring costs?

(a) Except as permitted in § 30.306(d), paragraph (b) of this section, or other EPA regulations, the award official and you must sign the EPA assistance agreement before you incur costs.

(b) You may incur costs between the date the award official signs the assistance agreement and you sign the agreement, provided the costs are identified in the agreement and you do not change the agreement.

[49 FR 38944, Oct. 2, 1984]

§ 30.309 What is the effect of accepting an assistance agreement?

(a) When the award official signs the assistance agreement, EPA will obligate Federal funds for the amount stated in your assistance agreement for the purposes of the award. EPA is not obligated to provide Federal funds for any costs incurred by you in excess of the Federal share of your approved budget. (See subpart G of this part.)

(b) The award of an assistance agreement constitutes a public trust. By signing and accepting an assistance agreement, you become responsible for complying with all terms and conditions of your assistance agreement, including any special conditions necessary to assure compliance with EPA policies and objectives, this subchapter, and any other applicable statute or regulation. You must efficiently and effectively manage your project, successfully complete the project according to the schedule, and meet all monitoring and reporting requirements. You may not delegate or transfer this responsibility.

Subpart D—How does EPA Pay Me?

§ 30.400 How does EPA make payments?

(a) EPA will promptly pay you for allowable costs you incur in accordance with EPA regulations and your assistance agreement. If at any time, EPA determines you received payment for unallowable cost or received an over-payment, you are required to reimburse EPA. (See § 30.802.)

(b) Your assistance agreement will specify one of the following ways for EPA to pay you. You will receive the appropriate forms and instructions with your assistance agreement.

(1) *By letter of credit.* EPA will pay you by the letter of credit method, it you meet the Treasury Department's criteria contained in Treasury Circular No. 1075, as revised. You must establish a separate bank account when payments under a letter of credit are made on a "check-paid" basis.

(2) *By advance.* If you do not qualify for a letter of credit, EPA may pay you by the advance payment method. You must negotiate the amount of your initial advance with the award official. The negotiated amount should not exceed the cash you will need for the first three months of operation. You must request the initial advance on Standard Form 270 (SF 270, "Request for Advance or Reimbursement") which will be included in your award package. EPA will issue a check for the first three months or one check each month (at EPA's option) to pay the advance. After your initial advance, you must submit an SF 270 at least quarterly, but not more often than monthly, indicating the amount of your expenditures to date and your request for funds for the coming period.

(3) *By reimbursement.* If you do not meet letter of credit requirements or receive advance payments, EPA will pay you by reimbursement. Also, EPA generally will pay you under the reimbursement method if you are receiving assistance under EPA's wastewater treatment construction grants program (see 40 CFR part 35, subpart I). When EPA pays by this method, you will be reimbursed for costs which you

have incurred and are currently and legally obligated to pay.

§ 30.405 Can I assign my payment to anyone else?

Except as provided for in 40 CFR 35.2025(b)(2) of EPA's wastewater treatment construction grants regulation, you cannot assign your right to receive payments under your assistance agreement. EPA will make payments only to the payee identified in the assistance agreement.

§ 30.410 How does EPA determine allowable costs?

To be allowable, costs must meet applicable statutory provisions and Federal cost principles. EPA uses the following cost principles in determining allowable costs for all EPA assistance agreements and subagreements under them, except as otherwise provided by statute or this subchapter. Regardless of whether the organization is the recipient of the award or is performing services for the recipient, the nature of the organization is the sole criterion for determining applicable cost principles.

(a) *State and local governments* must use OMB Circular A-87 to determine allowable costs;

(b) *Educational institutions* must use: (1) OMB Circular A-21 cost principles for research and development, training, and other educational services under grants, cooperative agreements, and subagreements, and (2) OMB Circular A-88 which provides principles for coordinating the establishment of indirect cost rates and the auditing of grants, cooperative agreements, and subagreements;

(c) *Other non-profit institutions* must use OMB Circular A-122, as revised;

(d) *Profit-making organizations* must use Federal Acquisition Regulation 48 CFR subparts 31.1 and 31.2;

(e) *Hospitals* must use 45 CFR part 74, Appendix E.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38944, Oct. 2, 1984]

§ 30.412 How are costs categorized?

(a) Costs are categorized as being either a direct cost if they support a specific project only or as an indirect cost as described in the applicable cost principles (see § 30.410). To receive payment for indirect costs, you must have negotiated an indirect cost rate with your cognizant Federal Agency and your assistance agreement must provide for the use of that rate.

(b) You may request a special indirect cost rate, if (1) your project is conducted at an off-site location; or (2) your project is a large, one-time project and its costs would distort the normal direct cost base used in computing the indirect cost rate.

Subpart E—How do I Manage My Award?

§ 30.500 What records must I maintain?

(a) You must maintain official records for each assistance award you receive and identify them with EPA assistance identification numbers. These records must contain the following information:

(1) Amount received and expended for the project, including all Federal and cost sharing funds;

(2) Program income;

(3) Total cost of the project (both direct and indirect costs);

(4) Property purchased under the award or used as part of your in-kind contribution;

(5) *Time records and other supporting data.* Institutions of higher education may account for the distribution of salaries and wages of professorial or professional staff by budgeted, planned, or assigned work activity if the system for wages and salaries meets the requirements in OMB Circular A-21;

(6) Documentation of compliance with applicable statutes and regulations.

(b) Your contractor must maintain books, documents, papers, and records pertinent to the project.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

§ 30.501 How long must I keep these records?

(a) Generally you and your contractor must keep all records for three years from the end of the project. Except for real property and nonex-

pendable personal property records, the beginning date of the three year period depends on the type of project you are conducting, as follows:

(1) For research, demonstration, and training programs, the submission date of a final Financial Status Report (SF-269);

(2) For construction awards, the approval date of EPA's final payment for the project.

(b) You must keep your records on real property and nonexpendable personal property for three years from the date of final disposition.

(c) If EPA terminates your award, you must keep all records for three years from the termination date, except as provided in paragraph (b) of this section.

(d) If litigation, a claim, a dispute under subpart L, or an audit is begun before the end of the three year period, you must keep all records until the three years have passed or until the litigation, dispute, claim, or audit is completed and resolved, whichever is longer.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984, as amended at 53 FR 8076, Mar. 11, 1988]

§ 30.502 To whom must my contractor and I show these records?

You and your contractor must allow the project officer and any authorized representative of EPA, including the Office of Inspector General, the Comptroller General of the United States, the Department of Labor, or a representative of delegated States under the wastewater treatment construction grants program, to inspect, copy, and audit records pertinent to the project. Access to records is not limited to the required retention periods. You and your contractor must allow access to records at any reasonable time for as long as the records are kept.

§ 30.503 What type of quality assurance practices am I required to have?

(a) If your project involves environmentally related measurements or data generation, you must develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation which will produce data of quality adequate to meet project objectives and will minimize loss of data due to out-of-control conditions or malfunctions.

(b) Your quality assurance practices must assure the reliability of monitoring and measurement data and integrate quality planning, quality assessment, and quality improvement efforts.

(c) As required in § 30.302(d), you must develop and implement a quality assurance program which is acceptable to the award official in order to receive an EPA assistance award. All applications for financial assistance must include a document as specified in paragraphs (d), (e), or (f) of this section.

(d) If your application is for research financial assistance it must include a quality assurance narrative statement which either addresses the following areas or provides justification why any of these areas do not apply to the proposal:

(1) The intended use of the data and the associated acceptance criteria for data quality (precision, accuracy, representativeness, completeness, comparability);

(2) Project requirements for precision, accuracy, representativeness, completeness, comparability, and how these will be determined;

(3) Procedures for selection of samples or sampling sites and collection or preparation of samples;

(4) Procedures for sample handling, identification, preservation, transportation, and storage;

(5) Description of measurement methods or test precedures with a statement of performance characteristics if methods are non-standard;

(6) Standard quality assurance/quality control procedures (e.g., American Society for Testing Materials, American Public Health Association standard procedures) to be followed. Nonstandard procedures must be documented; and

(7) Data reduction and reporting procedures, including description of statistical analyses to be used.

(e) All other applicants for financial assistance must submit with their application (see § 30. 302(d)) a quality as-

surance project plan acceptable to the award official. (For assistance in preparing a quality assurance project plan see "Interim Guidelines and Specifications for Preparing Quality Assurance Projects Plans" QAMS-005/80. This document (EPA-600/4-83-004; NTIS PB 83-170514) may be obtained from the National Technical Information Service, 5885 Port Royal Road, Springfield, Virginia 22161.) The project plan must address the following items:

(1) Title of project and name of principal investigator(s);

(2) Table of contents of project plan;

(3) Project description;

(4) Project organization and responsibilities;

(5) Quality assurance objectives and criteria for determining precision, accuracy, completeness, representativeness, and compatability of data;

(6) Sampling procedures;

(7) Sample custody;

(8) Calibration procedures and frequency and traceability of standards;

(9) Analytical procedures;

(10) Data reduction, validation, and reporting;

(11) Internal quality control checks;

(12) Performance and system audits;

(13) Preventive maintenance;

(14) Specific standard operating procedures used to assess data precision, accuracy, representativeness, and comparability;

(15) Corrective action for out-of-control situations; and

(16) Quality assurance reporting procedures.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984, as amended at 53 FR 8076, Mar. 11, 1988]

§ 30.505 What reports must I submit?

(a) *Interim and final progress reports.* You must submit interim and final progress reports if the assistance agreement or EPA regulations require them. See 40 CFR parts 35, 40, and 45 for specific requirements. EPA or its authorized representatives may inspect your project at any reasonable time to review its progress.

(b) *Financial reports.* (1) You must submit a Financial Status Report (SF 269) within 90 days after each budget period and within 90 days after the end of your project completion or termination. If either the Financial Status Report (FSR) you submit after the budget period or the FSR you submit after your project is completed or terminated includes unliquidated obligations, you must submit a final FSR immediately after those obligations are liquidated. If you do not submit a final FSR within a reasonable time after the 90 day period, the award official may disallow the unliquidated obligations.

(2) Recipients of fellowship assistance agreements do not have to submit FSR's.

(c) *Invention reports.* You must report all inventions to the award official (see subpart K for details).

(d) *Report on federally-owned property.* You must submit an annual inventory of all Federally-owned property used on your project. At the end of the project period, or when you no longer need the property, you must submit a final inventory which states the present condition of each item and requests disposition instructions.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984, as amended at 53 FR 8076, Mar. 11, 1988]

§ 30.510 What type of financial management system must I maintain?

You must maintain a financial management system that consistently applies accepted accounting principles and practices and at least includes:

(a) An accurate, current, and complete accounting of all financial transactions for your project;

(b) Records, together with supporting documents showing the source and application of all project funds, including assistance awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(c) Control over, and accountability for, all project funds, property, and other assets, and an assurance that you used these solely for their authorized purpose;

(d) A comparison of actual costs versus budgeted object class amounts;

(e) Procedures to ensure prompt disbursement of Federal funds after you receive them;

(f) Procedures for determining allowable, allocable, and reasonable costs;

(g) Audits at least every other year on an organization-wide basis or as required by OMB Circular A-128, if applicable (see § 30.540); and

(h) A systematic method to resolve audit findings and recommendations.

[48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986]

§ 30.515 What restrictions on signs, surveys, and questionnaires must I observe?

(a) *Signs.* You must place a visible project identification sign at a construction site. The sign must give project information and credit EPA for funding. Your project officer will give you specifications for sign design, content, and placement. The cost of making and erecting the sign is an allowable cost.

(b) *Surveys and questionnaires.* If your survey or questionnaire states that information is being collected for the Federal Government, you must request written approval from EPA to use Agency funds to cover the costs of data collection. To assure compliance with the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 et seq.), the project officer can grant approval only with the agreement of the EPA Headquarters reports management officer. You must also receive the project officer's approval to list EPA as a recipient of the survey information.

§ 30.518 What are the procedures for publishing scientific, informational, and educational documents?

(a) EPA encourages publication of the results of its assistance agreements.

(b) You must comply with EPA's peer and administrative review process if you intend to release to the public informational materials, reports, and other products produced under an EPA assistance agreement.

(1) Except for articles published under paragraph (d) of this section, you must submit three copies of the documents to your project officer for EPA review. EPA will evaluate the documents and will provide you with written, suggested changes, if any.

(2) You should make every effort to accommodate suggestions arising from the EPA review process while preparing a revised draft. You should alert EPA reviewers to suggestions you cannot accommodate and to changes initiated by you in the revised draft.

(3) If an agreement is reached that the material is appropriate for release as an EPA publication, the following statement must be included in the document:

> The information in this document has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). It has been subjected to the Agency's peer and administrative review and has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(c) If agreement cannot be reached that the material is appropriate for release as an EPA publication, you may independently publish and distribute the document for your own use and at your own expense provided you include the following statement in the document:

> Although the information in this document has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient), it may not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(d) EPA also encourages independent publication of reports in referred journals at any time. You must submit a copy of the article to your project officer when you send it for publication. Following publication, three copies of the article should be submitted to the project officer. The article must include the following statement:

> Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient), it has not been subjected to the Agency's peer and administrative review and therefore may not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(e) Documents that are not to be released to the public as EPA publications but are part of a recipient's regular pollution control activities are not subject to the EPA peer and administrative review process, e.g., State pollution control agency-published newsletters and operation and maintenance manuals under the wasterwater treatment construction grants program. However, EPA encourages you to establish a similar reveiw process before publishing any documents at your own expense. You may publish such documents only if you include the following statement:

This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document 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.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.520 When may I use my own employees ("force account")?

If costs will exceed $25,000, you must get prior written authorization from your project officer to use your own employees or equipment for construction, construction-related activities, or for repairs or improvements to a facility ("force account"). You must demonstrate that (a) your employees can competently and more economically complete the work than contractors or (b) an emergency circumstance makes the use of "force account" necessary.

§ 30.525 How should I treat program income?

(a) You may use program income to fund additional eligible project activities, or if approved by the award official, to meet your non-Federal share of project costs.

(b) If you do not use the program income to fund additional eligible activities or you are not permitted to use program income to meet your non-Federal share of project costs, EPA will subtract the income from the total allowable project cost to determine the net cost on which the Federal share will be based.

(c) Unless the assistance agreement provides otherwise, you do not owe EPA any of the royalties you earn on copyrights or patents produced under the assistance agreement. (See subpart K of this part for EPA's rights regarding copyrights and patents.)

(d) You must keep complete records showing all receipts and expenditures related to program income.

§ 30.526 How do I treat interest earned on EPA funds?

If you earn interest on an EPA advance, you must return it to EPA unless you are:

(a) A State, or State agency as defined under section 203 of the Intergovernmental Cooperation Act of 1968, (42 U.S.C. 4213), or

(b) A tribal organization as defined under sections 102, 103, or 104 of the Indian Self Determination Act (25 U.S.C. 450f, 450g, and 450h).

§ 30.530 May I purchase personal property using EPA assistance funds?

(a) *Nonprofit institutions of higher education conducting basic or applied research and nonprofit organizations whose primary purpose is the conduct of scientific research.* You may purchase personal property for the conduct of basic or applied research if authorized to do so in your assistance agreement. Before you purchase property or equipment with a unit acquisition cost of $10,000 or more, you must receive the award official's approval. Title will be vested in you but may be limited as provided in paragraph (a)(1) of this section.

(1) If EPA determines that it is in the best interest of the Agency, EPA may reserve the right to transfer the title for personal property having a unit acquisition cost of $1,000 or more to the Federal Government or a third party, within 120 days after project completion. EPA must identify such property in the assistance agreement, or otherwise notify you in writing that EPA reserves the right to transfer the title.

(2) If EPA does not reserve the right to transfer the title, you have no other obligations or accountability to EPA.

(b) *Other recipients.* You may purchase personal property with EPA assistance funds if authorized to do so in your assistance agreement. Before you purchase personal property with a unit cost of $10,000 or more, you must receive the award official's approval. Title will be vested in you, subject to the following conditions:

(1) You must use the property in the EPA assisted project for which it was acquired as long as needed, whether or not the project continues to be supported with EPA funds;

(2) You must assure that EPA's interest (the percentage of EPA's participation in the total award) is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code or other applicable local laws on all nonexpendable personal property with a unit acquisition cost of $10,000 or more;

(3) You must follow the property management standards in § 30.531;

(4) You must follow the disposition requirements in § 30.532; and

(5) EPA reserves the right to transfer the title for nonexpendable personal property having a unit acquisition cost of $1,000 or more to the Federal Government or a third party, within 120 days after project completion. EPA must identify such property in the assistance agreement.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.531 What property management standards must I follow for nonexpendable personal property purchased with an EPA award?

Nonprofit institutions of higher education conducting basic or applied research and nonprofit organizations whose primary purpose is to conduct scientific research are exempt from the following standards. All other recipients must comply with the following property management standards. Recipients may use their own property management system if the system meets the following minimum standards.

(a) Maintain accurate records reflecting:

(1) A description of the property;

(2) Manufacturer's serial number, model number, or other identification number;

(3) Source of the property, including assistance identification number;

(4) Whether title is vested in the recipient or the Federal Government;

(5) Unit acquisition date and cost;

(6) The percentage of the Federal share of the cost;

(7) Location, use, and condition of property and the date the information was recorded; and

(8) Ultimate disposition data, including sales price or the method used to determine the price, or the method used to determine current fair market value where a recipient compensates EPA for its share under § 30.532 of this part.

(b) Conduct a physical inventory of property, and reconcile the results with the property records, at least once every two years. Your inventory must verify the current use and continued need for the property.

(c) Maintain a control system to prevent loss, damage, or theft. (You must thoroughly investigate and document any loss, damage, or theft of nonexpendable personal property.)

(d) Maintain adequate maintenance procedures that ensure the property is in good condition and that instruments used for precision measurements are periodically calibrated.

(e) Maintain proper sales procedures which provide for competition resulting in the highest possible return.

(f) Maintain identification of Federally-owned property.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.532 How do I dispose of personal property?

Nonprofit institutions of higher education conducting basic or applied research and nonprofit organizations whose primary purpose is the conduct of scientific research are exempt from the following requirements. All other recipients must comply with the following requirements. When personal property is no longer needed for the

original project, you may use it on other EPA projects. If you do not have other EPA projects, you may use it on other Federal projects. If you wish to use the property on other than Federally sponsored activities, you must comply with the following requirements;

(a) Generally, if you purchased nonexpendable personal property for less than $1,000 per unit, you may either keep it or sell it and keep the proceeds. However, if you are a profit-making organization, you may keep nonexpendable personal property only if you reimburse EPA for its proportionate share of the current fair market value of the property.

(b) EPA is entitled to compensation on nonexpendable personal property you purchased for more than $1,000. You may keep it, provided you compensate EPA for its proportionate share of the current fair market value. If you do not want to keep the property, your project officer will give you instructions for disposition.

(c) If, at the end of your project, you have expendable personal property with a total aggregate fair market value exceeding $1,000, you may use the property on other Federally sponsored projects. If you do not use the property on other Federally sponsored projects you must keep it or sell it, but in either case you must compensate EPA for its proportionate share of the current fair market value.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

§ 30.535 May I purchase real property with EPA awarded funds?

You may purchase real property subject to the following conditions:

(a) The award official must approve the purchase.

(b) Except as provided in paragraph (f) of this section, you must use the real property only for the purpose for which it was purchased under the assistance award.

(c) You comply with the requirements in 40 CFR part 4.

(d) You must also comply with 40 CFR part 35, subpart I, if your award is a wastewater treatment construction grant.

(e) You must assure that EPA's interest is adequately reflected and protected in compliance with all recordation or registration requirements of applicable local laws on real property.

(f) When it is no longer needed for the original project:

(1) You must get approval from EPA to use the property for other Federally supported projects or progams; or

(2) You must contact EPA for instructions on how to dispose of the property. EPA may:

(i) Permit you to retain title to the property provided you compensate EPA for its share; or

(ii) Direct you to sell the property and to compensate EPA for its share, less your expenses; or

(iii) Direct you to transfer the title of the property to the Federal Government and then compensate you based on your percentage of participation in the original cost of the project, which will be applied to the current fair market value of the property.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.536 How do I manage federally-owned property?

You must negotiate the use of federally-owned property with the award official and comply with your lease agreement and § 30.505(d). You must inform the project officer of the availability of the property when the property is no longer needed for the assistance project or when you have completed the project. EPA will give you instructions on where to return the property.

§ 30.537 Are contractors required to comply with EPA property policies?

Generally, contractors are not required to comply with EPA property policies. However, if your contractors acquired personal property with EPA funds, and the subagreement states that ownership vests in you or EPA, the contractor must comply with EPA property policies.

§ 30.538 May I use General Services Administration (GSA) supplies and services?

• You may not use GSA sources of supplies and services, or excess Government property. Excess Government property consists of property under the control of any Federal agency that is not required for its needs.

§ 30.540 Who will audit my project?

(a) *General.* EPA may perform preaward or interim audits, as well as a final audit of your project. If EPA audits your project, EPA will rely to the extent practicable on your audits conducted under § 30.510(g) (if done in accordance with applicable audit standards) instead of reauditing the same records.

(b) *Other recipients.* The award official may request a final audit after the submission of, or the due date of, the final Financial Status Report (see § 30.505(b)). Where your organization has a cognizant Federal audit agency, EPA will refer these audits to your organization's cognizant Federal audit agency. Where OMB has not established a cognizant Federal audit agency, EPA staff may perform or arrange for the audit to be performed.

[48 FR 45062, Sept. 30, 1983, as amended at 53 FR 8076, Mar. 11, 1988]

§ 30.541 What are my audit responsibilities?

(a) If you are an institution of higher education audited as part of single audits under the Single Audit Act of 1984, 31 U.S.C. 7501-7507, you must comply with the audit requirements of OMB Circular A-128. Other institutions of higher education and other nonprofit organizations (except for certain hospitals under the Medicaid/Medicare programs, or subject to contract closing audits) must comply with the audit requirements of OMB Circular A-133 for fiscal years that begin after January 1, 1990, in accordance with paragraphs (b) through (h) of this section.

(b) If you receive $100,000 or more in a year in Federal awards you must have an audit made for that year in accordance with the provisions of OMB Circular A-133. However, if you receive $100,000 or more but receive awards under only one program, you have the option of having an audit of your institution prepared in accordance with the provisions of OMB Circular A-133 or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(c) If you receive at least $25,000 but less than $100,000 a year in Federal awards you must have an audit made for that year in accordance with OMB Circular A-133 or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which you participate.

(d) If you receive less than $25,000 in a year in Federal awards you are exempt from Federal audit requirements, but your records must be available for review by appropriate EPA or subgranting entity officials.

(e) Audits shall usually be performed annually but not less frequently than every two years.

(f) In arranging for audit services, you must follow the procurement standards prescribed by OMB Circular A-110.

(g) If you receive EPA assistance and provide $25,000 or more of it during your fiscal year to a sub-recipient, you must ensure that the requirements of OMB Circulars A-133 or A-128 are met, as appropriate.

(h) You must comply with the requirements of OMB Circular A-133 concerning the use of small audit firms and audit firms owned and operated by socially and economically disadvantaged individuals.

[56 FR 7305, Feb. 22, 1991]

§ 30.600 What Federal laws and policies affect my award?

You must comply with all applicable Federal laws.

(a) *National Environmental Policy Act.* You must comply with the National Environmental Policy Act of

1969 (42 U.S.C. 4321 *et seq.*) as amended and other related environmental laws and executive orders that require you to assess the environmental impact of your project. See 40 CFR part 6 for specific requirements.

(b) *Flood Disaster Protection Act.* If your project involves construction or property acquisition in a special flood hazard area, you must comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 13, 1973). If your project is located in a community participating in the National Flood Insurance Program (42 U.S.C. 4001-4128), the Act requires you to purchase flood insurance as a condition of receiving EPA assistance. If the community is not participating in the National Flood Insurance Program and the special flood hazard area has been designated by the Federal Insurance Administration of the Federal Emergency Management Agency for at least one year, EPA will not award assistance for your project until the community enters the program and flood insurance is purchased. See 44 CFR parts 59 through 79 for specific requirements.

(c) *Clean Air Act.* Section 306 of the Clean Air Act, (42 U.S.C. 7606), as amended, and Executive Order 11738 prohibit EPA from awarding assistance to you (with certain exceptions) if you intend to use any facility on EPA's List of Violating Facilities to complete work on your agreement. You must include a clause in all subagreements that requires the recipients of those subagreements to comply with the requirements of 40 CFR part 15 (see 40 CFR 33.1020).

(d) *Federal Water Pollution Control Act.* Section 508 of the Federal Water Pollution Control Act, (33 U.S.C. 1368), as amended, and Executive Order 11738 prohibit EPA from awarding assistance to you (with certain exceptions) if you intend to use any facility on EPA's List of Violating Facilities to complete work on your agreement. You must include a clause in all subagreements to comply with the requirements of 40 CFR part 15 (see 40 CFR 33.1020). Section 13 of the 1972 Amendments to the Act prohibits sex discrimination under any program or activity receiving assistance under the Act. See 40 CFR part 7 for specific requirements.

(e) *Civil Rights Act.* You must comply with section 602, Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d), and related nondiscrimination laws and Executive Order 11246. These authorities prohibit you from excluding any person from participating in, denying them the benefits of, or discriminating against them on the basis of race, color, or national origin under any program or activity involving Federal financial assistance. See 40 CFR parts 7 and 8 for specific requirements.

(f) *Rehabilitation Act.* You must comply with section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794), as amended, which prohibits discrimination on the basis of handicap in Federally assisted programs. See 40 CFR part 7 for specific requirements.

(g) *Age Discrimination Act.* You must comply with the provisions of the Age Discrimination Act of 1975, (42 U.S.C. 6101 *et seq.*), which prohibit discrimination on the basis of age in Federally assisted programs. See 40 CFR part 7 for specific requirements.

(h) *Title IX of the Education Amendments of 1972.* You must comply with Title IX of the Education Amendments of 1972, (20 U.S.C. 1681 *et seq.*) which prohibits sex discrimination in Federally assisted education programs. See 40 CFR part 7 for specific requirements.

(i) *Uniform Relocation Assistance and Real Property Acquisition Policies Act.* You must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601 *et seq.*), if your project involves acquiring an interest in real property and/or any displacement of persons, businesses, or farm operations. See 40 CFR part 4 for specific requirements.

(j) *The Indian Self-Determination and Education Assistance Act.* You must comply with the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93-638). If your project will benefit Indians, the Act requires you to give Indians preference in training and employment opportunities and in the award of subagreements.

(k) *The Hatch Act.* If you are a State or local government recipient, you must ensure compliance with the Hatch Act, (5 U.S.C. 1501 *et seq.*), as amended. The Act requires State and local government employees to comply with the restrictions on political activities imposed by the Act if their principal employment activities are funded wholly or in part by Federal assistance. See 5 CFR part 151 for specific prohibitions and exemptions.

(l) *Safe Drinking Water Act.* Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e)), prohibits EPA from awarding assistance to you if EPA determines that your project may contaminate a sole source aquifer which will result in a significant hazard to public health. See CFR part 149.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.601 Are there restrictions on the use of assistance funds for advocacy purposes?

(a) You may not use assistance funds for:

(1) Lobbying or influencing legislation before Congress;

(2) Partisan or political advocacy purposes; or

(3) An activity whose objective could affect or influence the outcome of an EPA regulatory or adjudicatory proceeding.

(b) For nonprofit recipient organizations other than educational institutions, EPA will implement § 30.601(a)(1) and (2) consistent with the requirements of OMB Circular A-122, as revised (see § 30.410(c)).

[49 FR 38945, Oct. 2, 1984]

§ 30.603 What additional Federal laws apply to EPA assisted construction projects?

If you receive EPA assistance for a project involving construction, you must ensure compliance with the following additional requirements:

(a) *The Davis-Bacon Act.* The Davis-Bacon Act (40 U.S.C. 276a *et seq.*) as amended, and implementing regulations of the Department of Labor under 29 CFR part 5 require you to ensure that on construction subagreements in excess of $2,000, your contractors and subcontractors pay wages to laborers and mechanics at least equal to the minimum wages specified by the Secretary of Labor if required in the program statute.

(b) *The Copeland Act.* The Copeland (Anti-Kickback) Act, and the regulations of the Department of Labor under 29 CFR part 3 prohibit your contractors and subcontractors from inducing any person involved in your project to give up any part of the compensation to which that person is entitled under an employment contract.

(c) *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 of the Department of Labor under 29 CFR part 5 require your contractors and subcontractors to pay wages to laborers and mechanics on the basis of an eight hour work day and 40 hour work week and to pay at least time-and-a-half for work performed in excess of these time limitations. Also, the Act prohibits your contractors and subcontractors from requiring laborers and mechanics to work in hazardous, unsanitary, or dangerous conditions (see 29 CFR part 1926).

(d) *Convict labor.* You may not use convict labor unless the convicts are on work release, parole, or probation (see 18 U.S.C. 436).

§ 30.610 What are my responsibilities for preventing and detecting fraud and other corrupt practices?

(a) You bear the primary responsibility for preventing, detecting, and prosecuting corrupt practices under your assistance agreement.

(b) If you become aware of allegations, evidence, or the appearance of corrupt practices, you must:

(1) Immediately inform the EPA project officer and the EPA Office of Inspector General; and

(2) Promptly pursue available State and local legal and administrative remedies.

§ 30.611 Can I hire a person or agency to solicit EPA assistance for me?

Yes, but you may not reimburse with EPA assistance funds any person, corporation, partnership, agency, or other entity which solicits or secures EPA assistance for you in exchange for a commission, a percentage fee, a brokerage fee, or a contingent fee.

§ 30.612 May an EPA employee act as my representative?

(a) An EPA employee may not represent you as an agent or attorney in any proceeding before EPA or any other Federal agency in which the United States is a party or has a direct or substantial interest unless:

(1) You are a State or local government agency;

(2) The EPA employee is on detail to the agency under the Intergovernmental Personnel Act (5 U.S.C. 3371-3376); and

(3) The representation takes place in the context of carrying out programs for which EPA and your agency have a joint responsibility under the environmental statutes.

(b) Except as provided for in paragraph (a) of this section, an EPA employee must not act as an agent or attorney for a recipient or for a contractor or subcontractor of a recipient in any claim against the United States.

§ 30.613 What is EPA's policy on conflict of interest?

EPA's policy is to prevent personal or organizational conflict of interest, or the appearance of such conflict of interest in the award and administration of EPA assistance, including subagreements. (For restrictions on EPA employees, see 40 CFR part 3.)

(a) An official or employee of a recipient may not participate in any activity relating to EPA assistance if any of the following persons or organizations, to the official's or employee's knowledge, has a financial interest in the activity:

(1) The official or employee himself;

(2) The official or employee's spouse or minor child;

(3) A partner of the official or employee;

(4) An organization (other than a public agency) in which the official or employee serves as an officer, director, trustee, partner, or employee; or

(5) Any person or organization with whom the official or employee is negotiating or has any arrangement concerning prospective employment.

(b) Officials and employees of recipients must avoid any action which might result in, or create the appearance of:

(1) Using official position for private gain;

(2) Giving preferential treatment to any person;

(3) Losing independence or impartiality;

(4) Making an official decision outside official channels; or

(5) Undermining public confidence in the integrity of EPA programs.

§ 30.615 May I employ a former EPA employee and still receive assistance?

You may hire a former EPA employee and still receive assistance provided the former employee complies with the restrictions on post-employment activities established by 18 U.S.C. 207. These restrictions are explained in regulations issued by the Office of Personnel Management under 5 CFR part 737 and EPA regulations under 40 CFR part 3.

Subpart G—Can an Assistance Agreement be Changed?

§ 30.700 What changes to my assistance agreement require a formal amendment?

You must receive from the award official a formal amendment before implementing:

(a) A transfer of an award to another recipient;

(b) Changes in the objectives of the project;

(c) Changes in the assistance amount;

(d) Substantial changes within the scope of the project; or

(e) A rebudgeting of the following:

(1) Amounts budgeted for either construction or non-construction activities if transferred from one activity to the other;

(2) Amounts budgeted for indirect costs to absorb increases in direct costs; or

(3) Amounts budgeted for training allowances if transferred to other cost categories.

§ 30.705 What changes can I make to my assistance agreement without a formal amendment?

Minor changes in the project work that are consistent with the objective of the project and within the scope of the assistance agreement do not require the execution of a formal amendment before the recipient's implementation of the change. However, such changes do not obligate EPA to provide Federal funds for any costs incurred by you in excess of the assistance amount, unless approved in advance under § 30.700.

§ 30.710 Can I terminate a part or all of my assistance agreement?

(a) You and EPA may terminate a part or all of your assistance agreement, when both parties agree that the continuation of the project will not produce beneficial results. You and the award official must agree on the conditions of the termination, the effective date, and in the case of partial termination, the portion to be terminated. EPA may unilaterally terminate for cause your assistance agreement under § 30.903 of this part.

(b) EPA will pay you the Federal share of allowable costs incurred up to the date of termination and allowable costs related to commitments you made prior to termination that you cannot cancel.

Subpart H—How do I Close out my Project?

§ 30.800 What records and reports must I keep after I complete my project?

You and your contractors must keep all books, records, documents, and other evidence (including accounting procedures and practices and subagreement documents) that track the progress of your project in accordance with the requirements under § 30.501.

§ 30.802 Under what conditions will I owe money to EPA?

(a) If the award official determines that you owe funds, you must reimburse the Federal government that amount. EPA will take appropriate legal and administrative action to collect the amount you owe the Agency if reimbursement is not made in a timely manner. EPA may offset the debt against other funds payable to you under an EPA or other Federal agency assistance agreement if not explicitly prohibited by another statute.

(b) EPA will charge you interest if you fail to pay within 30 days from the date of the Agency's decision that a debt is owed. The interest rate will be the rate established by the Secretary of the Treasury in accordance with the Treasury Fiscal Requirements Manual 6-8020.20. The rates are published quarterly in the FEDERAL REGISTER.

(c) If you are not a State or local government, EPA will charge you its cost to process and handle the overdue debt at the end of each 30 day period the debt is overdue, and a penalty of 6% per annum if the debt is not paid within 120 days after the date of the Agency's decision that a debt is owed.

[48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986]

Subpart I—What Measures may EPA Take for Non-compliance?

§ 30.900 What measures may EPA take for non-compliance?

If you do not comply with all of the terms and conditions of your assistance agreement, the award official may apply any of the following:

(a) Issue a stop-work order;

(b) Withold payment;

(c) Suspend or terminate your assistance agreement for cause;

(d) Annul your assistance agreement;

(e) Request that the Director, Grants Administration Division, debar or suspend you as an eligible recipient;

(f) Take other appropriate administrative action; or

(g) Institute judicial proceedings.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38945, Oct. 2, 1984]

§ 30.901 What are the consequences of a stop-work order?

(a) A stop-work order requires you to immediately stop the work or activities described in the order and to take all reasonable steps to minimize costs incurred on the work. The award official will issue the order in writing. The order will be in effect for forty-five days after you receive it unless cancelled or extended by mutual agreement between you and EPA. If the problem cannot be resolved during the stop-work period and EPA is likely to terminate or annul the agreement, the award official will so inform you.

(b) If the stop-work order is cancelled and it caused any increase in the cost of and/or the time for completing the project, you may request an adjustment in the project period, budget period, or assistance amount. You must submit a request for adjustment to the project officer within sixty days after the stop-work order ended.

§ 30.902 What are the consequences of withholding payments?

(a) The award official may withhold payments when you fail to comply with the tasks, reporting requirements, or conditions of your assistance agreement. The award official will provide you reasonable notice in writing before withholding payment.

(b) The award official may withhold only the amount necessary to assure compliance with your assistance agreement.

(c) The award official may withhold payment to the extent you are indebted to the United States, unless the collection of the indebtedness will impair the accomplishment of the project and the continuation of the project is in the best interest of the United States.

§ 30.903 What are the consequences of termination for cause?

(a) The award official may unilaterally terminate your agreement in whole or in part at any time before the date of completion, whenever he determines that you have failed to comply with the conditions of your agreement. The award official will provide you an opportunity for consultation before issuing a notice of termination.

(b) If EPA terminates your agreement, the award official will notify you in writing of his determination, the reasons for the termination, and the effective date. Upon receiving the termination notice, you must stop work immediately. EPA will not reimburse you for any new commitments you make after you receive the termination notice.

(c) EPA will pay you the Federal share of allowable costs incurred up to the date of termination and allowable costs related to commitments you made prior to termination that you cannot cancel.

§ 30.904 What are the consequences of annulment?

(a) The award official may unilaterally annul in whole or in part your assistance agreement in any of the following cases:

(1) You have made no substantial progress on the project without good cause;

(2) You obtained an assistance agreement by fraud or misrepresentation;

(3) You are found to practice corrupt administrative procedures;

(4) You have inordinately delayed project completion without good cause; or

(5) You have failed to meet the project purpose to the extent that the fundamental purpose stated in the assistance agreement is frustrated.

(b) If EPA intends to issue an annulment, the award official will inform you of the annulment in writing. The award official will provide you an opportunity for consultation before issuing a notice of annulment. If your assistance agreement is annulled, you must return all funds received for the project including those already expended. EPA may pursue other available remedies under Federal, State, and local laws.

§ 30.905 May I request a review of a termination or annulment?

You may request a review of EPA's decision to terminate or annul an assistance agreement. Within thirty days after the notice of termination or annulment is issued, you must file a written request for review to the appropriate Assistant or Regional Administrator. Your request for review must follow the procedures under subpart L of this part.

[49 FR 38945, Oct. 2, 1984]

§ 30.906 What are the consequences of suspension or debarment?

EPA may suspend or debar you in accordance with 40 CFR part 32. You may not receive assistance or a subagreement if your name or organization appears on EPA's Master List of Debarred and Suspended Firms and Individuals.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

Subpart J—Can I get An Exception ("Deviation") From These Regulations?

§ 30.1001 Will EPA approve any exceptions to these regulations?

(a) On a case-by-case basis, EPA will consider requests for exceptions to these regulations.

(b) EPA may issue a "deviation" from any of its assistance related regulations, except for those that implement statutory and executive order requirements.

(c) The award official may "waive" certain requirements of this subchapter for foreign awards. All provisions waived will be stated in the assistance agreement.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

§ 30.1002 Who may request a deviation?

You, your project officer, or an EPA program office may request a deviation from EPA regulations. If you are the initiator, you must send your written request to your project officer if the request is for a Headquarters program or to the Regional Administrator for a Regionally administered program, who will then forward the request to the Director, Grants Administration Division, with a recommendation for approval or disapproval.

§ 30.1003 What information must I include in a deviation request?

Your request must include the following information:

(a) Your name, the assistance identification number, date of award, and the dollar value of the application or award;

(b) The section of the regulation from which you need a deviation;

(c) A complete description of what the deviation will do and a justification of why the deviation is necessary; and

(d) A statement of whether the same or a similar deviation has been previously requested. If such a request has been made previously, explain why it was made and the outcome.

§ 30.1004 Who approves or disapproves a deviation request?

(a) The Director, Grants Administration Division (GAD), approves or disapproves your deviation request. Assistant Administrators in the affected program areas must review and concur on deviations affecting a class of applicants or recipients.

(b) If EPA approves the deviation before an award, the revised requirement will be included in your assistance agreement. Approval of a deviation before an award does not guarantee an award.

§ 30.1005 May I request a review of a deviation decision?

You may not request a review of a deviation decision under the procedures in subpart L of this part. However, you may request the Director of the Grants Administration Division to reconsider his decision.

[48 FR 45062, Sept. 30, 1983; 49 FR 38945, Oct. 2, 1984]

Subpart K—What Policies Apply to Patents, Data, and Copyrights?

§ 30.1100 What assistance agreements are subject to EPA patent rules?

Except for wastewater treatment construction grants awarded under Title II of the Clean Water Act, as amended, all EPA assistance agreements involving experimentation, development, special investigations, surveys, studies, or research are subject to the EPA patent rules.

§ 30.1101 What Federal patent laws or policies govern my assistance agreement?

The nature of your organization will determine which laws and policies govern your assistance agreement:

(a) Small business firms and nonprofit organizations, including educational institutions, are entitled to the benefits of, and must comply with 35 U.S.C. Chapter 18 (1982), and the patent rights clause in OMB Circular A-124, Attachment A (49 FR 10393).

(b) A profitmaking firm that is not defined as a small business firm, and whose assistance agreement is funded under section 6914 of the Resource Conservation and Recovery Act (RCRA), must comply with section 6981(c) of RCRA. See Federal Acquisition Regulation 48 CFR part 27 and 48 CFR 52.227-13 (49 FR 12972).

(c) If you are neither a small business firm nor a profitmaking firm with an award under section 6914 of RCRA, you are subject to the guidelines in the President's Memorandum on Government Patent Policy issued on February 18, 1983 (Weekly Compilation of Presidential Documents, vol. 19, no. 7, page 252), and, therefore, must comply with 35 U.S.C. Chapter 118 (1982) and the patent rights clause cited in § 30.1101(a).

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

§ 30.1102 What are my invention rights and my reporting requirements if my award is other than an award under section 6914 of RCRA?

You must report all inventions to the Award Official and decide whether you wish to retain domestic and/or foreign rights to your invention. You must report your invention and notify the Award Official of your decision within the time periods specified in the patent rights clause cited in § 30.1101(a). If you do not retain the rights to your invention, EPA may acquire the title from you. If you retain title, EPA acquires a royalty-free, irrevocable license to use the invention throughout the world by, and on behalf of, the Federal Government.

[49 FR 38946, Oct. 2, 1984]

§ 30.1103 What are my invention rights and obligations if I am a profitmaking firm with an award under section 6914 of RCRA?

If you are not a small business and your assistance agreement does not indicate otherwise, you must comply with the patent rights clause, entitled "Patent Rights Acquisition by the Government" (48 CFR 52.227-13), which implements section 6981(c) of RCRA. Under this section, EPA normally obtains title to your invention.

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

§ 30.1104 Can I get a waiver from section 6981(c) of RCRA?

On a case by case basis, you may ask EPA for a deviation from section 6981(c) of RCRA. You must follow the procedures in subpart J.

§ 30.1106 Do the patent rules apply to subagreements?

(a) Yes, if the subagreements involve experimentation, development, special investigations, surveys, studies, or research, you must include the appropriate patent rights clause in the subagreement. All business firms and nonprofit organizations awarded subagreements are entitled to the benefits and must comply with 35 U.S.C. Chapter 18 (1982) and the President's Memorandum on Government Patent Policy of February 18, 1983, except that a party to a subagreement awarded under section 6914 of RCRA which is a profitmaking firm not defined as a small business firm, is subject to §§ 30.1101(b) and 30.1103.

(b) Subagreements must be in compliance with the "Patent and data and copyright clause" in 40 CFR part 33, and generally must contain the same patent rights clause as contained in your assistance agreement.

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

§ 30.1108 Does EPA require any type of licensing of background patents that I own?

Generally, EPA does not require such licensing. However, in awards subject to 35 U.S.C. Chapter 18 (1982) the Administrator may approve such a requirement under exceptional circumstances.

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

§ 30.1112 Are there any other patent clauses or conditions that apply to my award?

Your award is subject to both the Notice and Assistance Clause and the Authorization and Consent Clause in Appendix B to this part.

§ 30.1130 What rights in data and copyrights does EPA acquire?

All assistance agreements and subagreements are subject to Appendix C. As set forth in Appendix C, the Federal Government has an unrestricted right to use any data or information generated using assistance funds or specified to be delivered to EPA in the assistance agreement. The Federal Government has a royalty-free, irrevocable license to use any copyrighted data in any manner for Federal Government purposes.

Subpart L—How are Disputes Between EPA Officials and me Resolved?

§ 30.1200 What happens if an EPA official and I disagree about an assistance agreement requirement?

(a) Disagreements should be resolved at the lowest level possible.

(b) If you can not reach an agreement, the EPA disputes decision official will provide you with a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning your assistance agreement.

(c) The disputes decison official's decision will constitute final agency action unless you file a request for review by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

§ 30.1205 If I file a request for review, with whom must I file?

(a) For final decisions issued by an EPA disputes decision official at Headquarters, you must file your request with the Assistant Administrator responsible for the assistance program.

(b) For final decisions issued by a Regional disputes decision official, you must file your request for review with the Regional Administrator. If the Regional Administrator issued the final decision, you must request the Regional Administrator to reconsider that decision.

§ 30.1210 What must I include in my request for review or reconsideration?

Your request must include:

(a) A copy of the EPA disputes decision official's final decision;

(b) A statement of the amount in dispute;

(c) A description of the issues involved; and

(d) A concise statement of your objections to the final decision.

§ 30.1215 What are my rights after I file a request for review or reconsideration?

(a) You may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record;

(b) You are entitled to an informal conference with EPA officials; and

(c) You are entitled to a written decision from the appropriate Regional or Assistant Administrator.

§ 30.1220 If the Assistant Administrator confirms the final decision of the Headquarters disputes decision official, may I seek further administrative review?

A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

§ 30.1225 If the Regional Administrator confirms the final decision of the Regional disputes decision official, may I seek further administrative review at EPA Headquarters?

(a) A determination by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, you may file a petition for discretionary review by the Assistant Administrator responsible for the assistance program within 30 calendar days of the Regional Administrator's decision. Your petition must be sent to the Assistant Administrator by registered mail, return receipt requested, and must include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the reasons why you believe the decision is erroneous.

(b) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise you in writing that the Regional Administrator's decision remains the final Agency action.

(c) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow you to submit briefs in support of your petition for review and may provide you an opportunity for an informal conference in order to clarify factual or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

§ 30.1230 Will I be charged interest if I owe money to EPA?

(a) Interest will accrue on any amounts of money due and payable to EPA from the date of the disputes decision official's final decision, even if you request review of the decision under this subpart. Only full payment of the debt within 30 days of the disputes decision officials' final decision will prevent EPA from charging interest. If you pay a debt but request review under this subpart and the amount of the debt is reduced as a result of the review, EPA will refund the interest and penalty charges that you paid on the adjustment. However, processing and handling charges which you may have paid are refundable only if EPA determines that the entire amount of the debt is not owed.

(b) State and local government recipients are not subject to the penalty and handling charges in this section, but are subject to the interest charges.

[48 FR 45062, Sept. 30, 1983, as amended at 51 FR 6353, Feb. 21, 1986]

§ 30.1235 Are there any EPA decisions which may not be reviewed under this subpart?

You may not request a review of:

(a) Disapprovals of deviations under subpart J;

(b) Bid protest decisions under part 33;

(c) National Environmental Policy Act decisions under part 6;

(d) Advanced wastewater treatment decisions of the Administrator; and

(e) Policy decisions of the EPA Audit Resolution Board.

[48 FR 45062, Sept. 30, 1983, as amended at 49 FR 38946, Oct. 2, 1984]

Appendices to Part 30

Appendix A to Part 30—EPA Programs

The following chart identifies EPA's assistance programs and the types of awards (grants or cooperative agreements) that EPA will award under these programs.

Catalog of Federal domestic assistance No	Title	Funding mechanism
66.001	Air Pollution Control Program	(1)
66.003	Air Pollution Control Manpower Training	(1)
66.006	Air Pollution Control—Technical Training	(1)
	Air Pollution Control Fellowships	(4)
66.418	Construction Grants for Wastewater Treatment Works	(3)
66.419	Water Pollution Control—State and Interstate Program	(1)
66.420	Water Pollution Control—State and Local Manpower Program Development	(3)
	Water Pollution Control Fellowships	(4)
66.428	Water Pollution Control—Professional Training	(2)
66.432	State Public Water System Supervision Program	(2)
66.433	State Underground Water Source Protection Program	(2)
66.435	Water Pollution Control—Lake Restoration Cooperative Agreements	(3)
66.438	Construction Management Assistance	(1)
66.451	Hazardous Waste Management Financial Assistance to States	(1)
66.454	Water Quality Management Planning.	(1)
	Safe Drinking Water Professional Training.	(2)
	Safe Drinking Water Occupational Training	(3)
	Safe Drinking Water Fellowships	(4)
66.500	Environmental Protection—Consolidated Research	(3)
66.501	Air Pollution Control Research	(3)
66.502	Pesticides Control Research	(3)
66.504	Solid Waste Disposal Research	(3)
66.505	Water Pollution Control—Research, Development, and Demonstration	(3)
66.506	Safe Drinking Water Research and Demonstration	(3)
66.507	Toxic Substances Research	(3)
66.600	Environmental Protection Consolidated Grants—Program Support	(3)
66.603	Loan Guarantees for Construction of Treatment Works	(4)
66.700	Pesticides Enforcement Program Grants	(1)
	State Inventories of Uncontrolled Hazardous Waste Sites	(2)
66.802	Hazardous Substance Response Trust Fund (Superfund)	(1)

[1] Cooperative Agreement
[2] Grant Agreement
[3] Either
[4] Loan or Fellowship

Appendix B to Part 30—Patents and Copyrights Clauses

Notice and Assistance Clause

(a) The recipient must report to the project officer, promptly and in reasonable written detail, each known notice or claim of patent or copyright infringement on this agreement.

(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 agreement or out of the use of any supplies furnished or work or services performed hereunder, the recipient must furnish to the Government, when requested by the project officer, all evidence and information in possession of the recipient pertaining to such suit or claim. Such evidence and information must be furnished at the expense of the Government except where the recipient has agreed to indemnify the Government.

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

Authorization and Consent Clause

EPA gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent held by the United States in the performance of an assistance agreement and any subagreement.

Appendix C to Part 30—Rights in Data and Copyrights

(a) The term *subject data* as used in this clause includes writing, technical reports, sound recordings, magnetic recordings, computer programs, computerized data bases, data bases in hard copy, pictorial reproductions, plans, drawings, including engineering or manufacturing drawings, specifications, or other graphical representations, and works of any similar nature (whether or not copyrighted) which an applicant submits or which EPA specifies to be delivered under this assistance agreement or which a recipient develops or produces and EPA pays for under this assistance agreement. The term does not include financial reports, cost analyses, and other information incidental to assistance agreement administration.

(b) Except as may otherwise be provided in this assistance agreement, when publications, films, or similar materials are developed directly or indirectly from a project supported by EPA, the author is free to arrange for copyright without approval. However such materials shall be subject to the provisions of 40 CFR 30.518. The recipient 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, covered by copyright now or in the future.

(c) The recipient 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 the copyrighted matter in the manner provided in paragraph (b) above.

(d) 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.

(e) Unless otherwise limited below, the Government may, without additional compensation to the recipient, duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all subject data.

(f) Notwithstanding any provisions of this assistance agreement concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate, or ignore any marking restricting disclosure of subject data if the marking is not authorized by the terms of this assistance agreement.

(g) Data need not be furnished for standard commercial items or services which are normally sold, or have been sold, or offered to the public commercially by ar y supplier and which are incorporated as component parts in or to be used with the product or process being developed or investigated under this assistance agreement, if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficier t to enable the Government to procure the part or practice the process, or acquire an adequate substitute, are furnished.

(h) In addition to any data specified elsewhere in this assistance agreement to be furnished to EPA, the recipient shall retain and, upon written request of the project officer at any time during project performance or within two years after project performance is completed, deliver any subject data not previously delivered.

Appendix D to Part 30—Reporting Requirements

Application for EPA assistance and application related forms	OMB clearance No
(1) EPA Form 5700-12 "Application for Federal Assistance (Research, Training & Demonstration)" (See § 30 302)	[1] 2010-0004
(2) EPA Form 5700-20A "EPA Assistance Agreement/Amendment." (See § 30 302)	[1] 2010-0004
(3) EPA Form 5700-20B "Assistance Amendment (Optional)" (See § 30 302)	[1] 2010-0004
(4) EPA Form 5700-30 "Preapplication for Federal Assistance (Optional)" (See § 30 302)	[1] 2010-0004
(5) EPA Form 5700-31 "Application for Federal Assistance (Short Form)" (See § 30 302)	2010-0005
(6) EPA Form 5700-32 "Application for Federal Assistance (Construction)" (See § 30 302)	2010-0003
(7) EPA Form 5700-33 "Application for Federal Assistance (Nonconstruction Programs)" (See § 30 302)	[1] 2010-0004
(8) EPA Fellowship Forms:	
(a) EPA Form 5770-2 "Fellowship Application" (See § 30 302)	[1] 2010-0004
(b) EPA Form 5770-3 "Fellowship Facilities and Commitment Statement" (See § 30 302)	[1] 2010-0004
(c) EPA Form 5770-4 "Fellowship Applicant Qualifications Inquiry" (See § 30 302)	[1] 2010-0004
(d) EPA Form 5770-5 "Agency Fellowship Certification" (See § 30 302)	[1] 2010-0004
(e) EPA Form 5770-6 "Fellowship Amendment" (See § 30 302)	[1] 2010-0004
(f) EPA Form 5770-7 "Fellowship Activation Notice" (See § 30 302)	[1] 2010-0004
(g) EPA Form 5770-8 "Fellowship Agreement" (See § 30 302)	[1] 2010-0004
(h) EPA Form 5770-9 "EPA Fellowship Termination Notice" (See § 30 302)	[1] 2010-0004
(9) SF-269 "Financial Status Report." (See § 30 505)	[1] 2010-0004
(10) SF-270 "Request for Advance or Reimbursement" (See § 30 400)	[1] 2010-0004
(11) SF-271 "Outlay Report and Request for Reimbursement for Construction Programs" (See § 30 505)	[1] 2010-0004
(12) SF-272 "Federal Cash Transactions Report (See § 30 400)	[1] 2010-0004
B Other Reporting Requirements and Processes	
(1) Establish a separate bank account if the recipient uses the letter of credit method of payment	[1] 2010-0004
(2) Establish official records for each assistance award and keep them for specified periods of time	[1] 2010-0004
(3) Develop and implement quality assurance practices to meet project objectives and minimize loss of data due to out-of-control conditions or malfunctions	2000-0403
(4) Submit interim and final progress reports	[1] 2010-0004
(5) Report all inventions developed with EPA assistance funds	[2]
(6) Report on all Federally-owned property used on a project	[1] 2010-0004

Application for EPA assistance and application related forms	OMB clearance No.
(7) Maintain a financial management system that consistently applies accepted accounting principles and practices.	[1] 2010-0004
(9) Comply with EPA peer and administrative review requirements	([3])
(10) Obtain EPA's written authorization to use the recipient's own employees or equipment for construction, construction-related activities, or for repairs or improvements to a facility ("force account")	[1] 2010-0004
(11) Obtain EPA's approval before purchasing property or equipment with a unit acquisition cost of $10,000 or more	[1] 2010-0004
(12) Comply with certain property management standards	[1] 2010-0004
(13) Comply with EPA requirements when disposing of property with a purchase price of $1,000 or more	[1] 2010-0004
(14) Obtain EPA approval for the purchase of real property	[1] 2010-0004
(15) Comply with EPA requirements for management of Federally-owned property	[1] 2010-0004
(16) Request EPA approval to deviate from EPA regulations	[1] 2010-0004
(17) Follow certain procedures to request a review of an award official's written final decision on a dispute over the requirements in an assistance agreement	[1] 2010-0004

[1] OMB Clearance Number 2010-0004 was submitted to OMB for a time extension on September 19, 1983. We will publish OMB's extension in the FEDERAL REGISTER.
[2] Will be submitted to OMB.
[3] No clearance required.

[48 FR 45062, Sept. 30, 1983; 49 FR 38946, Oct. 2, 1984]

APPENDIX E

APPENDIX E

40 CFR PART 31, "UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS"

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

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Printed on Recycled Paper

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APPENDIX A—PART 30 AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENT RECIPIENTS

AUTHORITY: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

SOURCE: 53 FR 8075 and 8087, Mar. 11, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 53 FR 8075 and 8087, Mar. 11, 1988, Part 31 was added, effective October 1, 1988.

Subpart A—General

§ 31.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 31.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 31.3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

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

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor

is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

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

"Government" means a State or local government or a federally recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

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

"OMB" means the U.S. Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing consent prior to incurring specific cost.

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

"Share", when referring to the awarding agency's portion of real property, equipment or supplies,

means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Terminatic does not include:

(1) Withdrawal of funds awarded the basis of the grantee's underes mate of the unobligated balance ir prior period;

(2) Withdrawal of the unobliga balance as of the expiration of a gr

(3) Refusal to extend a grant award additional funds, to make competing or noncompeting conti ation, renewal, extension, or supp mental award; or

(4) Voiding of a grant upon deter nation that the award was obtair fraudulently, or was otherwise ille or invalid from inception.

"Terms of a grant or subgrar mean all requirements of the grant subgrant, whether in statute, regu tions, or the award document.

"Third party in-kind contributior mean property or services which be fit a federally assisted project or p gram and which are contributed non-Federal third parties withc charge to the grantee, or a cost-ty contractor under the grant agreeme

"Unliquidated obligations" for ı ports prepared on a cash basis me the amount of obligations incurred the grantee that has not been pa. For reports prepared on an accru expenditure basis, they represent t. amount of obligations incurred by t. grantee for which an outlay has n been recorded.

"Unobligated balance" means t portion of the funds authorized by t Federal agency that has not been ob gated by the grantee and is dete mined by deducting the cumulative o ligations from the cumulative fun authorized.

§ 31.4 Applicability.

(a) *General.* Subparts A-D of th part apply to all grants and subgran to governments, except where incor sistent with Federal statutes or wit regulations authorized in accordanc with the exception provision of § 31. or:

(1) Grants and subgrants to Stat and local institutions of higher educ tion or State and local hospitals.

(2) The block grants authorized b the Omnibus Budget Reconciliatio

Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 31.4(a) (3) through (8) are subject to Subpart E.

§ 31.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 31.6.

§ 31.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(1) In the Environmental Protection Agency, the Director, Grants Administration Division, is authorized to grant the exceptions.

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8075, Mar. 11, 1988, § 31.6 (c)(1) and (d) were added, effective October 1, 1988.

Subpart B—Pre-Award Requirements

§ 31.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 31.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 31.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)).

[53 FR 8075, Mar. 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8075, Mar. 11, 1988, § 31.13 was added, effective October 1, 1988.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 31.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 31.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reim-

bursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 31.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 31.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government	OMB Circular A-87
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OBM Circular A-122
Educational institutions	OMB Circular A-21
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular	48 CFR Part 31 Contract Cost Principles and Procedures or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency

§ 31.23 Period fo availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 31.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions—*

(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 31.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 31.25(g).)

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

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records

must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

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

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved

as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § __22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 31.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 31.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 31.31 and 31.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds,

amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 31.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 31.36 shall be followed.

Changes, Property, and Subawards

§ 31.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the

prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 31.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 31.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 31.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 31.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 31.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 31.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition

takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 31.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 31.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 31.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 31.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 31.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property when-

ever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 31.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Noth-

ing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5)(i)-(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commerical quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other

property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 31.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 31.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review

is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [delete ","] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

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

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

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

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where con-

tractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(j) *Payment to consultants.* (1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS-18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99-591).

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.* (1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm

or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8075, Mar. 11, 1988, § 31.36 (c)(5), (j) and (k) were added, effective October 1, 1988.

§ 31.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 31.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part.

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 31.10;

(2) Section 31.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 31.21; and

(4) Section 31.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 31.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must

cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

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

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

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

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

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

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

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

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

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

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

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 31.41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 31.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the

end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 31.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 31.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 31.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall b governed by § 31.41(b)(3) and (4).

(ii) When a construction grant paid by Treasury check advanc based on periodic requests from th grantee, the advances will be reques ed on the form specified in § 31.41(d

(iii) The Federal agency may subst tute the Financial Status Report spe ified in § 31.41(b) for the Outla Report and Request for Reimburs ment for Construction Programs.

(3) *Accounting basis.* The accountin basis for the Outlay Report and R quest for Reimbursement for Co struction Programs shall be governe by § 31.41(b)(2).

§ 31.42 Retention and access requiremen for records.

(a) *Applicability.* (1) This section a plies to all financial and programmat records, supporting documents, stati tical records, and other records c grantees or subgrantees which are:

(i) Required to be maintained by th terms of this Part, program regul tions or the grant agreement, or

(ii) Otherwise reasonably considere as pertinent to program regulations o the grant agreement.

(2) This section does not apply t records maintained by contractors o subcontractors. For a requirement t place a provision concerning records i certain kinds of contracts, se § 31.36(i)(10).

(b) *Length of retention period.* (1 Except as otherwise provided, recorc must be retained for three years fro the starting date specified in par graph (c) of this section.

(2) If any litigation, claim, negoti tion, audit or other action involvir the records has been started befo the expiration of the 3-year perio the records must be retained unt completion of the action and resol tion of all issues which arise from or until the end of the regular 3-ye period, whichever is later.

(3) To avoid duplicate recordkee ing, awarding agencies may make sp cial arrangements with grantees a subgrantees to retain any recor which are continuously needed f joint use. The awarding agency will r quest transfer of records to its custo

when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

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

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 31.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or

more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program.

(i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program.

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award, are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 31.35).

[53 FR 8068 and 8087, Mar 11, 1988, and amended at 53 FR 8076, Mar 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8076, Mar. 11, 1988, § 31.43 (a)(3)(i) was added, effective October 1, 1988.

§ 31.44 Termination for convenience.

Except as provided in § 31.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 31.43 or paragraph (a) of this section.

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

[53 FR 8076, Mar. 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8076, Mar. 11, 1988, § 31.45 was added, effective October 1, 1988.

Subpart D—After-The-Grant Requirements

§ 31.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administra-

tive actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 31.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 31.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 31.42;

(d) Property management requirements in §§ 31.31 and 31.32; and

(e) Audit requirements in § 31.26.

§ 31.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

Subpart F—Disputes

SOURCE: 53 FR 8076, Mar. 11, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 53 FR 8076, Mar. 11, 1988, Subpart F was added, effective October 1, 1988.

§ 31.70 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall

be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under § 31.6;

(2) Bid protest decisions under § 31.36(b)(12);

(3) National Environmental Policy Act decisions under Part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

Appendix A—Part 31 Audit Requirements for State and Local Government Recipients

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Circular No. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section

7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles:

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether.

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books

and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurance they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in additon to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for congnizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective actions not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits build up such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also program 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assitance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The author's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution

of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit its completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firm* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions

of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

DAVID A. STOCKMAN,
Director.

ATTACHMENT—CIRCULAR A-128

Definition of Major Program as Provided in Pub. L. 96-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $308,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million
$5 billion	$6 billion	$16 million
$6 billion	$7 billion	$19 million
Over $7 billion		$20 million

[51 FR 6353, Feb. 21, 1986. Redesignated at 53 FR 8076, Mar. 11, 1988]

EFFECTIVE DATE NOTE: At 53 FR 8076, Mar. 11, 1988, Appendix E to Part 30 was redesignated as Appendix A to Part 31, effective October 1, 1988.

APPENDIX F

LIST OF EPA ASSISTANCE PROGRAMS (CFDA NUMBER, TITLE, STATUTORY AUTHORITY, GICS PROGRAM CODE, AND DELEGATION OF AUTHORITY NUMBER)

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.001	Air Pollution Control Program Support Clean Air Act: Secs. 105; 106	A	7-1
66.003	Air Pollution Control Manpower-Training Clean Air Act: Sec. 103(b)	T	7-35
66.006	Air Pollution Control -- Technical Training Clean Air Act: Sec. 103	T	7-35
66.032	State Indoor Radon Program Toxic Substances Control Act: Sec. 306 (Indoor Radon Abatement Act)	K1	27-3
66.419	Water Pollution Control State and Interstate Interstate Program Support Clean Water Act: Sec. 106	I	2-3
66.432	State Public Water System Supervision Safe Drinking Water Act: Sec. 1443(a)	F	9-11
66.433	State Underground Water Source Protection (UIC) Safe Drinking Water Act: Sec. 1443(b)	G	9-21
66.435	Water Pollution Control-- Lake Restoration Cooperative Agreements Clean Water Act: Sec. 314(b)	CL	2-16
66.438	Construction Management Assistance Clean Water Act: Sec. 205(g)	C	2-74

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.454	Water Quality Management Planning Clean Water Act: Secs. 205(j)(1) & (2)	C6	2-55 2-45
66.456	National Estuary Program Clean Water Act: Sec. 320(g)	CE X	2-42
66.458	Capitalization Grants for State Revolving Fund Clean Water Act: Secs. 205(m), 601(a)	CS	2-54
66.460	Nonpoint Source Implementation Grants Clean Water Act: Secs. 205(j)(5); 319(h)	C9	2-23
66.461	Wetlands Protection--State Development Grants Clean Water Act: Sec. 104	CD	2-43
66.463	National Pollutant Discharge Elimination System Related State Program Grants Clean Water Act: Sec. 104	CP	2-84
66.465	Wellhead Protection Program Grants Safe Drinking Water Act: Sec. 1428	WH	9-37
66.466	Chesapeake Bay Program Clean Water Act: Sec. 104(b)(3)	CB	2-46
66.500	Environmental Protection--Consolidated Research (Combination of 2 or more Research authorities.)	R	(identify delegs. for all auths. used in award)
66.501	Air Pollution Control Research Clean Air Act: Secs. 104; 617(b)	R	7-61

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.502	Pesticides Control Research Federal Insecticide, Fungicide, and Rodenticide Act: Sec. 20(a)	R	5-23
66.504	Solid Waste Disposal Research Solid Waste Disposal Act: Sec. 8001	R	(pending)
66.505	Water Pollution Control--Research, Development, Demonstration Clean Water Act: Secs. 104; 105; 107; 113	R S	(pending)
66.506	Safe Drinking Water Research and Demonstration Safe Drinking Water Act: Secs. 1442; 1444	R S	(pending)
66.507	Toxic Substances Research Toxic Substances Control Act: Sec. 10	R	(pending)
66.508	Senior Environmental Employment Program Environmental Programs Assistance Act of 1984 (NOTE: "Q" used when enrollee(s) assigned to EPA; "QS" used when assigned to other Federal agency)	Q QS	1-67
66.600	Environmental Protection Consolidated Grants--Program Support Omnibus Territory Act: Title V Toxic Substances Control Act: Sec. 28 Clean Air Act: Sec. 105 Solid Waste Disposal Act: Secs. 3011; 3012(c); 4008 Federal Insecticide, Fungicide, and Rodenticide Act: Sec. 23(a) Safe Drinking Water Act: Secs. 1443(a); 1443(b) Clean Water Act: Sec. 106	M	(identify delegs. for all auths. used in award)

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.604	Environmental Equity Clean Water Act: Sec. 104(b)(3); Safe Drinking Water Act: Sec. 1442(b)(3); Solid Waste Disposal Act: Sec. 8001(a); Clean Air Act: Sec. 103(b)(3); Toxic Substances Control Act: Sec. 10(a); Federal Insecticide, Fungicide, and Rodenticide Act: Sec. 20(a); Comprehensive Environmental Response, Compensation and Liability Act: Sec. 111(c)(10); Marine Protection, Research and Sanctuaries Act: Sec. 203, and National Environmental Education Act: Sec. 6	EQ	1-86
66.700	Consolidated Pesticide Compliance Monitoring and Program Cooperative Agreements Federal Insecticide, Fungicide, and Rodenticide Act: Sec. 23(a)	E	5-27
66.701	Toxic Substances Compliance Monitoring Program Toxic Substances Control Act: Sec. 28	K	12-9
66.707	State Lead Program Grants Toxic Substances Control Act: Sec. 404(g)	PB	(pending)
66.801	Hazardous Waste Management--State Program Support Solid Waste Disposal Act: Sec. 3011	D	8-13
66.802	Hazardous Substance Response Trust Fund Comprehensive Environmental Response, Compensation, and Liability Act: Sec. 104(d)	V	14-1-B 14-4-A 14-4-C
66.804	State Underground Storage Tanks Program Solid Waste Disposal Act: Sec.2007(f)(2)	L	8-14

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.805	Undergound Storage Tank Trust Fund Program Solid Waste Disposal Act: Sec.2007(f)(2)	L	8-38
66.806	Superfund Technical Assistance Grants for Citizen Groups at Priority Sites Comprehensive Environmental Response, Compensation, and Liability Act: Sec.117(e)	1	14-24
66.807	Superfund Innovative Technology Evaluation Program Comprehensive Environmental Response, Compensation, and Liability Act: Sec. 311	S	14-18-A
66.808	Solid Waste Management Assistance Solid Waste Disposal Act: Sec. 8001	X1	8-42
66.809	Core Program Cooperative Agreements Comprehensive Environmental Response, Compensation, and Liability Act: Sec. 104	VC	14-4-C 14-4-A
66.810	Emergency Planning & Community Right to Know Toxic Substances Control Act: Secs. 10 & 28	X	12-25 12-26
66.900	Pollution Prevention Grants Program Pollution Prevention Act of 1990: Sec. 6605 Solid Waste Disposal Act: Sec. 8001 Clean Water Act: Sec. 104 Safe Drinking Water Act: Sec. 1442 Toxic Substances Control Act: Sec. 10 Clean Air Act: Sec. 103	NP	28-1

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.925	State/EPA Data Management Financial Assistance Program Federal Insecticide, Fungicide, and Rodenticide Act: Sec. 20 Solid Waste Disposal Act: Sec. 8001 Clean Water Act: Sec. 104 Safe Drinking Water Act: Sec. 1442 Comprehensive Environmental Response, Compensation, and Liability Act: Sec. 311 Toxic Substances Control Act: Sec. 10 Clean Air Act: Sec. 103	X2	1-61
66.926	Indian Environmental General Assistance Program Indian Environmental General Assistance Program Act of 1992: Sec. 11	GA	1-71
66.950	Environmental Education and Training Program National Environmental Education Act: Sec. 5	NT	1-74
66.951	Environmental Education Grants National Environmental Education Act: Sec. 6	NE	1-74
66.CAF	Air Pollution Control Fellowships Clean Air Act: Sec. 103(b)(5)	U	7-36
66.CWF	Water Pollution Control Fellowships Clean Water Act: Sec. 104(g)(3)(B)	U	2-40
66.CWT	Water Pollution Control Professional Training Clean Water Act: Sec. 104(g)(3)(A) & (c)	T	2-39

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.CWT	Water Pollution Control Technical Training Clean Water Act: Secs. 109; 110	T	2-41
66.DWF	Drinking Water Fellowships Safe Drinking Water Act: Sec. 1442(b)(3)	U	9-10
66.DWT	Drinking Water Training Safe Drinking Water Act: Secs. 1442(b)(3)(A) and 1442(d)(1)	T	9-15
66.INT	Interdisciplinary Training Clean Air Act: Sec. 103 Clean Water Act: Sec. 104 Safe Drinking Water Act: Sec. 1442 Solid Waste Disposal Act: Sec. 8001	T	(identify delegs. for all training auths. used in award)
66.MIA	Minority Institution Assistance Program (MIAP) Fellowship Clean Air Act: Sec. 103 Clean Water Act: Sec. 104 Safe Drinking Water Act: Sec. 1442 Solid Waste Disposal Act: Sec. 8001	U	(identify delegs. for all auths. used in award)
66.NMS	National Network for Environmental Management (NNEMS) Fellowship Clean Air Act: Sec. 103 Clean Water Act: Sec. 104 Safe Drinking Water Act: Sec. 1442 Solid Waste Disposal Act: Sec. 8001	U	1-75

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.RTX	Radon Training Toxic Substances Control Act: Sec. 308	T	27-1
66.SFT	Superfund Training Comprehensive Environmental Response, Compensation, and Liability Act: Sec. 311(b)	T	14-18-A
66.SPX	Environmental Protection Consolidated Grants-- (Combination of 2 or more statutory authorities delegated to Headquarters AAs)	Y	(identify delegs. for all auths. used in award)
66.SRF	Superfund Research (includes "Centers") Comprehensive Environmental Response, Compensation, and Liability Act: Sec.311	R	14-18-B
66.SSI	Investigations, Surveys or Studies considered neither Research, Demonstration nor Training Clean Water Act: Sec. 104(b)(3) Clean Water Act: Sec. 105; 107; 113 Clean Air Act: Sec. 617(b)	X	(identify delegs. for all auths. used in award)
66.SWF	Solid Waste Fellowship Solid Waste Disposal Act: Sec. 8001	U	
66.SWT	Solid Waste Training Solid Waste Disposal Act: Sec. 7007	T	8-17

CFDA NO.	PROGRAM TITLE STATUTORY AUTHORITY	PROGRAM CODE	DELEGATION OF AUTHORITY NO.
66.TSD	Toxic Substances Control Act Development Toxic Substances Control Act: Sec. 10	R	OPPT -- 12-22 (ORD -- pending)

APPENDIX G

GUIDE: "DELEGATIONS OF AUTHORITY -- WHAT MANAGERS NEED TO KNOW"

United States Environmental Protection Agency | Administration and Resources Management | EPA 202-F-94-002 February 1994

EPA

Delegations of Authority — *What Managers Need to Know*

Office of Administration
Management and Organization Division

INSIDE

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This Guide is designed to give you an overview of EPA's delegations of authority and to discuss your responsibility in managing delegated programs. A delegation of authority is defined as the Administrator's charge to senior Headquarters and Regional managers to carry out statutory and regulatory responsibilities on her behalf.

I. Background— Delegated Authority

There are 555+ delegations in the Agency's Delegations Manual. Delegations are important for two reasons. First, they are a legal record—documenting which Agency officials have authority to make decisions for the Administrator. Second, delegations are a management tool that establishes operating conditions among organizations and individuals as they carry out authorities.

Figure 1 shows the distribution of 555+ delegations throughout the Agency. Approximately 40% are held in Headquarters, 29% in the Regions and 31% shared by Headquarters and the Regions. Figure 1 also shows that EPA is a fairly decentralized Agency, with 60% of its delegations going either solely or on a shared basis to the Regions.

EPA's delegations tend to fall into one of several categories, such as enforcement actions, administrative decisions, state environmental agreements/approvals, certification/permits/registration decisions, and awarding grants and cooperative agreements. Figure 2 shows that the largest number of delegations result from the Clean Water Act and the Clean Air Act.

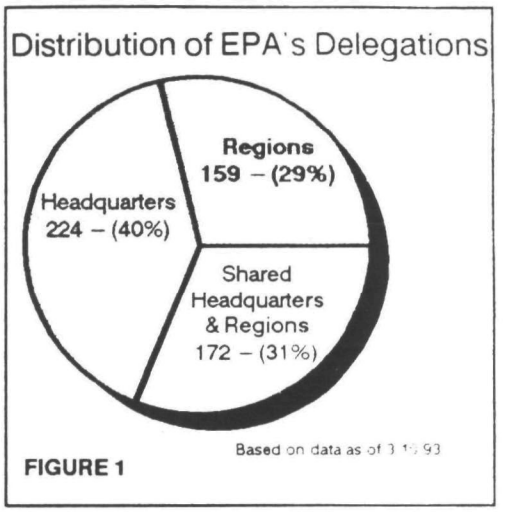

FIGURE 1

II. Delegated Authority vs. General Authority

It's important to note that a delegation of authority is not needed for all work that is performed by an office. **Delegated authority** generally refers to decision-making that flows directly from legislation or regulation. General authority stems from activities that an office does as a result of its functions, and can be found in functional and mission statements, operating guidance, and strategic plans.

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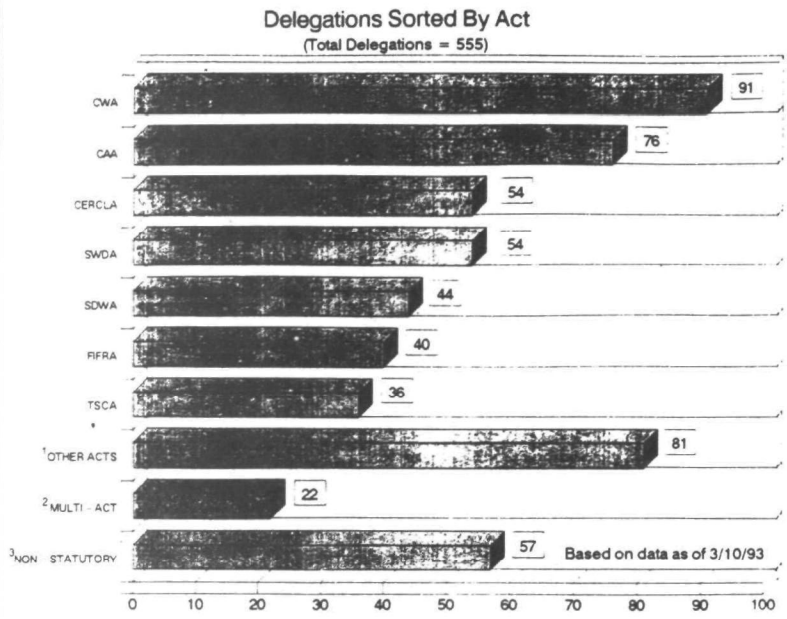


[1]**Other Acts:** Includes delegations from acts with fewer than 15 delegations. Acts included are: PPA, EPCRA, IRAA, MPRSA, NCA, & OAPCA.

[2]**Multi-Act:** Delegations use multiple statutory authorities and cannot be attributed to any one specific act.

[3]**Non-Statutory:** Includes delegations that are not based on legislation (i.e., General/Administrative delegations based on management decision-making protocol, Executive Orders, Federal Register Notices, etc.).

FIGURE 2

To put it simply, a general authority is an activity that an office performs—such as the analysis and work that is involved in reviewing a permit. A **delegated authority** is an accountable decision-making responsibility—such as approving or denying a permit.

III. Delegation Floors

An action can be redelegated to various levels in an organization, such as the Division Director or Branch Chief level. A delegation floor is the lowest level in an organization to which an action can be redelegated. This floor is written into the delegation as a specific authorized level. Delegatees may choose to have actions actually carried out at a level above the authorized floor, but not below it.

As of March, 1993, the majority of delegations are authorized to be redelegated to the Division Director level (43%), followed by 25% with no floor identified, and 15% that cannot be redelegated. (In light of the Inspector General's concern about delegation floors, the Agency now identifies a floor on all delegations as they are written or revised.) Figure 3 indicates that Division Directors are the critical action and decision-making level for the majority of delegated Agency authorities.

IV. Common Management Concerns

As managers, delegated authorities are an important part of the way you manage your organization and your programs. In addition to the technical and programmatic issues inherent in a delegation, you also need to be aware of some common management concerns.

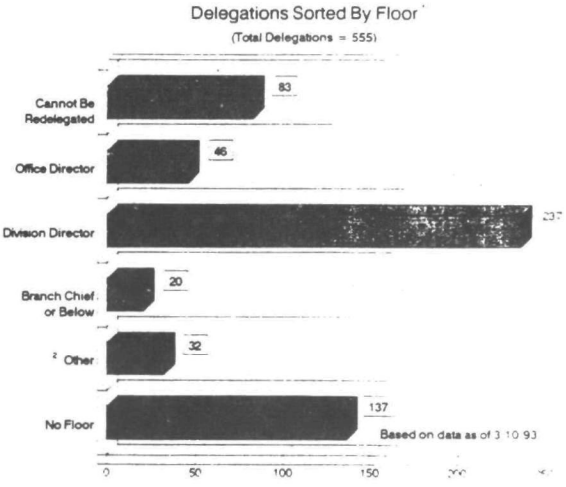
(1) There is considerable disagreement about how to determine the lowest appropriate level for redelegation in a highly decentralized decision-making management structure.

— In EPA a significant amount of discretion and autonomy is held in the Regional offices. It is crucial to decide how much authority you wish to delegate to the Regions.

— The level of delegation sometimes receives Congressional interest. In general, Congress prefers to keep decisions and accountability at high levels in the Agency to ensure effective oversight.

— In contrast, recent AA/RA Forums, the National Performance Review, and individual Regions have raised issues suggesting a need for additional employee empowerment and autonomy in making decisions under delegated authority.

These tensions are symptomatic of the pull and tug in a centralized vs. decentralized management structure and are important for you to keep in mind as you make your delegation decisions.



[1]**Floor=** Lowest level to which a delegation can be redelegated, e.g., Branch Chief, Division Director.

[2]**Other=** Includes delegations with floors identified as On-Site Coordinators, National Program Managers, Senior Budget Officers, or Human Resources Officers.

FIGURE 3

DELEGATION PRINCIPLES & PHILOSOPHIES

EPA's delegation system is based on five core principles and philosophies:

(1) Act for the Administrator — Generally the Administrator only delegates to one or more senior officials reporting directly to her to act on her behalf. This means the AA/RAs, General Counsel, and Associate Administrators.

(2) Right to Exercise or Withdraw — The Administrator and other delegatees always retain the right to exercise or withdraw a delegated authority at any time.

(3) Allocate Authority — Delegations allocate authority between the Regions and Headquarters, as well as among Headquarters Offices. As a way of deciding who should hold what authority, issues mainly affecting Regional or field offices are delegated to Regional Administrators, and issues that are multi-regional or of national significance generally remain with the Administrator or are delegated to senior officials at Headquarters.

(4) Authority at Lowest Level —When deciding to delegate authorities, consider the following:

- Review enabling legislation—sometimes it dictates the level of decision-making authority.
- Delegate an action to the lowest level that is appropriate for efficiency and effectiveness.
- Decide whether or not to redelegate authority to lower levels based on areas of responsibility, the staff's technical expertise, and political judgment, then delegate as close as possible to where the action takes place.
- Determine if an action has a high degree of importance and visibility and, if so, retain authority at an appropriate level capable of performing the task and making the appropriate technical, political and policy judgments.
- Determine whether full or partial authorization is needed based on the above criteria; decide who should exercise what parts of the authority; and what should not be delegated.

(5) Delegatees Are Accountable — Regardless of the level to which an action is redelegated, you remain accountable for all decisions or actions taken by your redelegatees in exercising the authority. In the following chain of accountability, it is very important for you to understand the level at which delegated authorities are or should be exercised.

(2) Determining the appropriate level to carry out an authority is closely aligned with the notion of what restrictions or limitations should be placed upon officials as they carry out authorities. While limitations are used most frequently with enforcement delegations, the majority of EPA's delegations (approximately 64%) have no restrictions limiting how officials exercise the delegated authority (see Figure 4).

— Historically the Agency's Administrators, the recipients of delegations, and the Management and Organization Division (M&O) have strongly discouraged limitations because they undermine the accountability and effectiveness that a delegation is intended to provide. Limitations result in "phantom" delegations, meaning that the delegatee only appears to have the authority, but in reality it is held by the office or person who must ultimately approve the action.

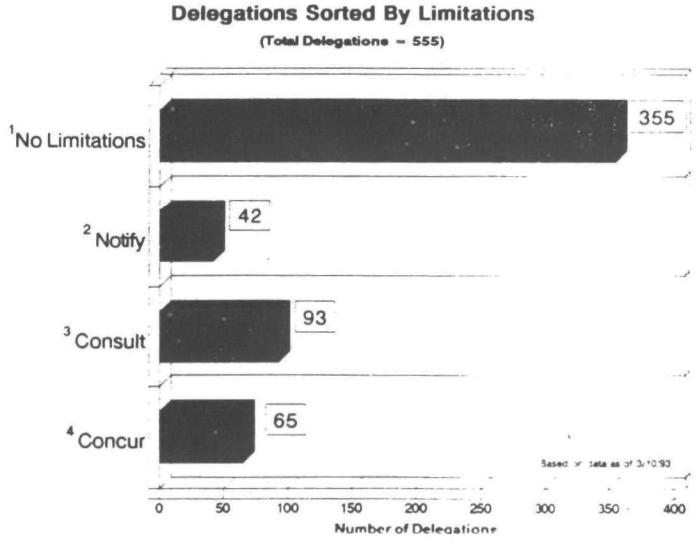
Although delegatees want to receive authorities as unencumbered as possible, National Program Managers often want to maintain control or ensure national consistency by placing limitations in delegations.

— Limitations, when necessary, establish operating procedures between programs that must share delegated authority.

— EPA officials who have been given a delegated authority can only carry it out within the stated parameters of the limitations included in the delegation.

(3) Timing is an important issue in managing your delegations and programs. Delegation actions submitted at the last minute force an expedited review (or no review at all), limit input by essential parties affected by the delegation, and create the potential for vulnerability when the delegation is exercised.

For example, regulations and permits are sometimes approved and ready to be carried out before an office realizes they do not have appropriate delegated authority to approve the action.



[1]No specific restrictions on officials in exercising the delegated authority.
[2]Requires informing other official(s) named when exercising the authority.
[3]Requires discussing action with other official(s) named before exercising the authority.
[4]Requires approval from other official(s) named before exercising the authority.

FIGURE 4

Delegations with limitations are separated into three types:

- ☐ **Notify requires the delegatee to *inform* another official(s) when exercising the authority. Notify is used in 21% of the delegations with limitations;**
- ☐ **Consult requires that an action official *discuss* the action with another official(s) *before* exercising the authority. Consult is used in 46% of the delegations with limitations;**
- ☐ **Concur is the most rigid of all limitations, is used in 33% of the delegations with limitations, and requires the delegatee to obtain the *approval* of another official(s) *before* exercising the authority.**

(4) A delegation of authority should be considered an initial management step, not a final one. As a manager, you must also control delegations after they are redelegated. Several methods can be used:

— Consider crafting delegations to stipulate dollar levels or types of actions as a way of control rather than delegating broad authority or imposing unnecessary limitations. An example are dollar limits used with some grant or cooperative agreement delegations.

— Build a management infrastructure for your program using a mix of applicable program guidance, plans, evaluations, technical assistance, information sharing systems, and other mechanisms. Don't rely solely on delegations of authority for program management directions.

— Systematically review your delegations on a regular basis to make sure they are compatible with program objectives. Periodic program evaluations and conferences can help the National Program Manager assure that the entire program, including the exercise of delegated authority, is solid and consistent.

— Revise delegations as understanding and experience with the authority grows in the organization.

— Show confidence in the redelegation decisions you make. Once decisions are redelegated, it is important to demonstrate trust, integrity, and consistency toward redelegatees and the actions they take under the redelegations.

— Exercise a delegated authority yourself when it is appropriate for policy or political reasons to do so; and withdraw an authority if it is being improperly carried out.

Before deciding to exercise or withdraw a delegation, explore alternatives and discuss your concerns with the redelegatee. Withdrawing a delegated authority should be used as a last resort after other alternatives are exhausted.

V. The Green Border Review Process

Before the Administrator approves a delegation of authority, it is circulated through the Agency's "Green Border" review process. This review process is the mechanism for the Administrator to receive the advice and counsel of her senior managers and to be sure that all legal or operational issues have been raised before she makes her decision. Green Border is also an Agencywide consensus-building process, and is managed by the Management and Organization Division (M&O) in the Office of Administration and Resources Management. Your staff has more detailed information about the Green Border review process.

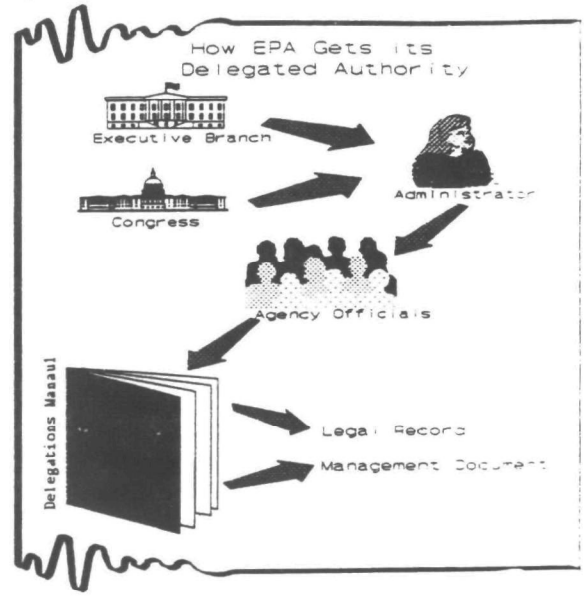
VI. Conclusion

Delegations of authority are management tools that:

(1) Ease the burden of obligations for which the Administrator is responsible by giving authority to senior managers to carry out actions on her behalf. By delegating these responsibilities to EPA senior officials, the Administrator has more time to address other pressing issues affecting the Agency; and

(2) Provide a legal record of Agency officials who carry out authority on behalf of the Administrator. This becomes very important when EPA actions are challenged in court.

If you are interested in learning about specific delegations in your program, please consult the M&O Management Analyst for your organization ((202) 260-5000) who will be happy to assist you.



APPENDIX H

APPENDIX H

40 CFR PART 33, "PROCUREMENT UNDER ASSISTANCE AGREEMENTS"

substance in conducting any activity with the grant.

[54 FR 4962, Jan. 31, 1989]

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

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APPENDIX A—PROCEDURAL REQUIREMENTS FOR RECIPIENTS WHO DO NOT CERTIFY THEIR PROCUREMENT SYSTEMS, OR FOR RECIPIENTS WHO HAVE THEIR PROCUREMENT CERTIFICATIONS REVOKED BY EPA

AUTHORITY: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

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SOURCE: 48 FR 12926, Mar. 28, 1983, unless otherwise noted.

§ 33.001 Applicability and scope of this part.

(a) This part applies to all assistance agreements awarded on or after the effective date of this part. For assistance agreements awarded before the effective date, this part will apply only to those procurement actions initiated by the recipient on or after the date the recipient complies with the self-certification requirements in § 33.110 of this part.

(b) This part:

(1) Describes EPA's procurement system evaluation process.

(2) Identifies the minimum requirements for the procurement of supplies, services, and construction under EPA assistance agreements.

(3) Identifies an additional specification requirement for procurement under assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subparts E and I.

(4) Identifies the procurement standards that institutions of higher education and other nonprofit organizations must follow.

(5) Identifies the provisions that recipients of EPA assistance agreements must include in their subagreements.

(6) Describes the procedures that EPA will use to handle protest appeals concerning the award of a subagreement by the recipient of an EPA assistance agreement.

(c) This part does not apply to work beyond the scope of the project for which an assistance agreement is awarded (i.e., ineligible work).

(d) This part does not apply to expenses for services for which the recipient will receive an allowance or a potential recipient will receive an advance of an allowance under 40 CFR Part 35, Subpart I.

(e) This part supplements the requirements in:

(1) 40 CFR Part 30 "General Regulation for Assistance Programs," and

(2) 40 CFR Part 32, "Debarments and Suspensions under EPA Assistance Programs."

(f) The following types of recipients must comply with the specified subparts in this part:

(1) Recipients of assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subparts E and I, must follow the requirements in Subparts A, B, C, F and G.

(2) Recipients of remedial action cooperative agreements under the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (Superfund 42 U.S.C. 6901 et seq.) must follow the requirements in Subparts A, B, E, F and G.

(3) State and local government recipients for other than construction grants and CERCLA remedial action cooperative agreements must follow the requirements in Subparts A, B, F and G.

(4) Institutions of higher education, hospitals, and other nonprofit organizations must follow the requirements in Subparts A, B, D and G.

(g) In the construction of treatment works program under the Clean Water Act (33 U.S.C. 1251 et. seq.), it is EPA's policy to delegate determinations on individual projects to State agencies to the maximum extent possible (see 40 CFR Part 35, Subpart F). This part uses the term "award official." To the extent that the award official for a treatment works assistance agreement delegates responsibility for determining compliance with the requirements of this part (except for § 33.115 "Procurement system review," and Subpart G "Protests") to a State agency under a delegation agreement (40 CFR 35.1130), the term "award official" may be read "State agency."

(h) This part applies to a grant awarded under 40 CFR Part 35 Subpart E only if the recipient elects to follow the requirements in this part. If the recipient of a Subpart E grant does not elect to follow the requirements in this part, it is subject to the procurement requirements in 40 CFR Subpart E.

[48 FR 12926, Mar. 28, 1983, 48 FR 30364, July 1, 1983]

§ 33.005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and Part 35.

(b) As used in this part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations; reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, alteration, remodeling, improvement, or extension of buildings, structures or other property. Construction also includes remedial actions in response to a release, or a threat of a release, of a hazardous substance into the environment as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability and allowability.

Intergovernmental Agreement. Any written agreement between units of government under which one public agency performs duties for or in concert with another public agency using EPA assistance. This includes substate and interagency agreements.

Minority business enterprise. A minority business enterprise is a business which is: (1) Certified as socially and economically disadvantaged by the Small Business Administration, (2) certified as a minority business enterprise by a State or Federal agency, or (3) an independent business concern which is at least 51 percent owned and controlled by minority group member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

(i) Black American;

(ii) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);

(iii) Native American (American Indian, Eskimo, Aleut, native Hawaiian), or

(iv) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition, previous experience with similar work, established catalog or market price, law or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal cost principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

Services. A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, (e.g., reports, design drawing, specifications). This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Supplies. All property, including equipment, materials, printing, insurances, and leases of real property, but excluding land or a permanent interest in land.

Women's business enterprise. A women's business enterprise is a business which is certified as such by a State or Federal agency, or which meets the following definition: A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or

women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51 percent owned by a married woman in a community property state will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business.

Subpart A—Procurement System Evaluation

§ 33.105 Applicability and scope of this subpart.

(a) This subpart applies to all recipients of EPA assistance agreements.

(b) For procurements involving EPA funds, recipients shall use their own procurement policies and procedures if those policies and procedures reflect applicable Federal, State, and local laws and regulations, and at least meet the requirements set forth in this part.

(c) This subpart describes when EPA will review the recipient's procurement practices.

§ 33.110 Applicant and recipient certification.

(a) It is the applicant's and recipient's responsibility to evaluate its own procurement system and to determine whether its system meets the applicable requirements in this part (see § 33.001).

(b) After evaluating its procurement system, the applicant or recipient will complete the "Procurement System Certification" (EPA Form 5700-48). The applicant or recipient will either certify that:

(1) Its system will meet the intent of all the requirements in this part before any procurement action with EPA assistance is undertaken, or

(2) Its current system does not meet the intent of the requirements of this part and, therefore, the applicant will follow the requirements of 40 CFR Part 33 and allow EPA preaward review of proposed procurement actions that will use EPA funds. The additional requirements for EPA review and approval are contained in Appendix A to this part.

(c) The applicant must submit the signed certification form with the assistance application to the award official.

(d) The certification will be valid for two years or for the length of the project period specified in the assistance agreement, whichever is greater, unless the recipient substantially revises its procurement system or the award official determines that the recipient is not following the intent of the requirements in this part (see § 33.115(b)). If the recipient substantially revises its procurement system, the recipient must re-evaluate its system and submit a revised EPA Form 5700-48.

(e) Even when a recipient certifies its procurement system, the EPA award official retains the authority stated in:

(1) Section 33.210(h) "Recipient's procurement responsibilities," which requires the recipient to receive the award official's prior written approval if the recipient wants to use an innovative procurement method,

(2) Section 33.211 "Recipient reporting requirements," which requires the award official to notify the Department of Labor of certain construction subagreement awards, and obtain all bid or offer tabulations,

(3) Section 33.605(d) "Noncompetitive negotiation procurement method," to authorize a noncompetitive award,

(4) Section 33.820(b) "Additional procurement requirements," which requires the award official's prior approval for a sole source award over $10,000 by an institute of higher education or other nonprofit organization,

(5) Subpart G "Protests."

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983, as amended at 53 FR 8077, Mar. 11, 1988]

§ 33.115 Procurement system review.

(a) EPA will not substitute its judgment for that of the recipient unless

the matter is primarily a Federal concern.

(b) Even if a recipient has a certified procurement system, EPA reserves the right to review a recipient's procurement system or procurement action under an assistance agreement:

(1) To determine if the recipient is following the procurement requirements in this part; or

(2) When there is sufficient reason to believe that the recipient's system may be unacceptable based on:

(i) Information concerning the review or certification of the recipient's procurement system or actions by other Federal agencies or Congress;

(ii) Information from the recipient's cognizant audit agency;

(iii) Information from State agencies and organizations independent of the recipient's procurement activity;

(iv) Recipient responses to the procurement system certification form;

(v) Previous EPA experience with the recipient; or

(vi) Information from contractors or prospective contractors.

(c) If the award official determines that the recipient is not following the procurement requirements it certified it would follow, the award official shall revoke the recipient's certification and:

(1) Require that the recipient follow the procurement requirements in this part, including Appendix A, for future procurement actions and, if appropriate,

(2) Apply the sanctions in 40 CFR Part 30.

(d) The recipient may recertify its procurement system if it shows the award official that it has corrected the procurement deficiencies noted by the award official, and the award official accepts the recertification.

Subpart B—Procurement Requirements

§ 33.205 Applicability and scope of this subpart.

This subpart contains:

(a) The recipient's and EPA's responsibilities, and

(b) The minimum procurement standards for each recipient's procurement system.

§ 33.210 Recipient responsibility.

(a) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes and other related procurement matters.

(b) The recipient shall maintain a subagreement administration system to assure that contractors perform in accordance with the terms, conditions and specifications of their subagreements.

(c) The recipient shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(d) The recipient shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(e) Where appropriate, the recipient shall make an analysis of lease versus purchase alternatives in its procurement actions.

(f) A recipient may request technical and legal assistance from the award official for the administration and enforcement of any subagreement awarded under this part. However, such assistance does not relieve the recipient of its responsibilities under this part.

(g) A recipient may use innovative procurement methods or procedures only if it receives the award officials' prior written approval.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983, as amended at 53 FR 8077, Mar. 11, 1988]

§ 33.211 Recipient reporting requirements.

Recipients shall notify the award official, in writing, of each construction subagreement which has or is expected to have an aggregate value over $10,000 within a 12-month period. The recipient shall notify the award official within ten (10) calendar days after the award of each construction subagreement. The notice shall include:

(a) Name, address, telephone number and employee identification number of the construction contractor,

(b) Amount of the award,

(c) Estimated starting and completion dates,

(d) Project number, name and site location of the project, and

(e) Copy of the tabulations of bids or offers and the name of each bidder or offeror.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.220 Limitation of subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. A responsible contractor is one that has:

(1) Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;

(2) Resources to meet the completion schedule contained in the subagreement;

(3) A satisfactory performance record for completion of subagreements;

(4) Accounting and auditing procedures adequate to control property, funds and assets, as required in this part and 40 CFR Part 30; and

(5) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under 40 CFR Part 30.

(b) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 nor shall it permit any portion of the work required by the subagreement to be performed at any facility listed on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.225 Violations.

The recipient shall refer violations of law to the local, State or Federal authority with jurisdiction over the matter (see 40 CFR 30.610).

[48 FR 12926, Mar 28, 1983, 48 FR 30364 July 1, 1983]

§ 33.230 Competition.

(a) The recipient shall conduct all procurement transactions in a manner that provides maximum open and free competition.

(b) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

(1) Noncompetitive practices between firms;

(2) Organizational conflicts of interest;

(3) Unnecessary experience and bonding requirements;

(4) State or local laws, ordinances, regulations or procedures which give local or in-State bidders or proposers preference over other bidders or proposers in evaluating bids or proposals; or

(5) Placing unreasonable requirements on firms in order for them to qualify to do business.

(c) The recipient may use a prequalification list(s) of persons, firms or products if it:

(1) Updates its prequalified list(s) at least every six months;

(2) Reviews and acts on each request for prequalification made more than 30 days before the closing date for receipt of proposals or bid opening; and

(3) Gives adequate public notice of its prequalification procedure in accordance with the public notice procedures in § 33.410 or § 33.510.

(d) A recipient may not use a prequalified list(s) of persons or firms if the procedure unnecessarily restricts competition. However, this restriction does not apply to § 33.525 "Optional selection procedure for negotiation and award of subagreements for architectural and engineering services."

EDITORIAL NOTE: For Class deviation documents affecting § 33.230, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) The recipient shall negotiate profit as a separate element of price for each subagreement in which there is no price competition, or where price is based on cost analysis.

(c) Where the recipient receives two or more bids, profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Off-the-shelf or catalog supplies are exempt from this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction and services. Affirmative steps shall include the following:

(1) Including qualified small, minority, and women's businesses on solicitation lists;

(2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses;

(4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses;

(5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (a) (1) through (5) of this section.

(b) [Reserved]

(c) EPA encourages recipients to procure supplies and services from labor surplus area firms.

§ 33.245 Privity of subagreement.

Neither EPA nor the United States shall be a party to any subagreement nor to any solicitation or request for proposals.

§ 33.250 Documentation.

(a) Procurement records and files for procurements in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Written justification for selection of the procurement method;

(3) Written justification for use of any specification which does not provide for maximum free and open competition;

(4) Written justification for the type of subagreement;

(5) Basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 33.290 and documentation of negotiations; and

(6) Written justification for rejecting bids.

(b) Recipients must state the reasons for rejecting any or all bids and the justification for procurements on a noncompetitively negotiated basis and make them available for public inspection.

EDITORIAL NOTE: For Class deviation documents affecting § 33.250, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 33.255 Specifications.

(a) Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition, unless the features are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment or to promote innovative technologies. The description shall include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

(b) The recipient shall avoid the use of detailed product specifications if at all possible.

(c) When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a "brand name or equal" description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must clearly state in the specification the salient requirements of the named brand which must be met by offerors. (An additional specification requirement for recipients of assistance for the construction of treatment works under 40 CFR Part 35, Subparts E and I is contained in § 33.710.)

§ 33.260 Intergovernmental agreements.

(a) To foster greater economy and efficiency, EPA encourages recipients to enter into State and local intergovernmental agreements for common procurement or use of goods and services.

(b) Although intergovermental agreements are not subject to the requirements in this part, all procurements under intergovernmental agreements are subject to the requirements in this part except for procurements that are:

(1) Incidental to the purpose of the assistance agreement, and

(2) Made through a central public procurement unit.

§ 33.265 Bonding and insurance.

(a) These requirements apply only to recipients and contractors with subagreements for construction.

(1) For construction subagreements of $100,000 or less, the recipient shall follow its own requirements relating to bid guarantees, performance bonds and payment bonds.

(2) For those subagreements more than $100,000, the award official may accept the recipient's bonding policy and requirements provided the award official makes a determination that the Federal Government's interest is adequately protected. If the award official does not make that determination, the minimum bonding requirements for subagreements more than $100,000 are:

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

(ii) A "performance bond" for 100 percent of the subagreement price. A "performance bond" is one that the contractor executes in connection with a subagreement to secure fulfillment of all its obligations under such subagreement.

(iii) A "payment bond" for 100 per cent of the subagreement price. A "payment bond" is one that the contractor executes in connection with a subagreement to assure payment as required by law, to all persons supplying labor and material in the execution of the work provided for in the subagreement.

(3) Where bonds are required in the situations described above, bidders and contractors shall obtain them from companies holding certificaties of authority as acceptable sureties (31 CFR Part 223).

(b) Recipients and contractors must follow the flood hazard area requirements of the Flood Disaster Protection Act of 1973 contained in 40 CFR Part 30.

§ 33.270 Code of conduct.

(a) Recipients shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by EPA funds. No employee, officer or agent of the recipient shall participate in the selection, award or administration of a subagreement supported by EPA funds if a conflict of interest, real or apparent, would be involved.

(b) Such a conflict would arise when:

(1) Any employee, officer or agent of the recipient, any member of their immediate families, or their partners have a financial or other interest in the firm selected for award, or

(2) An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person under paragraph (b)(1) of this section.

(c) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or other parties to subagreements.

(d) Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(e) To the extent permitted by State or local law or regulations, the recipient's code of conduct shall provide for penalties, sanctions or other disciplinary actions for violations of the code by the recipient's officers, employees or agents or by contractors or their agents.

§ 33.275 Federal cost principles.

The following cost principles apply to assistance agreements and subagreements:

(a) State and local governments must comply with OMB Circular A-87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A-21 to determine allowable costs and with OMB Circular A-88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A-122 to determine allowable costs.

(d) All other recipients, contractors and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1-15.2 and, if appropriate, § 1-15.4) to determine allowable costs.

§ 33.280 Payment to consultants.

(a) For all EPA assistance agreements, EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for a GS-18. (Recipients may, however, pay consultants more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.

(b) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, July 1, 1983]

§ 33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed $10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed $10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit cost or pricing data in support of their proposals to the recipient.

§ 33.295 Subagreements awarded by a contractor.

A contractor must comply with the following provisions in its award of subagreements. (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) 40 CFR Part 32 (Debarment and Suspension Under EPA Assistance Programs);

(b) The limitations on subagreement award in § 33.220(a) (1) through (5);

(c) The profit requirements in § 33.235;

(d) The requirements for small, minority, women's and labor surplus area businesses in § 33.240;

(e) The specification requirements of § 33.255;

(f) The requirements of Subpart C of this part, if appropriate;

(g) The Federal cost principles in § 33.275;

(h) The prohibited types of subagreements in § 33.285;

(i) The cost and price considerations in § 33.290, and

(j) The applicable subagreement provisions in Subpart F of this part.

Small Purchases

§ 33.305 Small purchase procurement.

If the aggregate amount involved in any one procurement transaction does not exceed $10,000, including estimated handling and freight charges, overhead and profit, the recipient may use small purchase procedures.

Editorial Note: For Class deviation documents affecting § 33.305, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 33.310 Small purchase procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for a procurement of services, supplies or other property costing in the aggregate not more than $10,000.

Editorial Note: For Class deviation documents affecting § 33.310, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 33.315 Requirements for competition.

(a) Recipients shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(b) Recipients shall obtain price or rate quotations from an adequate number of qualified sources.

Formal Advertising

§ 33.405 Formal advertising procurement method.

(a) The requirements in §§ 33.405 through 33.430 apply to all formally advertised subagreements in excess of $10,000. Formal advertising means the public solicitation of sealed bids and the award of a subagreement based on a fixed price (lump sum, unit price, or a combination of the two) to the lowest, responsive, responsible bidder.

(b) Formal advertising requires at a minimum:

(1) A complete, adequate and realistic specification or purchase description of what is required;

(2) Two or more responsible bidders which are willing and able to compete effectively for the recipient's business;

(3) A procurement that lends itself to the award of a fixed-price subagreement; and

(4) That the selection of the successful bidder be made principally on the basis of price.

§ 33.410 Public notice and solicitation of bids.

The recipient shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained or examined.

§ 33.415 Time for preparing bids.

The recipient must allow adequate time between the date the public notice is first published and the date by which bids must be submitted.

§ 33.420 Adequate bidding documents.

Recipient's bidding documents shall include:

(a) A complete statement of work to be performed including, where appropriate, design drawings and specifications and the required performance schedule;

(b) The terms and conditions of the subagreement to be awarded, including payment, delivery schedules, point of delivery and acceptance criteria;

(c) A clear explanation of the recipient's method of bidding and the method of evaluating bid prices, and its basis and method for awarding the subagreement;

(d) Any other responsibility requirements or evaluation criteria which the recipient will use in evaluating bidders;

(e) The prevailing wage determination, made under the Davis-Bacon Act, if applicable; and

(f) The deadline and place to submit bids and a copy of § 33.295, Subparts F and G and, if appropriate, EPA Form 5720-4 "Labor Standard Provisions for Federally Assisted Construction Contracts."

[48 FR 12926, Mar 28, 1983, 48 FR 30364, July 1, 1983]

§ 33.425 Public opening of bids.

The recipient shall publicly open bids at the place, date and time announced in the bidding documents.

§ 33.430 Award to the lowest, responsive, responsible bidder.

(a) The recipient shall evaluate all bids in accordance with the methods and criteria in the bidding documents.

(b) The recipient shall award a fixed-price subagreement to the lowest, responsive, responsible bidder. Where specified in the bidding documents, recipients shall consider factors such as discounts, transportation costs and life cycle costs to determine the low bid. Payments discounts may be used to determine the low bid only when prior experience of the recipient indicates that it generally accepts such discounts.

(c) The recipient may reject all bids only when it has sound, documented business reasons which are in the best interest of the program for which EPA assistance is awarded (see § 33.250 "Documentation").

Competitive Negotiation

§ 33.505 Competitive negotiation procurement method.

(a) The requirements in §§ 33.505 through 33.525 apply to all competitively negotiated subagreements in excess of $10,000.

(b) Recipients may use competitive negotiation only if conditions are not appropriate for the use of the formal advertising method of procurement (see § 33.405).

§ 33.510 Public notice.

(a) The recipient must give adequate public notice for competitively negotiated procurements.

(b) The notice of a request for proposals must state how to obtain associated documents, including a copy of § 33.295, Subparts F and G, the basis for subagreement award, and, if appropriate, EPA Form 5720-4 "Labor Standard Provisions for Federally Assisted Construction Contracts."

(c) Requests for proposals must be written, contain enough information to enable a prospective offeror to prepare a proposal, contain all evaluation criteria and the relative importance attached to each, and clearly state the deadline and place to submit proposals.

[48 FR 12926, Mar. 28, 1983, 48 FR 30364, July 1, 1983]

§ 33.515 Evaluation of proposals.

(a) Recipients must uniformly and objectively evaluate all proposals submitted in response to the request for proposals.

(b) Recipients must base their determinations of qualified offerors and acceptable proposals solely on the evaluation criteria stated in the request for proposals.

§ 33.520 Negotiation and award of subagreement.

(a) Unless the request for proposals states that award may be based on initial offers alone, the recipient must conduct meaningful negotiations with the best qualified offerors with acceptable proposals within the competitive range, and permit revisions to obtain best and final offers. The best qualified offerors must have equal opportunities to negotiate or revise their proposals. During negotiations, the recipient must not disclose the indentity of competing offerors or any information from competing proposals.

(b) The recipient must award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the recipient, taking into consideration price and other evaluation criteria set forth in the request for proposals.

(c) The recipient must promptly notify unsuccessful offerors that their proposals were rejected.

(d) The recipient must document its procurement file to indicate how proposals were evaluated, what factors were used to determine the best qualified offerors within the competitive range, and what factors were used to determine the subagreement award

[48 FR 12926, Mar. 28, 1983, 48 FR 30364, July 1, 1983]

33.525 Optional selection procedure for negotiation and award of subagreements for architectural and engineering services.

(a) The recipient may evaluate and elect an architect or engineer using ne procedures in this section in place f the procedures in § 33.520, "Negotition and award of subagreement."

(b) The recipient may use either a requalified list developed in accordnce with § 33.230(c) or responses to equests for statement of qualificaons to determine the most technical- / qualified architects or engineers.

(c) After selecting and ranking the ıost qualified architects or engineers, ne recipient will request technical roposals from those architects or enineers and inform them of the evalation criteria the recipient will use to ank the proposals.

(d) The recipient shall then select nd determine, in writing, the best echnical proposal.

(e) After selecting the best proposal, he recipient shall attempt to negotite fair and reasonable compensation 'ith that offeror.

(f) If the recipient and the offeror of ne best proposal cannot agree on the mount of compensation, the recipient nall formally terminate negotiations 'ith that offeror. The recipient shall hen negotiate with the offeror with he next best proposal. This process 'ill continue until the recipient eaches agreement on compensation 'ith an offeror with an acceptable roposal. Once the recipient termiates negotiations with an offeror, the ecipient cannot go back and renegotite with that offeror.

[48 FR 12926, Mar. 28, 1983; 48 FR 30364, uly 1, 1983]

Noncompetitive Negotiation

33.605 Noncompetitive negotiation procurement method.

Recipients may use noncompetitive egotiation to award a subagreement f the other three procurement methds are inappropriate because:

(a) The item is available only from a ingle source;

(b) A public exigency or emergency xists and the urgency for the requirement will not permit a delay incident to competitive procurement;

(c) After solicitation from a number of sources, competition is inadequate; or

(d) The EPA award official authorizes noncompetitive negotiation, subject to the limitation in § 33.715(a)(2).

Subpart C—[Reserved]

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

§ 33.805 Applicability and scope of this subpart.

Recipients who are subject to the provisions of OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" are not subject to all of the requirements in this part.

§ 33.810 Nonapplicable subagreement clauses.

The following clauses in Subpart F of this part do not apply to institutions of higher education and other nonprofit organizations:

(a) Energy efficiency (§ 33.1021);

(b) Changes (§ 33.1030,3);

(c) Differing site conditions (§ 33.1030,4); and

(d) Price reduction for defective cost or pricing data (§ 33.1030,8).

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.815 Nonapplicable procurement provisions.

The following procurement provisions do not apply to institutions of higher education and other nonprofit organizations:

(a) Subparts C and E;

(b) Sections 33.405 through 33.430 "Formal advertising;"

(c) Sections 33.505 through 33.525 "Competitive negotiation;"

(d) Section 33.605 "Noncompetitive negotiation" (see § 33.820(b));

(e) The requirement in § 33.270(a) "Code of conduct" to have a written code of conduct;

(f) The provisions of § 33.240 "Small, minority, women's, and labor surplus area businesses" which:

(1) Encourage the award of a fair share of contracts to women's and labor surplus area businesses;

(2) Require the specific affirmative action steps in § 33.240(a)(1) through (a)(6); however, nonprofit organizations are required to make positive efforts to use small businesses and minority owned businesses as sources of supplies and services;

(g) Subpart G "Protests."

§ 33.820 Additional procurement requirements.

(a) Recipients must exclude contractors that develop or draft specifications, requirements, statements of work, invitation for bids, or requests for proposals from competing for awards resulting from the prior effort.

(b) For all proposed sole source subagreements and where only one bid or proposal is received, the recipient must request the award official's prior approval to award the subagreement if the aggregate expenditure is expected to exceed $10,000.

Subpart E—[Reserved]

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractural requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1021, and the appropriate clauses in § 33.1030, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

(a) Nature, scope, and extent of work to be performed;

(b) Timeframe for performance;

(c) Total cost of the subagreement; and

(d) Payment provisions.

§ 33.1016 Labor standards provisions.

(This clause applies only when required by statute.) Recipients shall include a copy of EPA Form 5720-4 "Labor Standards Provisions for Federally Assisted Construction Contracts" in each subagreement for construction (as defined by the Secretary of Labor). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a—276a-7); the Copeland Regulations (29 CFR Part 3); the Contract Work Hours and Safety Standards Act—Overtime Compensation (940 U.S.C. 327-333) and the nondiscrimination provisions in Executive Order 11246, as amended.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.1019 Patents data and copyrights clause.

Except for construction grant subagreements, all subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the conduct of work under a subagreement. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1020 Violating facilities clause.

Subagreements in excess of $100,000 shall contain a provision which requires contractor compliance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738,

and EPA regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

§ 33.1021 [Reserved]

§ 33.1030 Model subagreement clauses.

Recipients must include, when appropriate, the following clauses or their equivalent in each subagreement. Recipients may substitute other terms for "recipient and" "contractor" in their subagreements.

1. SUPERSESSION

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 apply to that work eligible for EPA assistance to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. PRIVITY OF SUBAGREEMENT

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this subagreement or any lower tier subagreement. This subagreement is subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. SUSPENSION OF WORK

The following clause applies only to construction subagreements. (a) The recipient may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), the recipient shall make an adjustment for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the subagreement in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the subagreement.

4. TERMINATION

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination

(d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make

available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the subagreement price shall be made as provided in paragraph (c) of this clause.

5. Remedies

Unless otherwise provided in this subagreement, all claims, counter-claims, disputes and other matters in question between the recipient and the contractor arising out of, or relating to, this subagreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

6. Audit; Access to Records

(a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and (the State) or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to make paragraphs (a) through (g) applicable to all subagreements he awards in excess of $10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on EPA assisted work under this subagreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR Part 30.

(f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

(g) This right of access clause applies to financial records pertaining to all subagreements (except formally advertised, competitively awarded, fixed price subagreements) and all subagreement change orders regardless of the type of subagreement, and all subagreement amendments regardless of the type of subagreement. In addition this right of access applies to all records pertaining to all subagreements, subagreement change orders and subagreement amendments:

(1) To the extent the records pertain directly to subagreement performance;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or

(3) If the subagreement is terminated for default or for convenience.

7. Covenant Against Contingent Fees

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the re-

cipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the subagreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

8. GRATUITIES

(a) If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending or making any determinations related to the performance of this subagreement, the recipient may, by written notice to the contractor, terminate this subagreement. The recipient may also pursue other rights and remedies that the law or this subagreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this subagreement.

(b) In the event this subagreement is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

9. *Responsibility of the Contractor*

(a) *The following clause applies only to subagreements for services.* (1) The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this subagreement. If the subagreement involves environmental measurements or data generation, the contractor shall comply with EPA quality assurance requirements in 40 CFR 30.503. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(2) The contractor shall perform the professional services necessary to accomplish the work specified in this subagreement in accordance with this subagreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

(3) The owner's or EPA's approval of drawings, designs, specifications reports and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this subagreement.

(4) The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this subagreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

(b) *The following clause applies only to subagreements for construction.* (1) The contractor agrees to perform all work under this subagreement in accordance with this agreement's designs, drawings and specifications.

(2) The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this subagreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

10. FINAL PAYMENT

Upon satisfactory completion of the work performed under this subagreement, as a condition before final payment under this subagreement or as a termination settlement under this subagreement the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this subagreement, except claims which are specifically exempted by the contractor to be set forth therein Unless otherwise provided in this subagreement, by State law or otherwise expressly agreed to by the parties to this subagreement, final payment under this subagreement or settlement upon termination of this subagreement shall not constitute a waiver of the owner's claims against the contractor or his sureties under this subagreement or applicable performance and payment bonds.

[48 FR 12926, Mar 28, 1983; 48 FR 30365, July 1, 1983, as amended at 53 FR 8077, Mar. 11, 1988]

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

This subpart sets forth EPA's administrative process for the rapid resolution of protest appeals filed with the award official.

§ 33.1110 Recipient protest procedures.

(a) Recipients must establish their own procedures for prompt consideration of initial protests concerning their solicitations or subagreement awards. A "protest" is a written complaint concerning the recipient's solicitation or award of a subagreement. It must be filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action (see § 33.1130 "Review of protest appeal").

(b) The recipient should review each protest received to determine whether it is appropriate to defer the protested procurement action.

(c) If the recipient does not defer the procurement action, it assumes the risk that the award official may disallow the cost of the protested procurement action if the protest appeal is upheld.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.1115 Protest appeal.

(a) A party with a financial interest which is adversely affected by the recipient's decision on the initial protest may file a "protest appeal" with the award official.

(b) A "protest appeal" is a written complaint filed with the award official regarding the recipient's determination of a protest.

§ 33.1120 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal is limited to the following.

(1) Issues arising under the procurement provisions of this part, or

(2) Alleged violations of State or local law or ordinances where the award official determines that there is an overriding Federal requirement.

(c) A recipient of a lower tier subagreement (subcontract) may only file a protest appeal for issues which relate to the award of a subagreement by a contractor (see § 33.295 "Subagreements awarded by a contractor").

§ 33.1125 Filing requirements.

(a) Protest appeals must be filed with the Assistant General Counsel for Grants for headquarters-awarded assistance agreements and with the Office of Regional Counsel for regionally awarded assistance agreements.

(b) A protest appeal must:

(1) Be written;

(2) Include a copy of the recipient's determination of the protest;

(3) State the basis for the appeal; and

(4) Request a determination under this subpart.

(c) Upon filing a protest appeal with the Regional Counsel or Assistant General Counsel for Grants, as appropriate, the party filing the protest appeal must concurrently transmit a copy of all protest documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest appeal.

(d) The award official will only consider written protest appeals received

by the appropriate Counsel's office within seven calendar days after the adversely affected party receives the recipient's determination of protest. However, the adversely affected party can meet the seven-day notice requirement by telegraphing the Counsel within the seven-calendar-day period of its intent to file a protest appeal, provided the adversely affected party submits a complete protest appeal within seven calendar days of the date it sends the telegram. If the seventh day falls on a Saturday, Sunday or holiday, the next working day shall be the last day to submit a protest appeal.

(e) Any party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

[48 FR 12926, Mar. 28, 1983; 48 FR 30365, July 1, 1983]

§ 33.1130 Review of protest appeal.

(a) If the recipient does not receive the initial protest before bid opening or the closing date for receipt of proposals, the award official may dismiss as untimely any protest appeal based upon alleged improprieties in the solicitation which were clearly apparent before bid opening or before the deadline for receipt of initial proposals. In negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient by the closing date for receipt of proposals for the new solicitation.

(b) In cases not involving improprieties in the solicitation, the award official may dismiss as untimely a protest appeal if the adversely affected party did not file the initial protest with the recipient within seven calendar days of the date the basis for the protest was known or should have been known, whichever is earlier.

§ 33.1140 Deferral of procurement action.

When the award official receives a protest appeal and the recipient has not deferred the procurement action under § 33.1110(b), the award official must promptly request that the recipient defer the protested procurement action until the award official notifies the recipient of the formal or informal resolution of the appeal. The request shall be limited to the award of the subagreement or subitem which is the basis of the protest appeal.

§ 33.1145 Award official's review.

(a) The award official may establish rules of procedures or deadlines for the submission of materials or the arrangement of protest appeal conferences.

(b) The award official may summarily dismiss an appeal without proceedings under this subpart if:

(1) The protest appeal is not reviewable, see § 33.1130, or addresses issues other than those allowed under § 33.1120(b);

(2) The protester substantially fails to comply with the procedural requirements of this subpart; or

(3) The protester does not agree to the recipient's request for a reasonable extension of the bid and bond period.

(c) The award official may summarily deny a protest appeal without proceedings under this subpart if, after considering the facts in a light most favorable to the protester, the award official believes that the protest lacks merit.

(d) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in support of their views in writing or at a conference.

(e) After the announced date for receipt of written arguments, the record shall be closed.

(f) The award official shall review the record considered by the recipient and any other documents or arguments presented by the parties to determine whether the recipient has complied with the procurement requirements of this part and has a rational basis for its determination of protest.

(g) The award official's determination shall constitute final EPA action from which there shall be no further administrative appeal. No party may appeal an award official's determina-

tion of appeal to the EPA Board of Assistance Appeals.

(h) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(i) Noncompliance with the award official's determination of protest shall be cause for an action against the recipient under 40 CFR Part 30 or 32.

(j) If an appeal involves legal issues not explicitly addressed by this part, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this part.

Appendix A—Procedural Requirements for Recipients Who Do Not Certify Their Procurement Systems, or for Recipients Who Have Their Procurement Certifications Revoked By EPA

(a) The following procedural requirements apply to recipients who:

(1) Do not certify to EPA that their procurement system meets the minimum procurement requirements in this part, or

(2) Have their procurement certification revoked by the award official, as stated in § 33.115(c).

(b) Those recipients must comply with the requirements in this part plus the following procedural requirements. These procedural requirements supplement the requirements in the sections cited.

(1) To comply with § 33.250, "Documentation," the recipient must submit to the award official, unless he instructs otherwise, the records required by this section.

(2) To comply with § 33.290, "Cost and price considerations," the recipient's contractors and subcontractors must submit their cost or price data on EPA Form 5700-41, "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or in another format which provides information similar to that required by EPA Form 5700-41.

(3) To comply with § 33.415, "Time for preparing bids," the recipient must allow at least 30 days between the date when it first publishes the public notice and the date by which bids must be submitted.

(4) To comply with § 33.410, "Public notice and solicitation of bids," the recipient must publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days before bid opening.

(5) To comply with § 33.510, "Adequate public notice," the recipient must publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days before the deadline for receipt of proposals. The recipient may use posted public notices or written notification directed to interested persons, firms or professional organizations.

[48 FR 12926, Mar. 28, 1983, 48 FR 30365, July 1, 1983]

Editorial Note: For Class deviation documents affecting Part 33, Appendix A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

APPENDIX I

APPENDIX I

40 CFR PART 40, "RESEARCH AND DEMONSTRATION GRANTS"
40 CFR PART 45, "TRAINING ASSISTANCE"
40 CFR PART 46, "FELLOWSHIPS"
40 CFR PART 47, "NATIONAL ENVIRONMENTAL EDUCATION GRANTS"

United States
Environmental Protection
Agency

Grants Administration
Division (PM-216)
Washington, DC 20460

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Interim Regulations and Procedures Applicable to

federal register

Research and Demonstration Grants

Reprinted from Code of Federal Regulations, Title 40, Part 40, revised as of July 1, 1979

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40.165 Continuation grants.

AUTHORITY: Authorities cited in § 40.110.

SOURCE: 38 FR 12784, May 15, 1973, unless otherwise noted.

§ 40.100 Purpose of regulation.

These provisions establish and codify policies and procedures governing the award of research and demonstration grants by the Environmental Protection Agency.

§ 40.105 Applicability and scope.

This part establishes mandatory policies and procedures for all EPA research and demonstration grants. The provisions of this part supplement the EPA general grant regulations and procedures (40 CFR Part 30). Accordingly, all EPA research and demonstration grants are awarded subject to the EPA interim general grant regulations and procedures (40 CFR Part 30) and to the applicable provisions of this Part 40.

§ 40.110 Authority.

EPA research and demonstration grants are authorized under the following statutes:

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

(1) Section 103 (42 U.S.C. 1857b) authorizes grants for research and demonstration projects relating to the causes, effects, extent, prevention, and control of air pollution.

(2) Section 104 (42 U.S.C. 1857b–1) authorizes grants for research and development of new and improved methods for the prevention and control of air pollution resulting from the combustion of fuels.

(b) The Federal Water Pollution Control Act, as amended, Pub. L. 92–500.

(1) Section 104(b) (33 U.S.C. 1254(b)) authorizes grants for research and demonstration projects relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution.

(2) Section 104(h) (33 U.S.C. 1254(h)) authorizes grants for research and development of new and improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and for construction of publicly owned research facilities for such purpose.

(3) Section 104(i) (33 U.S.C. 1254(i)) authorizes grants for research, studies, experiments, and demonstrations relative to the removal of oil from any waters and for the prevention, control, and elimination of oil and hazardous substances pollution.

(4) Section 104(r) (33 U.S.C. 1254(r)) authorized grants for the conduct of basic research into the structure and function of freshwater aquatic ecosystems, and to improve understanding of the ecological characteristics necessary to the maintenance of the chemical, physical, and biological integrity of freshwater aquatic ecosystems.

(5) Section 104(s) (33 U.S.C. (s)) authorizes grants to conduct and report on interdisciplinary studies on river systems, including hydrology, biology, ecology, economics, the relationship between river uses and land uses, and the effects of development within river basins on river systems and on the value of water resources and water-related activities.

(6) Section 105(a) (33 U.S.C. 1255(a)) authorizes grants for research and demonstration of new or improved methods for preventing, reducing, and eliminating the discharge into any waters of pollutants from sewers which carry storm water or both storm water and pollutants; and for the demonstration of advanced waste treatment and water purification methods (including the temporary use of new or improved chemical additives which provide substantial immediate improvement to existing treatment processes), or new or improved methods of joint treatment systems for municipal and industrial wastes.

(7) Section 105(b) (33 U.S.C. 1255(b)) authorizes grants for demonstrating, in river basins or portions thereof, advanced treatment and environmental enhancement techniques to control pollution from all sources, within such basin or portions thereof, including nonpoint sources, together with instream water quality improvement techniques.

(8) Section 105(c) (33 U.S.C. 1255(c)) authorizes grants for research and demonstration projects for prevention of pollution of any waters by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants.

(9) Section 105(e)(1) (33 U.S.C. 1255(e)(1)) authorizes grants for research and demonstration projects with respect to new and improved methods of preventing, reducing, and eliminating pollution from agriculture.

(10) Section 105(e)(2) (33 U.S.C. 1255(e)(2)) authorizes grants for demonstration projects with respect to new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, communitywide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

(11) Section 107 (33 U.S.C. 1257) authorizes grants for projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations and other environmental pollution affecting water quality within all or part of a watershed or river basin, including siltation from surface mining.

(12) Section 108 (33 U.S.C. 1258) authorizes grants for projects to demonstrate new methods and techniques, and to develop preliminary plans for the elimination or control of pollution within all or any part of the watersheds of the Great Lakes.

(13) Section 113 (33 U.S.C. 1263) authorizes grants for projects to demonstrate methods to provide for central community facilities for safe water and elimination or control of pollution in those native villages of Alaska without such facilities.

(c) The Public Health Service Act, as amended, 42 U.S.C. 241 et seq.

(1) Section 301 (42 U.S.C. 241, 242b, and 246) authorizes grants for research relating to the human and environmental effects of radiation.

(d) The Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

(1) Section 8001 (42 U.S.C. 6981) authorizes grants for research and demonstration projects relating to solid waste.

(2) Section 8004 (42 U.S.C. 6984) authorizes grants for demonstration of new or improved technologies for resource recovery.

(3) Section 8005 (42 U.S.C. 6985) authorizes grants to conduct special studies and demonstration projects on recovery of useful energy and materials.

(4) Section 8006 (42 U.S.C. 6986) authorizes grants for the demonstration of resource recovery system or for the construction of new or improved solid waste disposal facilities.

(e) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended, Pub. L. 92–516.

(1) Section 20 authorizes grants for research in the pesticides areas with priority given to the development of biologically integrated alternatives for pest control.

(f) The Grant Act, 42 U.S.C. 1891 et seq., authorizes grants for basic scientific research.

[38 FR 12784, May 15, 1973, as amended at 42 FR 56056, Oct. 20, 1977]

§ 40.115 Definitions.

The statutes identified in § 40.110 contain definitions which are not all repeated here. The following terms shall have the meaning set forth below:

[42 FR 56056, Oct. 20, 1977]

§ 40.115–1 Construction.

May include the preliminary planning to determine the economic and engineering feasibility of a facility, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of a facility, the erection, ac-

quisition, alteration, remodeling, improvement, or extension of a facility, and the inspection and supervision of the construction of a facility.

§ 40.115-2 Intermunicipal agency.

(a) Under the Clean Air Act, an agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(b) Under the Resource Conservation and Recovery Act, an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

(c) In all other cases, an agency of two or more municipalities having substantial powers or duties pertaining to the control of pollution.

[38 FR 12784, May 15, 1973, as amended at 42 FR 58056, Oct. 20, 1977]

§ 40.115-3 Interstate agency.

(a) Under the Clean Air Act, an agency established by two or more States, or by two or more municipalities located in different States, having substantial powers or duties pertaining to the prevention and control of air pollution.

(b) Under the Federal Water Pollution Control Act, an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution of waters.

(c) Under the Resource Conservation and Recovery Act, an agency of two or more municipalities in different States or an agency established by two or more States, with authority to provide for the disposal of solid wastes and serving two or more municipalities located in different States.

(d) In all other cases, an agency of two or more States having substantial powers or duties pertaining to the control of pollution.

[38 FR 12784, May 15, 1973, as amended at 42 FR 58056, Oct. 20, 1977]

§ 40.115-4 Municipality.

(a) Under the Federal Water Pollution Control Act, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, with jurisdiction over disposal of sewage, industrial wastes, or other wastes; or a designated and approved management agency under section 208 of the act.

(b) Under the Resource Conservation and Recovery Act, a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(c) In all other cases, a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having substantial powers or duties pertaining to the control of pollution.

[38 FR 12784, May 15, 1973, as amended at 42 FR 58056, Oct. 20, 1977]

§ 40.115-5 Person.

(a) Under the Federal Water Pollution Control Act, an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(b) Under the Resource Conservation and Recovery Act, an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

[38 FR 12784, May 15, 1973, as amended at 42 FR 58057, Oct. 20, 1977]

§ 40.115-6 State.

(a) Under the Federal Water Pollution Control Act, a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(b) Under the Resource Conservation and Recovery Act, a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) In all other cases, a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

[42 FR 58057, Oct. 20, 1977]

§ 40.120 Publication of EPA research objectives.

The Office of Research and Development of EPA publishes a statement of research objectives and priorities annually in a document entitled "Office of Research and Development—Program Guide." This document may be obtained from either the Office of Research and Development, RD-674, or the Grants Administration Division, PM-216, U.S. Environmental Protection Agency, Washington, D.C. 20460.

[42 FR 58057, Oct. 20, 1977]

§ 40.125 Grant limitations.

§ 40.125-1 Limitations on duration.

(a) No research or demonstration grant shall be approved for a budget period in excess of 2 years except demonstration grants involving construction.

(b) No research or demonstration grant shall be approved for a project period in excess of 5 years.

(c) The grant award official may extend the budget and project periods for up to an additional 12 months without additional grant funds, when such extensions are in the best interest of the Government.

[42 FR 58057, Oct. 20, 1977]

§ 40.125-2 Limitations on assistance.

In addition to the cost-sharing requirements pursuant to 40 CFR 30.720, research and demonstration grants shall be governed by the specific assistance limitations listed below:

(a) *Federal Water Pollution Control Act.* (1) Section 104(s)—no grant in any fiscal year may exceed $1 million.

(2) Sections 105(a), 105(c) and 108—no grant may exceed 75 percent of the allowable actual project costs.

(b) *Clean Air Act.* (1) Section 104—no grant may exceed $1,500,000.

(c) *Resource Conservation and Recovery Act.*

(1) Sections 8001, 8004, and 8005. The maximum practicable cost sharing is required.

(2) Section 8006. The Federal share for any grant for the demonstration of resource recovery systems shall not exceed 75 percent and is subject to the conditions contained in section 8006(b) of the Act. The Federal share for any grant for the construction of new or improved solid waste disposal facilities shall not exceed 50 percent in the case of a project serving an area which includes only one municipality and 75 percent in any other case, and is subject to the limitations contained in section 8006(c) of the Act. Not more than 15 percent of the total funds authorized to be appropriated for any fiscal year to carry out this section shall be awarded for projects in any one State.

[38 FR 12784, May 15, 1973, as amended at 42 FR 20083, May 8, 1975; 42 FR 58057, Oct. 20, 1977]

§ 40.130 Eligibility.

Except as otherwise provided below, grants for research and demonstration projects may be awarded to any responsible applicant in accordance with 40 CFR 30.340:

(a) The Clean Air Act, as amended—public or nonprofit private agencies, institutions, organizations, and to individuals.

(b) Resource Conservation and Recovery Act.

(1) Section 8001, public authorities,

agencies, and institutions; private agencies and institutions; and individuals.

(2) Section 8004 and 8005, public agencies and authorities or private persons.

(3) Section 8006, State, municipal, intersate or intermunicipal agencies.

(4) No grant may be made under this Act to any private profit-making organization.

(c) The Federal Insecticide, Fungicide, and Rodenticide Act, as amended—other Federal agencies, universities, or others as may be necessary to carry out the purposes of the act.

(d) The Federal Water Pollution Control Act, as amended:

(1) Section 104(b)—State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and to individuals.

(2) Sections 104(h) and 104(l)—public or private agencies and organizations and to individuals.

(3) Section 104(r)—colleges and universities.

(4) Section 104(s)—institutions of higher education.

(5) Sections 105(a), 105(e)(2), and 107—State, municipal, interstate, and intermunicipal agencies.

(6) Section 105(b)—State or States or interstate agency.

(7) Sections 105(c) and 105(e)(1)—persons.

(8) Section 108—State, political subdivision, interstate agency, or other public agency, or combination thereof.

(9) Section 113—only to the State of Alaska.

(e) The Public Health Service Act, as amended—only to nonprofit agencies, institutions, organizations, and to individuals.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975; 42 FR 56057, Oct. 20, 1977]

§ 40.135 Application.

§ 40.135-1 Preapplication coordination.

(a) *All applicants.* (1) Applicants for research and demonstration grants are encouraged to contact EPA for further information and assistance prior to submitting a formal application. The EPA regional office or the laboratory nearest the applicant will be able to provide such assistance or to refer the applicant to an appropriate EPA representative.

(2) Applicants shall prepare an environmental assessment of the proposed project where applicable, outlining the anticipated impact on the environment pursuant to 40 CFR, Part 6.

(b) *Demonstration grants.* All applicants for demonstration grants must comply with all applicable requirements of Office of Management and Budget (OMB) Circular No. A-95 as revised, see § 30.305 of this subchapter.

(c) Applications for grants for demonstration projects funded by the Office of Solid Waste will be solicited through the Department of Commerce Business Daily, and selections will be made on a competitive basis.

[38 FR 12784, May 15, 1973, as amended at 41 FR 20659, May 20, 1976; 42 FR 56057, Oct. 20, 1977]

§ 40.135-2 Application requirements.

All applications for research and demonstration grants shall be submitted in an original and 8 copies to the Environmental Protection Agency, Grants Administration Division, Washington, D.C. 20460, in accordance with §§ 30.315 through 30.315-5.

(a) *Applications involving human subjects.* (1) Safeguarding the rights and welfare of human subjects involved in projects supported by EPA grants is the responsibility of the institution which receives or is accountable to EPA for the funds awarded for the support of the project.

(2) Institutions must submit to EPA, for review, approval, and official acceptance, a written assurance of its compliance with guidelines established by Department of Health, Education, and Welfare concerning protection of human subjects. However, institutions which have submitted and have had accepted, general assurance to DHEW under these guidelines will be considered as being in compliance with this requirement. These guidelines are provided in DHEW Publication No. (NIH) 72-102, the "Institutional Guide to DHEW Policy on Protection of Human Subjects." Copies of this publication are available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20420.

(3) Applicants must provide with each proposal involving human subjects a certification that it has been or will be reviewed in accordance with the institution's assurance. This certification must be renewed annually on the basis of continuing review of the supported project.

(b) *Applications involving laboratory animals.* Each application for a project involving the use of warm-blooded animals shall include a written assurance that the applicant has registered with the Department of Agriculture and is in compliance with the rules, regulations, and standards enunciated in the Animal Welfare Act, Pub. L. 89-554, as amended.

(c) *Notice of research project (NRP).* Each application for research must include a summary (NRP) of proposed work (200 words or less) incorporating objectives, approach and current plans and/or progress. Upon approval of an application, summaries are forwarded to the Smithsonian Science Information Exchange. Summaries of work in progress are exchanged with government and private agencies supporting research and are forwarded to investigators who request such information.

(d) *Federal Water Pollution Control Act.* (1) All applications for grants under section 105(a) must have been approved by the appropriate State water pollution control agency or agencies.

(2) All applications for grants under section 107, where the proposed project will be located in the Appalachian region, shall have been coordinated with the Appalachian Regional Commission for determination that such demonstration project is consistent with the objectives of the Appalachian Regional Development Act of 1965, as amended.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975; 42 FR 56057, Oct. 20, 1977]

§ 40.140 Criteria for award.

In determining the desirability and extent of funding for a project and the relative merit of an application, consideration will be given to the following criteria:

§ 40.140-1 All applications.

(a) The relevancy of the proposed project to the objectives of the EPA research and demonstration program;

(b) The availability of funds within EPA;

(c) The technical feasibility of the project;

(d) The seriousness, extent, and urgency of the environmental problems toward which the project is directed;

(e) The anticipated public benefits to be derived from the project in relation to the costs of the project;

(f) The competency of the applicant's staff and the adequacy of the applicant's facilities and available resources;

(g) The degree to which the project can be expected to produce results that will have general application to pollution control problems nationwide;

(h) Whether the project is consistent with existing plans or ongoing planning for the project area at the State, regional, and local levels;

(i) The existence and extent of local public support for the project;

(j) Whether the proposed project is environmentally sound;

(k) Proposed cost sharing.

§ 40.140-2 [Reserved]

§ 40.140-3 Federal Water Pollution Control Act.

(a) All applications for grants under section 105(c) must provide evidence that the proposed project will contribute to the development or demonstration of a new or improved method of treating industrial wastes or otherwise preventing pollution by industry, which method shall have industrywide application;

(b) All applications for grants under section 113 must include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities and programs relating to health and hygiene. Such projects must also be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of water pollution for all native villages in the State of Alaska.

§ 40.145 Supplemental grant conditions.

In addition to the EPA general grant conditions (40 CFR, Part 30, Subpart C), all grants are awarded subject to the following requirements:

(a) The project will be conducted in an environmentally sound manner.

(b) In addition to the notification of project changes required pursuant to 40 CFR 30.900, prior written approval by the grants officer is required for project changes which may (1) alter the approved scope of the project, (2) substantially alter the design of the project, or (3) increase the amount of Federal funds needed to complete the project. No approval or disapproval of a project change pursuant to 40 CFR 30.900 or this section shall commit or obligate the United States to an increase in the amount of the grant or payments thereunder, but shall not preclude submission or consideration of a request for a grant amendment pursuant to 40 CFR 30.900-1.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975]

§ 40.145-1 Resource Conservation and Recovery Act.

Programs for which a Federal grant is awarded by the Environmental Protection Agency to a State, municipal, interstate or intermunicipal agency, or to any public authority, agency or institution, under the Resource Conservation and Recovery Act, shall be the subject of public participation consistent with Part 249 of this chapter.

[42 FR 56057, Oct. 20, 1977]

§ 40.145-2 Federal Water Pollution Control Act.

(a) No person in the United States shall on the ground 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 Act.

(b) Grants under section 107 are awarded subject to the conditions—(1) that the State shall acquire any land or interests therein necessary for such project to assure the elimination or control of acid or other mine water pollution; and (2) that the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

§ 40.145-3 Projects involving construction.

Research and demonstration grants for projects involving construction shall be subject to the following conditions:

(a) The applicant will demonstrate to the satisfaction of the grants officer that he has or will have a fee simple or such other estate or interest in the site of the project, and rights of access, as the grants officer finds sufficient to assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project; and in the case of projects serving more than one municipality, that the participating communities have such interests or rights as the grants officer finds sufficient to assure their undisturbed utilization of the project for the estimated life of the project.

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

(c) Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services.

(d) Subagreements for construction work may be negotiated when advertising for competitive bids is not feasible; however, the grantee must adequately demonstrate its need to contract with a single or sole source. All such subagreements are subject to prior approval by the grants officer.

(e) Construction work will be performed by the fixed-price (lump sum) or fixed-rate (unit price) method, or a combination of these two methods, unless the grants officer gives advance written approval to use some other method of contracting. The cost-plus-a-percentage-of-cost method of contracting shall not be used. Adequate methods of advertising for and obtaining competitive sealed bids will be employed prior to award of the construction contract. The award of the contract will be made to the responsible bidder submitting the lowest responsive bid, which shall be determined without regard to State or local law whereby preference is given on factors other than the specification requirements and the amount of bid. The grantee must promptly transmit to the grants officer copies of bid protests, decisions on such protests, and related correspondence. The grants officer will cause appropriate review of grantee procurement methods to be made.

(f) On construction contracts exceeding $100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition, the contractor awarded the contract must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than $100,000 shall follow the State or local requirements relating to bid guarantees, performance bonds, and payment bonds.

(g) The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws.

(h) The grantee will provide and maintain competent and adequate engineering supervision and inspection for the project to insure that the construction conforms with the approved plans and specifications.

(i) Any construction contract must provide that representatives of the Environmental Protection Agency and the State, as appropriate, will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. The contract must also provide that the grants officer, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

(j) The grantee agrees to construct the project or cause it to be constructed in accordance with the application, plans and specifications, and subagreements approved by EPA in the grant agreement or amendments.

(k) In addition to the notification of project changes pursuant to 40 CFR 30.900, a copy of any construction contract or modifications thereof, and of revisions to plans and specifications must be submitted to the grants officer.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975]

§ 40.150 Evaluation of applications.

Every application for a research or demonstration grant will be evaluated by appropriate EPA staff in terms of relevancy and the applicable criteria set forth in § 40.140. Only applications considered relevant to EPA research and demonstration objectives will receive further consideration and be subjected to additional review. Relevancy will be measured by program needs and priorities as defined in the Agency's current planned objectives. Relevancy, coupled with the results of

technical review, will provide the basis for funding recommendations.

(a) *New applications.* Applications considered relevant to EPA research and demonstration objectives will be reviewed for technical merit by at least one reviewer within EPA and at least two reviewers outside EPA. Review by a National Advisory Council is statutorily required for radiation grants.

(b) *Continuation applications.* Continuation applications will be reviewed by appropriate EPA staff only. Recommendations for continuation of funding will be based on progress toward the accomplishment of the goals set forth for the project and continued Agency needs and priorities.

§ 40.155 Availability of information.

(a) The availability to the public of information provided to, or otherwise obtained by, the Administrator under this Part shall be governed by 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.

(c) All information and data contained in the grant application will be subject to external review unless deviation is approved for good cause pursuant to 40 CFR 30.1000.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975; 41 FR 36918, Sept. 1, 1976]

§ 40.160 Reports.

§ 40.160-1 Progress reports.

The grant agreement will normally require the submission of a brief progress report after the end of each quarter of the budget period. A monthly progress report may be required for some demonstration projects, if set forth in the grant agreement. Progress reports should fully describe in chart or narrative format the progress achieved in relation to the approved schedule and project milestones. Special problems or delays encountered must be explained. A summary progress report covering all work on the project to date is required to be included with applications for continuation grants (see § 40.165b). This report may be submitted one quarter prior to the end of the budget period.

§ 40.160-2 Financial status report.

A financial status report must be prepared and submitted within 90 days after completion of the budget and project periods in accordance with § 30.635-3.

[42 FR 56057, Oct. 20, 1977]

§ 40.160-3 Reporting of inventions.

As provided in Appendix B of 40 CFR, Part 30, immediate and full reporting of all inventions to the Environmental Protection Agency is required. In addition:

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

(b) A final invention report is required within 90 days after completion of the project period.

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

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975]

§ 40.160-4 Equipment report.

At the completion or termination of a project, the grantee will submit a listing of all items of equipment acquired with grant funds with an acquisition cost of $300 or more and having a useful life of more than 1 year.

§ 40.160-5 Final report.

The grantee shall submit a draft of the final report for review no later than 90 days prior to the end of the approved project period. The 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. The report shall set forth in complete detail all technical aspects of the projects, 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. The final report shall include EPA comment when required by the grants 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 grants officer.

§ 40.165 Continuation grants.

To be eligible for a continuation grant within the approved project period, the grantee must:

(a) Have demonstrated satisfactory performance during all previous budget periods; and

(b) Submit no later than 90 days prior to the end of the budget period a continuation application which includes a detailed summary progress report, an estimated financial statement for the current budget period, a budget for the new budget period; and an updated work plan revised to account for actual progress accomplished during the current budget period.

federal register

Thursday
October 18, 1984

Part III

Environmental Protection Agency

40 CFR Part 45
Training Assistance; Final Rule
40 CFR Part 46
Fellowship Assistance; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 45

[OA-FRL 2621-2(a)]

raining Assistance; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule revises the Environmental Protection Agency's (EPA) regulation at 40 CFR Part 45 governing the award and administration of EPA training assistance. The revisions are designed to ensure consistency with EPA's "General Regulation for Assistance Programs" and to reflect current EPA policies on training assistance awards.

DATE: This rule applies to all training assistance which EPA awards on or after October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street SW., Washington, D.C., 20460 (202) 382-5296.

SUPPLEMENTARY INFORMATION: Part 45 establishes the policies and procedures for the award of training assistance by EPA. We have not updated the training assistance rule since October 20, 1977.

This document updates Part 45 and incorporates changes to EPA policies on training assistance awards. Since the revisions to this rule are largely technical in nature, we did not publish a proposed rule for public comment. The changes to the rule include:

Stipend Levels

In the previous rule, we had a dollar limit on the use of awarded funds for stipend amounts in any particular budget period and a dollar limit on the amount of an annual stipend. We deleted those levels from this rule in order to provide program offices the flexibility to make changes in the stipend levels based on program needs and funding levels without seeking a deviation from the rule.

Subpart B—Manpower Forecasting

EPA anticipated funding for manpower forecasting when the Agency was first established, therefore, we reserved Subpart B for the development of policies and procedures for manpower forecasting assistance agreements. Since no funds have been available for such agreements, and none is anticipated, we deleted the reference to manpower forecasting in the title of this part and in the table of contents.

Consistency With 40 CFR Part 30, "General Regulation for Assistance Programs"

EPA published a final revision to 40 CFR Part 30 on September 30, 1983 (48 FR 45056). EPA revised this rule to make it consistent with the revised 40 CFR Part 30, "General Regulation for Assistance Programs," September 30, 1983.

Regulation Development

Under Executive Order 12291, EPA is required to make a judgement whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this rule is not "major" because it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increases in costs or prices for consumers, individuals, industries, or Federal, State, or local governments. The rule was submitted to the Office of Management and Budget as required by Executive Order 12291.

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., the information provisions in this rule have been approved by the Office of Management and Budget (OMB clearance number 2010-0004).

List of Subjects in 40 CFR Part 45

Administrative practice and procedures, Environmental protection, Grant programs—environmental protection, Reporting and recordkeeping requirements.

Dated: October 3, 1984.

William D. Ruckelshaus,

Administrator.

Accordingly, title 40, Chapter I is amended by revising Part 45 to read as follows.

PART 45—TRAINING ASSISTANCE

Sec.

45.100 Purpose and scope.
45.105 Authority.
45.110 Objectives.
45.115 Definitions.
45.120 Applicant eligibility.
45.125 Application requirements.
45.130 Evaluation of applications.
45.135 Supplemental conditions.
45.140 Budget and project period.
45.145 Allocability and allowability of costs.
45.150 Reports.
45.155 Continuation assistance.
Appendix A—Environmental Protection Agency Training Programs

Authority: Sec. 103 of the Clean Air Act, as amended (42 U.S.C. 7403), sec. 104(g), 109, and 111 of the Clean Water Act, as amended (33 U.S.C. 1254(g), 1259, and 1281), secs. 7007 and 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6977 and 6981), sec. 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j-1).

§ 45.100 Purpose and scope.

This part establishes the policies and procedures for the award of training assistance by the Environmental Protection Agency (EPA). The provisions of this part supplement EPA's "General Regulation for Assistance Programs," 40 CFR Part 30.

§ 45.105 Authority.

The EPA is authorized to award training assistance under the following statutes:

(a) Section 103 of the Clean Air Act, as amended (42 U.S.C. 7403);

(b) Section 104(g), 109, and 111 of the Clean Water Act, as amended (33 U.S.C. 1254(g), 1259, and 1281);

(c) Sections 7007 and 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6977 and 6981);

(d) Section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j-1).

§ 45.110 Objectives.

Assistance agreements are awarded under this part to support students through traineeships for occupational and professional training, and to develop career-oriented personnel qualified to work in occupations involving environmental protection and pollution abatement and control. Training assistance is available to:

(a) Assist in developing, expanding, planning, implementing, and improving environmental training;

(b) Increase the number of trained pollution control and abatement personnel;

(c) Upgrade the level of occupational and professional training among State and local environmental control personnel;

(d) Train people to train others in occupations involving pollution abatement and control, and

(e) Bring new people into the environmental control field.

§ 45.115 Definitions.

The following definitions supplement the definitions in 40 CFR 30.200.

Stipend. Supplemental financial assistance, other than tuition and fees, paid directly to the trainee by the recipient organization.

Trainee. A student selected by the recipient organization who receives support to meet the objectives in § 45.110.

§ 45 120 Applicant eligibility.

Institutions. organizations. and individuals are eligible for EPA training awards as follows

(a) *Clean Air Act* Section 103(b)—Air pollution control agencies. public and nonprofit private agencies institutions organizations and individuals No award may be made under this Act to any private. profitmaking organization

(b) *Clean Water Act* (1) Section 104(b)(3)—State water pollution control agencies. interstate agencies other public or nonprofit private agencies. institutions. organizations. and individuals. No award may be made to any private profitmaking organization

(2) Section 104(g)(3)(A)—Public or private agencies and institutions. and individuals

(3) Sections 104(g)(1) and 104(g)(3)(C)—State and interstate agencies. municipalities. educational institutions and other organizations and individuals.

(4) Sections 109. 110. and 111—Institutions of higher education. or combinations of such institutions.

(c) *Solid Waste Disposal Act* (1) Section 8001(a)—Public or private authorities. agencies. and institutions and individuals. No award may be made to any private. profitmaking organization.

(2) Section 7007(a)—State or interstate agencies. municipalities. educational institutions. and other organizations.

(d) *Safe Drinking Water Act.* Sections 1442(b) and 1442(d)—Public agencies. educational institutions. and other organizations. No awards may be made to profitmaking agencies or institutions.

§ 45.125 Application requirements.

Applicants must submit their requests for assistance on EPA Form 5700-12. Application for Federal Assistance." Applicants must submit the original and two copies of the application to EPA. If the assistance agreement is to be awarded by EPA Headquarters. the applicant must send the application to the Environmental Protection Agency. Grants Administration Division. Grants Operation Branch (PM-216). 401 M Street SW. Washington. D.C. 20460. If the assistance agreement is to be awarded by an EPA Regional Office. the applicant must send the application to the appropriate Regional Office. (OMB clearance number 2010-0004)

§ 45.130 Evaluation of applications.

(a) Consistent with 40 CFR 30.301. the appropriate EPA program office staff will review training applications in accordance with the following criteria:

(1) Relevance of proposal to Agency objectives priorities. achievement of national goals and technical merit.

(2) Competency of the proposed staff in relation to the type of project proposed

(3) Feasibility of the proposal.

(4) Adequacy of the applicant's resources available for the project.

(5) Amount of funds necessary for the completion of the project.

(b) In addition awards under section 104(g)(1) of the Clean Water Act are subject to the following criteria

(1) Assessment of need for training in a State or municipality based on problems with existing wastewater treatment plants. such as violation of discharge permit conditions. and faulty or improper operation or maintenance.

(2) Need for operating training based on the number of wastewater treatment construction grants in the State

§ 45.135 Supplemental conditions.

Training awards are subject to the following conditions·

(a) Trainees must be citizens of the United States. its territories. or possessions. or lawfully admitted to the United States for permanent residence.

(b) Recipients shall not require the performance of personal services by individuals receiving training as a condition for assistance.

(c) Trainees are entitled to the normal student holidays observed by an academic institution. or the holiday and vacation schedule applicable to all trainees at a nonacademic institution.

(d) Training awards may include a provision to pay stipends to trainees. Stipends must be paid under section 111 of the Clean Water Act consistent with prevailing practices under comparable federally supported programs.

(e) Training awards under section 111 of the Clean Water Act are subject to the following conditions:

(1) Recipients must obtain the following agreement in writing from persons awarded scholarships for undergraduate study of the operation and maintenance of treatment works:

I agree to enter and remain in an occupation involving the design. operation. or maintenance of wastewater treatment works for a period of two years after the satisfactory completion of my studies under this program. I understand that if I fail to perform this obligation I may be required to repay the amount of my scholarship.

(2) Recipients must take such action as may be reasonably required to enforce the condition in paragraph (e)(1) Recipients shall credit or pay EPA for any repayments.

§ 45 140 Budget and project period

The budget and project periods for training awards may not exceed three years

§ 45 145 Allocability and allowability of costs

(a) Allocability and allowability of costs will be determined in accordance with 40 CFR 30 410

(b) Costs incurred for the purchase of land or the construction of buildings are not allowable

§ 45 150 Reports.

(a) Recipients must submit the reports required in 40 CFR 30 505

(b) A draft of the final project report is required 90 days before the end of the project period The recipient shall prepare the final projects report in accordance with the project officer's instructions. and submit the final project report within 30 days after the end of the project period.

§ 45.155 Continuation assistance.

To be eligible for continuation assistance. the recipient must

(a) Demonstrate satisfactory performance during all previous budget periods:

(b) Include in the application a detailed progress report showing the progress achieved and explain special problems or delays. a budget for the new budget period. and a detailed work plan for the new budget period and

(c) Submit a preliminary financial statement for the current budget period that includes estimates of the amount the recipient expects to spend by the end of the current budget period and the amount of any uncommitted funds which the recipient proposes to carry over beyond the term of the current budget period.

APPENDIX A—ENVIRONMENTAL PROTECTION AGENCY TRAINING PROGRAMS

	Administering office	
	Headquarters	Regions
Office of Air Noise and Radiation.		
Air Pollution Control Manpower Training Grants.	X	
Air Pollution Control—Technical Training.	X	
Office of Water		
Water Pollution Control—Professional Training Grants.	X	X
Safe Drinking Water Professional Training Grants.	X	
Safe Drinking Water—Occupational Training.	X	
Office of Solid Waste and Emergency Response: Hazardous Waste Training.	X	

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BILLING CODE 6560-50-M

40 CFR Part 46

[OA-FRL 2621-2(b)]

Fellowships; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule

SUMMARY: This final rule revises the Environmental Protection Agency's (EPA) regulation at 40 CFR Part 46, "Fellowships," governing the award and administration of EPA fellowship assistance. The revisions are designed to ensure consistency with EPA's "General Regulation for Assistance Programs" (40 CFR Part 30) and to reflect current EPA policies on fellowship awards.

DATE: This rule is effective for all fellowships which EPA awards on or after October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 382-5296.

SUPPLEMENTARY INFORMATION: Part 46 establishes the policies and procedures for the award of fellowships by EPA. We have not substantially updated the fellowship rule since June 30, 1973. This document updates Part 46 and incorporates changes to EPA policies on fellowship awards. Since the revisions to this rule are largely technical in nature, we did not publish a proposed rule for public comment. The changes to the rule include:

Stipend Levels

In the previous rule, we had a dollar level for the maximum annual stipend. We deleted the reference to a maximum level in this rule in order to give the program offices the flexibility to make changes in stipend levels based on program needs and funding levels without seeking a deviation from the rule.

Book Allowance

We increased the book allowance from $250 to $750

Authority

We updated the Authority section of the existing regulation to include references to two additional fellowship programs. The two additional programs are section 8001 of the Solid Waste Disposal Act and section 1442(d)(2) of the Safe Drinking Water Act, as amended.

Consistency With 40 CFR Part 30, "General Regulation for Assistance Programs"

EPA published a final revision to 40 CFR Part 30 on September 30, 1983 (48 FR 45056). We revised this rule to make it consistent with the revised 40 CFR Part 30, "General Regulation for Assistance Programs," September 30, 1983.

Regulation Development

Under Executive Order 12291, EPA is required to make a judgment whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this rule is not "major" because it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increases in costs or prices for consumers, individuals, industries, or Federal, State, or local governments. The rule was submitted to the Office of Management and Budget as required by Executive Order 12291.

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., the information provisions in this rule have been approved by the Office of Management and Budget (OMB clearance number 2010-0004).

List of Subjects in 40 CFR Part 46

Administrative practice and procedures, Environmental Protection, Grant programs—environmental protection, Reporting and recordkeeping requirements.

Dated: October 3, 1984.

William D. Ruckelshaus,

Administrator.

Accordingly, title 40, chapter I is amended by revising Part 46 to read as follows:

PART 46—FELLOWSHIPS

Sec.

46.100 Purpose.
46.105 Authority.
46.110 Objectives.
46.115 Types of fellowships.
46.120 Definitions.
46.125 Benefits.
46.130 Eligibility.
46.135 Submission of applications.
46.140 Evaluation of applications.
46.145 Fellowship agreement.
46.150 Fellowship agreement amendment.
46.155 Supplemental conditions.
46.160 Acceptance of fellowship award.
46.165 Duration of fellowship.
46.170 Initiation of studies.
46.175 Completion of studies.
46.180 Payment.
Appendix A—Environmental Protection Agency Fellowship Programs.

Authority: Sec. 103(b)(5) of the Clean Air Act as amended, (42 U.S.C. 7403(b)(5)); secs. 104(b)(5) and 104(g)(3)(B) of the Clean Water Act, as amended, (33 U.S.C. 1254(b)(5) and 1254(g)(3)(B)); sec. 1442(d)(2) of the Safe Drinking Water Act, as amended, (42 U.S.C. 300j-1(d)(2)); and sec. 8001 of the Solid Waste Disposal Act, as amended, (42 U.S.C. 6981).

§ 46.100 Purpose.

This part establishes the policies and procedures for all Environmental Protection Agency (EPA) fellowships and supplements the requirements in 40 CFR Part 30, "General Regulation for Assistance Programs."

§ 46.105 Authority.

The EPA is authorized to award fellowships under the following statutes:

(a) Section 103(b)(5) of the Clean Air Act as amended (42 U.S.C. 7403(b)(5));

(b) Section 104(b)(5) and 104(g)(3)(B) of the Clean Air Act, as amended (33 U.S.C. 1254(b)(5) and 1254(g)(3)(B));

(c) Section 1442(d)(2) of the Safe Drinking Water Act, as amended (42 U.S.C. 300j-1(d)(2)); and

(d) Section 8001 of the Solid Waste Disposal Act as amended (42 U.S.C. 6981).

§ 46.110 Objectives.

Fellowships awarded under this part are intended to enhance the capability of State or local agencies responsible for environmental pollution control or other agencies with similar pollution control responsibilities; provide educational renewal opportunities for their career oriented personnel to achieve additional knowledge through academic professional training; and to bring new people into the environmental control field.

§ 46.115 Types of fellowships.

(a) *Local agency fellowships* are awarded to current or prospective employees of a local environmental pollution control or regulatory agency for academic professional training in pollution control science, engineering, and technology and in specialty areas supportive of pollution abatement and control efforts.

(b) *State agency fellowships* are awarded to current or prospective employees of a State environmental pollution control or regulatory agency to provide academic professional training in the areas of pollution abatement and control.

(c) *Special fellowships* are awarded to individuals for education and training in pollution control science, engineering, and technology and in specialty areas

supportive of pollution abatement and control efforts.

§ 46.120 Definitions.

The following definitions supplement the definitions in 40 CFR 30.200

Full time fellow An individual enrolled in an academic educational program directly related to pollution abatement and control and taking a minimum of 30 credit hours or an academic workload otherwise defined by the institution as a full-time curriculum for a school year. The fellow need not be pursuing a degree.

Part-time fellow An individual enrolled in an academic educational program directly related to pollution abatement an control and taking at least 6 credit hours but less than 30 credit hours per school year or an academic workload otherwise defined by the institution as less than a full-time curriculum The fellow need not be pursuing a degree.

Special fellow An individual enrolled in an educational program relating to environmental sciences, engineering, professional schools, and allied sciences.

Stipend. Supplemental financial assistance other than tuition, fees, and book allowance, paid directly to the fellow.

§ 46.125 Benefits.

(a) Recipients of assistance under this part shall be entitled to tuition and fees. Recipients may receive an allowance for books and supplies up to a maximum of $750 for the school year for a full-time fellow, and are entitled to the normal student holidays observed by the academic institution.

(b) Recipients of a fellowships may receive a stipend at a level determined by the EPA program office based on EPA's needs and resources, and on the student's course load.

(c) Part-time fellows will not be paid more than the maximum amount paid to an equivalent full-time fellow under the same fellowships program.

§ 46.130 Eligibility.

(a) All applicants for fellowships under this part must be:

(1) Citizens of the United States, its territories, or possessions, or lawfully admitted to the United States for permanent residence; and

(2) Accepted by an accredited educational institutional for full-time or part-time enrollment for academic credit in an educational program directly related to pollution abatement and control.

(b) Applicants for State or local agency fellowships must be current or prospective employees of a State or local agency with responsibilities for environmental pollution control, and must be recommended by the administrator or designee, of the State or local agency The administrator, or designee, will recommend applicants based on the State or local need for academic professional training which will enhance the capability of the State or local agency.

§ 46.135 Submission of applications.

(a) Applicants must submit their requests for assistance on EPA Form 5770-2, "Fellowship Application." Applicants must submit the original and two copies of the application and undergraduate or graduate transcripts, as appropriate, to the Grants Administration Division, Grants Operation Branch (PM-216), Environmental Protection Agency, 401 M Street SW., Washington, D.C., 20460. (OMB clearance number 2010-0004.)

(b) The applicant must submit documentation to show compliance with the eligibility requirements in § 46.130, and any additional information required by the award official. Instructions for filing are contained in the application kit.

§ 46.140 Evaluation of applications.

(a) EPA will evaluate fellowship applications based upon:

(1) Their relevance to EPA's program needs;

(2) The availability of funds; and

(3) EPA's priorities.

(4) Appropriateness of the fellow's proposed course of study;

(5) Evaluation of the applicant in terms of potential for study, as evidenced by academic record, letters of reference, training plans; and any other available information.

§ 46.145 Fellowship agreement.

(a) The fellowship agreement is the written agreement, including amendments, between EPA and a fellow. The agreement, EPA Form 5770-8, "Fellowship Agreement," will state the terms and conditions governing the fellowship. (OMB clearance number 2010-0004.)

(b) EPA will not participate in costs incurred by the fellow before both the award official and the fellow sign the agreement.

(c) The fellow must use the funds for the purposes stated in the fellowship agreement. If the fellow fails to comply with the terms and conditions of the award, the award official may apply the sanctions in 40 CFR Part 30, Subpart I.

§ 46.150 Fellowship agreement amendment.

(a) The fellow must receive a formal amendment before implementing

(1) Changes in the objective of the agreement,

(2) Changes in the assistance amount

(3) Substantial changes within the scope of the agreement, or

(4) Changes in the project period

(b) Fellows must submit a completed EPA Form 5770-6, "Fellowship Amendment" (OMB clearance number 2010-0004) when requesting an amendment to the fellowship agreement

(c) Minor changes in the agreement that are consistent with the objective of the agreement and within the scope of the agreement do not require a formal amendment before the fellow implements the change. However, such changes do not obligate EPA to provide Federal funds for any costs incurred by the fellow in excess of the assistance amount unless the award official approves the change in advance under § 46.150(a). The fellow must inform the EPA project officer in writing before implementing minor changes.

§ 46.155 Supplemental conditions.

Recipients of a State or local fellowship receiving financial assistance under section 1442(d)(2) of the Safe Drinking Water Act, as amended, sections 104(b)(3) and 104(g)(3)(B) of the Clean Water Act as amended; and section 8001 of the Solid Waste Disposal Act must agree to remain in the employment of the State or local agency that recommended the recipient for an EPA fellowship for twice the period of the fellowship. If the recipient fails to perform this obligation the recipient may be required to repay the amount of the EPA fellowship.

§ 46.160 Acceptance of fellowship award.

The applicant accepts the fellowship by signing and returning the fellowship agreement to the EPA award official within three weeks after receipt, or within any extension of such time that may be permitted by the EPA award official. If the applicant does not sign and return the agreement to the award official or request an extension of the acceptance time within three calendar weeks after receiving the agreement, the offer is null and void.

§ 46.165 Duration of fellowship.

(a) Full-time fellowships will not exceed one year.

(b) Part-time fellowships will not exceed three years.

§ 46.170 Initiation of studies.

(a) The fellow must submit EPA 5770-7 "Fellowship Activation Notice" when they start their course of studies (OMB clearance number 2010-0004).

(b) If the EPA Grants Administration Division has not received the signed Fellowship Activation Notice within six months following the date of the award, EPA may terminate the fellowship.

§ 46.175 Completion of studies.

Fellows must submit EPA Form 5770-8 "EPA Fellowship Termination Notice." when the fellow completes the course of study. (OMB clearance number 2010-0004)

§ 46.180 Payment.

(a) EPA will pay stipends directly to the fellow on a monthly basis or any other basis approved by the Project Officer, only after EPA has received the signed EPA Form 5770-7, "Fellowship Activation Notice." (OMB clearance number 2010-0004).

(b) EPA will pay the book allowance directly to the fellow only after EPA receives the signed EPA Form 5770-7.

(c) EPA will pay tuition and fees in a lump payment directly to the sponsoring institution only after EPA has received the signed EPA Form 5770-7.

APPENDIX A—ENVIRONMENTAL PROTECTION AGENCY FELLOWSHIP PROGRAMS

	Administering office	
	Headquarters	Regions
Office of Air Noise, and Radiation: Air Pollution Control Fellowships.	X	
Office of Water: Water Pollution Control Fellowships.	X	
Safe Drinking Water Fellowships.	X	
Office of Research and Development: Interdisciplinary Fellowships.	X	
Office of Solid Waste and Emergency Response: Hazardous Waste Fellowships.	X	

[FR Doc. 84-27409 Filed 10-17-84 8:45 am]

Billing Code 6560-50-M

federal register

Monday
March 9, 1992

Part III

Environmental Protection Agency

40 CFR Part 47

National Environmental Education Act Grants Regulations; Interim Final Rule

primarily directed toward the support of noneducational research and development;

(b) *Federal agency* or *agency of the United States* means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation;

(c) *Local education agency* means any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U S C 3381) and shall include any tribal education agency, as defined in § 47 105(f);

(d) *Not-for-profit* organization means an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code;

(e) *Noncommercial education broadcasting entities* means any noncommercial educational broadcasting station (and/or its legal nonprofit affiliates) as defined and licensed by the Federal Communications Commission;

(f) *Tribal education agency* means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs;

(g) Refer to 40 CFR parts 30 and 31 for definitions for budget period, project period, continuation award, cooperative agreement, grant agreement, and other Federal assistance terms.

§ 47.110 Eligible applicants.

Any local education agency (including any tribal education agency), college or university, State education agency or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit an application to the Administrator in response to the solicitations described in § 47.120.

§ 47.115 Award amount and matching requirements.

(a) Individual awards shall not exceed $250,000, and 25 percent of all funds obligated under this section in a fiscal year shall be for individual awards of not more than $5,000

(b) The Federal share shall not exceed 75 percent of the total project costs The non-Federal share of project costs may be provided by in-kind contributions and other noncash support In cases where the EPA determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the EPA may approve awards with a matching requirement other than that specified in this paragraph, including full Federal funding.

§ 47.120 Solicitation notice and proposal procedures.

Each fiscal year the Administrator shall publish a solicitation for environmental education grant proposals. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit EPA to assess the project.

§ 47.125 Eligible and priority projects and activities.

(a) Activities eligible for funding shall include, but not be limited to, environmental education and training programs for:

(1) Design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;

(2) Design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;

(3) Projects to understand and assess a specific environmental issue or a specific environmental problem;

(4) Provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and

(5) Design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

(b) EPA shall give priority to those proposals which will develop

(1) A new or significantly improved environmental education practice, method, or technique,

(2) An environmental education practice, method, or technique which may have wide application;

(3) An environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report which will be developed within two years of enactment pursuant to section 9(d) of the Act; and

(4) An environmental education practice, method, or technique which addresses an environmental issue which, in the judgment of EPA, is of a high priority.

§ 47.130 Performance of grant.

(a) Each project shall be performed by the recipient, or by a person satisfactory to the recipient and to the EPA. Workplans shall accompany all applications, shall identify who will be performing activities, and shall be approved by EPA prior to funding.

(b) Budget periods normally will not exceed one year. Project periods may be longer, and additional funding may be awarded for continuations.

(c) Procurement procedures, which are found in 40 CFR part 33 for all recipients other than State and local governments. Procurement procedures for State and local governments are described in 40 CFR part 31. These procedures include provisions for small purchase procedures.

§ 47.135 Disputes.

Disputes arising under these grants shall be governed by 40 CFR 30 1200 for recipients other than State and local governments and 40 CFR 31 70 for State and local governments.

[FR Doc. 92-5283 Filed 3-6-92, 8:45 am]
BILLING CODE 6560-50-M

APPENDIX J

APPENDIX J

EPA ORDER 1000.25, "USE OF RECYCLED PAPER"

EPA ORDER

Classification No.: 1000.25

Approval Date: JAN 2 4 1990

Use of Recycled Paper

1. PURPOSE. This Order establishes Agency policy to encourage the use of recycled paper.

2. BACKGROUND. The EPA has set a goal for the nation to reduce and recycle twenty-five percent of municipal solid waste by 1992. One of the keys to making recycling successful is the development of stable markets for products containing recovered materials. The Federal government needs to do its part by purchasing such products; the EPA should be a leader in this effort. This Order promotes this end by establishing an Agency policy promoting the use of recycled paper.

3. POLICY. It is Environmental Protection Agency policy to use, and to promote the use of, recycled paper.

4. RESPONSIBILITIES. The Procurement and Contracts Management Division (PCMD) is directed to ensure that all new contracts specify that contractors use recycled paper for all reports required for delivery to the Agency. Where feasible, PCMD should seek to modify existing contracts to include the same requirement.

The Grants Administration Division (GAD) is directed to include in all new grants and cooperative agreements a special condition requiring that grantees and recipients of cooperative agreement funds use recycled paper for all reports submitted to the Agency.

All Agency employees should be mindful of our initiatives in the area and should do their part to reduce and recycle waste.

William K. Reilly

MEMORANDUM

SUBJECT: EPA Order on the Use of Recycled Paper

FROM: Harvey G. Pippen, Jr., Director
Grants Administration Division

TO: Assistant Regional Administrators
Regions I - X

On April 12, 1990, I issued a memorandum covering an EPA Order on the use of recycled paper. The memorandum included a requirement for the inclusion of special condition.

Since that time, we have received several questions and comments on the special condition. Based on these comments, we have revised the special condition to read as follows:

> "Pursuant to EPA Order 1000.25, dated January 24, 1990, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to the Agency. This requirement does not apply to reports which are prepared on forms supplied by EPA. This requirement applies even when the cost of recycled paper is higher than that of virgin paper."

This new version makes it clear that the recycled paper special condition results from an EPA Order, and applies only to reports delivered to the Agency. Also, please note that this special condition applies to all new and continuing grants and cooperative agreements. You should begin using it as revised immediately.

Should you have any questions or comments regarding this matter, please call me or have your staff contact Tom Fletcher on 382-5297.

Attachment

cc: Regional Grants Branch Chiefs, Regions I - X

bcc: Bruce Feldman
Fred Meadows
Scott McMoran

Official H. Pippen P. Hull B. Feldman
Reading T. Fletcher R. Johnson
Division
PM-216F:TFLETCHER:tf:801 FC:382-5297:4/24/90
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APPENDIX K

APPENDIX K

EPA ORDER 5730.1, "POLICY AND PROCEDURES FOR FUNDING ASSISTANCE AGREEMENTS"

EPA ORDER

Classification No.: 5730.1

Approval Date: 1/21/94

POLICY AND PROCEDURES FOR FUNDING ASSISTANCE AGREEMENTS

1. PURPOSE. The purpose of this policy is to establish consistent, standard operating procedures for Regional and Headquarters Program Offices and Grants Management Offices (GMOs) to follow in awarding grants. While the policy and procedures address the funding process for all grants and cooperative agreements, it focuses primarily on new\unique assistance programs or individual project grants and cooperative agreements not previously funded and for which the GMOs have limited background information. These assistance awards are other than continuing assistance programs, are frequently new programs, Congressional add-ons, or special projects to be funded with the Administrator's or Regional Administrator's discretionary funds. Currently, there is confusion regarding assistance awards resulting from Congressional add-ons or that have no administrative procedures in place, i.e. funds that are unexpectedly identified for assistance awards in the fourth quarter of the fiscal year. In many cases, the GMO is made aware of these grants late in the fiscal year.

The Headquarters and Regional Program, Budget, and Grants Management Offices are participants in this assistance funding process. Close coordination between and understanding of roles and responsibilities of these key participants is vital to making the process work efficiently. The Program Office provides the funding and is responsible for the programmatic and technical oversight of the assistance process to ensure the purposes of the assistance award are achieved in a timely and high quality manner. The Budget Office maintains assistance funds availability through control of advices of allowance and reprogrammings to the Agency's Operating Plan. The GMOs assure the assistance application completeness by performing and documenting an administrative review of the assistance application. To avoid an unmanageable assistance award workload in the fourth quarter, there is a need for regular communications and coordination of planning throughout the fiscal year between these offices.

This policy addresses two concerns: (1) the need for communication and early planning and scheduling for making awards, and (2) identifying appropriate program elements, statutory authorities, and delegations for such awards.

2. POLICY. It is EPA policy to award assistance agreements that are legal, administratively correct, and support the Agency's mission, as quickly as possible after funds become available. In furtherance of this policy, EPA establishes the following:

a. Planning and Communication. Good management practices dictate the need for strong communication and early planning. To facilitate better planning, the Program Offices are encouraged to establish an annual plan and schedule for awarding their assistance agreements and to regularly communicate that plan and schedule to the appropriate Budget and Grants Management Offices. To promote earlier planning and increased communication, both Headquarters and Regional Grants Management, Budget, and Program Offices should hold periodic meetings, initiated by the GMOs, to reduce the impact created by last-minute, fourth-quarter awards. These last-minute awards are often due to late reprogramming of funds from Headquarters to the Regions or to grants hastily awarded to avoid having funds carried-over and reissued for a different purpose or Office. Both the National Program Manager and the Program Office must recognize that the GMO needs at least 60 days lead time (Superfund awards require 90 days) from receipt of application to the award date to assure award of a grant by the end of the fiscal year.

b. Program Element, Statutory Authority, Delegation of Authority. The program element, statutory authority, and delegation of authority are information required before EPA can award a grant. They are documented on the EPA Assistance Agreement - EPA Form 5700-20A. The National Program Office will verify statutory authority, program element, and delegation of authority before funds are sent to the Regions to award assistance. This information **must appear** in a memorandum or d-mail from the National Program Office to the Regional Program Office prior to the distribution of the funds. The memorandum or d-mail should be referenced on the budget reprogramming document in IFMS.

3. DEFINITIONS.

a. Approval Official. The individual within the Program having the responsibility and delegated authority for determining whether to fund or reject an application on the basis of technical\programmatic considerations. The Approval Official communicates this funding decision to the Award Official through a Decision Memorandum and\or an Assistance Funding Order (EPA Form 5700-14).

b. Assistance Funding Process. The process by which assistance funds are (1) planned in a Program Office's budget request to OMB and Congress, (2) distributed during their operating

plan development, (3) received in an advice of allowance, (4) committed in IFMS, and (5) ultimately routed to the appropriate Grants Management Office for award.

c. Award Official. The individual who signs the assistance agreement ensuring that all technical, legal, and administrative evaluations have been made and that the proposed agreement is awardable. The Award Official for regionally administered programs is either the Regional Administrator, the Assistant Regional Administrator, or the Division Director, depending upon the region or program. The Award Officials for Headquarters are the Branch Chief, Grants Operations Branch, and the Branch Chief, Grants Information and Analysis Branch, Grants Administration Division, Office of Grants and Debarment, Office of Administration and Resources Management.

d. Carry-over Funds. Funds that are: (1) not obligated by the end of a fiscal year; and (2) may be obligated in the next fiscal year according to the terms of the appropriations legislation that first made these funds available. This term should not be confused with 'recipient requested carryover' of (unused, previously obligated) funds on a continuation assistance agreement. The latter do not require any action to be taken by the Budget Division. (Ref. - EPA Resources Management Directive System (RMDS) Chapter 2510)

e. Comptroller's Year-End Close-Out Procedures Guidance. Each July, the Comptroller issues guidance entitled "FY 19-- Year-End Close-Out Procedures". This broadly distributed package includes a schedule with cut-off dates for all end-of-year activities associated with the Budget, Finance, and Grants Administration Divisions and the Office of Acquisition Management. It also includes a cut-off date (usually the last business day in August) for all routine budget reprogrammings, beyond which, IFMS security is modified so only reprogrammings approved on a case-by case basis are processed by the Budget Division. This cut-off date is imposed to encourage all offices to get their end-of-year funding in place with sufficient lead time for processing the commitment and obligation.

f. Cooperative Agreement. The agreement used when the principal purpose of the relationship is the transfer of money, property, or anything of value to a State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute in which substantial

involvement is anticipated between EPA and the recipient during performance of the contemplated activity. (Also known as an assistance agreement.) (Ref. - Federal Grant and Cooperative Agreement Act of 1977 and 40 CFR Part 30)

g. Decision Memorandum. The Program Office's memorandum containing the decision and justification for either funding or rejecting an assistance proposal. The memorandum is sent to the Grants Management Office as part of the assistance funding package. For grants awarded in the Regions, this decision is signed by the Approval Official or his\her respective designee. For all grants awarded from Headquarters (except fellowships), the Recommending Official (RO) writes the Decision Memorandum. The Approval Official approves or rejects the proposal based upon the justification and recommendation made by the RO.

h. Delegation of Authority. The official basic directive to senior Headquarters and Regional management officials to exercise authority for the Administrator. Statutory authorities to approve assistance agreements are assigned to EPA's Administrator and implemented through delegation to the Regional Administrators, National Program Managers or their designees. The Agency's Delegation Manual identifies each delegation of authority by a specific number. EPA's Management and Organization Division records all delegations of authority, except emergency\letter delegations in the Delegation Manual and distributes them to Regional and Headquarters offices.

i. Grant. The agreement used when the principal purpose of the relationship is the transfer of money, property, or anything else of value to a State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute in which substantial Federal involvement is not anticipated between EPA and the recipient during performance of the contemplated activity. (Also known as an assistance agreement.) (Ref. - Federal Grant and Cooperative Agreement Act of 1977 and 40 CFR Part 31.)

j. Grants Management Offices (GMO). The Headquarters and Regional units responsible for all business management aspects associated with the review and negotiation of applications and the award and administration of funded projects through audit resolution and final close out.

k. National Program Manager The individual responsible for management of a program on a national level.

l. Program Element. A classification within EPA's program\budget structure which represents a distinct program activity. The Program Element is supported by one or more authorizing sections of law and must be associated with the grant statutory authority. (Appears as part of Item #39 - Fiscal Data -on EPA's Assistance Agreement.)

m. Program Office. Refers to either the Headquarters Program Office or Regional Program Office responsible for managing the technical\programmatic aspects of a specific media program.

n. Regional Program Manager. The individual responsible for technical\programmatic management of an assistance program at the regional level.

o. Statutory Authority. The section of authorizing legislation specifically providing authority to the EPA to award assistance agreements including grants and cooperative agreements for the intended purpose. (Appears as Item #19 on EPA's Assistance Agreement.)

4. PROCEDURES.

a. Planning and Communication.

(1) Program Office Responsibilities.

(a) The Program Office(s) should be encouraged to establish an annual plan (including early identification of additional award activities for the fiscal year) and schedule for recommending awards and to regularly communicate that plan and schedule to Headquarters and Regional Grants Management Offices. In particular, the Program Office must communicate its plans for spending last-minute money to these offices. These plans must comply with the timetables cited in the Comptroller's Year-End Close-Out Procedures (See definition).

(b) The Program Office should do as much preliminary planning and work as possible (including a prioritized list of potential projects and possibly completed applications and workplans from potential recipients for these projects) in anticipation of possible, last-minute, year-end funding.

(2) Grants Management Office Responsibilities.

(a) The Grants Administration Division should hold periodic meetings with the National Program Managers/Contacts and the Budget Division to discuss proposed assistance funding plans, schedules, and related information and then distribute that information to both Headquarters and Regional Grants Management Offices so they can adjust their workload.

(b) The GMOs should hold periodic meetings with Program Contacts to discuss proposed assistance funding plans and to plan their workload.

(c) The GMOs must plan their workload to allow for processing some unexpected, last-minute, fourth-quarter awards.

b. Identifying Program Element, Statutory Authority, Delegation of Authority.

(1) Program Office Responsibilities.

(a) The National Program Manager (NPM) should notify the Regional Program Manager (RPM) via memorandum or d-mail, whenever the NPM initiates a reprogramming for distribution of assistance funds to the Region. The NPM must identify the purpose of the funding; program element; statutory authority; delegation of authority, and an appropriate program contact person familiar with the project in the memorandum\d-mail. The NPM should carbon copy the Headquarters Budget and Grants Management Office if the assistance is to be awarded from Headquarters or the Regional Budget and Grants Management Offices if the assistance is to be awarded from the Region.

(b) The NPM must reference the dated memorandum or d-mail on the budget reprogramming which transmits the funds to the Regions. This reference should be entered in the justification section of the IFMS reprogramming document. Funds provided to the Regions for assistance projects should be placed in the proper Budget Object Class (41).

(c) The NPM must include the Grants Administration Division's (GAD) Assistance Administrative Summary Sheet in program guidance. The Summary Sheet includes the program element, statutory authority and the delegation of authority for the

respective assistance program. The NPM must submit the completed Summary Sheet and program guidance to GAD for concurrence prior to its issuance.

(d) The Program must identify and verify the match requirement(s), if any, for the assistance against the statutory authority, program regulation, or administrative regulation for the assistance. In addition, the program will identify and verify the program element and delegation of authority supporting the match.

If an application will be funded under an existing program described in the Catalogue of Federal Domestic Assistance (CFDA), the Program must verify that the proposed activity meets the program's eligibility criteria published in the CFDA. If the assistance program is not in the CFDA, the Program must identify the eligibility requirements for the award and ensure that these eligibility requirements agree with the statutory authority and delegation of authority under which the grant is being awarded.

(e) The Program Office should coordinate with the appropriate NPM, and Headquarters or Regional Budget Office to provide the GMO with missing information if the GMO returns a grant award\funding package to the Program Office because it is incomplete regarding program element, statutory authority and delegation of authority.

(f) The Program Office must designate the program element, statutory authority, and delegation of authority in the decision memorandum.

(g) The Program Office should refer any legal questions such as those regarding statutory authority, match requirements, and eligibility to the Office of General Counsel, Grants Law Branch, or Regional Counsel.

(2) Grants Management Office Responsibilities.

(a) The GMO provides an overall "check and balance" function, assuring the correctness of the program element and statutory authority, and the existence of a delegation of authority.

(b) The GMO should request clarification from the Office of General Counsel or Regional Counsel on any outstanding legal questions.

(c) The GMO should return, in a timely manner, all incomplete funding\grant packages to the Program Office and should communicate to the Program Office the information needed to complete the package.

(d) The Grants Administration Division (GAD) and GMOs, when appropriate, must incorporate the standard operating procedures stated in this policy into their training programs, e.g., project officer training, and Basic Grants course.

(e) GAD should verify that its Assistance Administrative Summary Sheet appears in all program guidance.

5. ADDITIONAL REFERENCES.

a. For further information regarding the legal responsibilities of the Approval Official under borrowed authorities, refer to Sallyanne Harper's 6/9/93 memorandum, Approval Official's Responsibilities for Grants and Cooperative Agreements Originating and Managed in Other Offices.

b. For further information regarding the administration of grants, cooperative agreements, and interagency agreements, refer to the Assistance Administration Manual, EPA Document Number 5700 1984 Edition.

c. For further information regarding this Order, please contact Chief, Grants Policy and Procedures Branch, Grants Administration Division.

Jonathan Z. Cannon
Assistant Administrator

United States

EPA ENVIRONMENTAL PROTECTION AGENCY

Washington, DC 20460

ASSISTANCE ADMINISTRATIVE SUMMARY SHEET

NOTE: Quality Assurance: Any applicant proposing environmentally related measurements or data collection must comply with EPA's requirements for quality assurance as cited in 40 CFR Part 30.503 and 40 CFR Part 31.45.

1. Operating Program/Office:

2. Program Contact(s):

3. Catalog of Federal Domestic Assistance (CFDA) Number:

4. Program Title:

5. Program Purpose:

6. Eligible Applicants/Recipients:

7. Type of Assistance:
- ☐ Grant
- ☐ Loan
- ☐ Cooperative Agreement

8. Nature of Assistance:
- ☐ Continuing Program
- ☐ Project

9. Statutory Authority:

Act: _____

Section: _____

10. Regulatory Authority:

Programmatic: _____

Administrative: _____

11a. Cost Sharing/Match Requirements:

Yes ☐ No ☐

% _____ MOE _____

11b. Basis of Cost Sharing/Match Requirement (Check One):

Statute ☐ Program Regulation ☐

Program Guidance ☐ Administrative Regulation ☐

12 Limitations: Yes ☐ No ☐ (If "Yes", list the limitations)

13 Delegation of Authority:

Delegation Number: Title of Delegation:

14 Subject to Intergovernmental Review? Yes ☐ No ☐ (If No, why?)

15 Program Code	16. Program Element	17. Object Class

ASSISTANCE ADMINISTRATIVE SUMMARY SHEET INSTRUCTIONS

1. OPERATING PROGRAM OR OFFICE: (Office establishing program.)

2. PROGRAM CONTACT(S): (Name, location and phone # of individual(s) who can be contacted for further information on this program.)

3. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: (The number assigned to an EPA assistance program for inclusion in the government-wide catalog Coordinate with Grants Information and Analysis Branch, Grants Administration Division to determine if listing is required.).

4. OFFICIAL PROGRAM TITLE: (The official title of the assistance program. May or may not be included in the Catalogue of Federal Domestic Assistance. (See #3.) Be concise and descriptive (40 characters or less).

5. PURPOSE: (A one or two sentence summary description of eligible activities.)

6. ELIGIBLE APPLICANTS\RECIPIENTS: (Who is eligible to receive this assistance from EPA? Often identified in the authorizing legislation.)

7. TYPE OF ASSISTANCE: (Grant, Cooperative Agreement, Loan)

8. NATURE OF ASSISTANCE: (Continuing Program; Project)

9. STATUTORY AUTHORITY: (EPA's legal authority to fund activities; cite the Act, and the Section. As necessary, OGC will verify statutory authority to award financial assistance as proposed and make other legal determinations.)

10. REGULATORY AUTHORITY: (Cite programmatic regulation(s) governing the assistance program in addition to the standard grant administrative regulations.)

11. COST-SHARING\MATCH REQUIREMENTS: (What share must the applicant contribute to the assistance? Is it a statutory or regulatory requirement? Reminder: For those programs with no statutory/regulatory match requirements, it is national policy to encourage a minimum five percent match (to States/locals) to ensure the recipient's committment to the project. The five percent minimum is a regulatory requirement for all educational and non-profit organizations per 40 CFR 30.307.)

12. LIMITATIONS: (What restrictions, if any, are there e.g., 10% statutory limitation on administrative costs for 319(h) Non-point source grants?)

13. DELEGATION OF AUTHORITY: (Provide number and title of Delegation of Authority(s) for these grants. Identifies the official(s) who have the authority to approve or reject the funding of the grant and the official(s) who have the authority to award the grant. Management and Organization Division coordinates Delegations of Authority for EPA.)

14. INTERGOVERNMENTAL REVIEW: (Is this required? Executive Order 12372 provides for State's right to review applications for Federal assistance. Coordinate with Grants Policy and Procedures Branch, Grants Administration Division for verification of requirement.)

15. PROGRAM CODE\IDENTIFIER: (The administrative code that identifies the program and assures the proper recording of the receipt of applications for assistance, their disposition, and related financial transactions. It is an integral part of the assistance identification number. Obtain from GICS Policy Specialist, Grants Administration Division.)

16. PROGRAM ELEMENT: (Budgetary classification which identifies the source of the funding; is supported by one or more authorizing sections of law and must be associated with the grant statutory authority)

17. OBJECT CLASS: (Budgetary classification used to identify the transactions of the Federal Government by the nature of the goods or services purchased, as required by OMB Circular A-11.)

APPENDIX L

PERFORMANCE BASED ASSISTANCE POLICY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D C 20460

MAY 31 1985

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Policy on Performance-Based Assistance

FROM: Lee M. Thomas

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrator
Regional Administrators
Staff Office Directors
Division Directors

I am pleased to issue the attached policy on EPA's performance-based assistance to States. This policy represents an important step in the continuing effort to achieve environmental results through a strong EPA/State partnership.

Our assistance to States covers a wide range of continuing environmental programs. In the past, the process for developing and managing assistance agreements has varied significantly among programs and Regions. This policy establishes an Agency-wide approach toward negotiating assistance agreements, conducting oversight of those agreements, and responding to key oversight findings. While the aim of the policy is a consistent approach across Agency programs, it retains considerable flexibility for Regions to tailor assistance agreements to the unique environmental conditions of particular States.

This policy is effective immediately. The accompanying Question and Answer Package explains how FY'86 assistance agreements will be expected to comply with it and details the rationale behind major policy components.

The Deputy Administrator will monitor implementation of the Policy on Performance-Based Assistance and issue special instructions as necessary. I expect Assistant Administrators to advise the Deputy Administrator of actions planned or taken to make their program policies, guidance and procedures fully consistent with this policy within thirty days.

Regional Administrators are responsible for ensuring that their staffs and States receive, understand and begin to apply this policy package to their assistance activities. To assist in its prompt and proper implementation, members of the task force and staff instrumental in the development of this policy have agreed to make Regional visits to explain and discuss it.

I would like to commend the task force that developed this policy, whose members included managers and staff from EPA's Headquarters and Regions, and State Environmental Directors, and representatives from the Washington-based Executive Branch Organizations. I believe they have done an excellent job and hope their effort can serve as a model for future EPA/State decision-making.

I look forward to strong Agency commitment to this policy. You can be assured of my full support as EPA and the States move forward with its implementation.

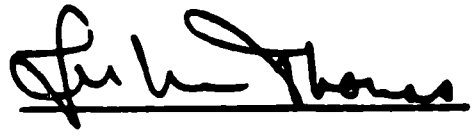
Attachments

POLICY ON PERFORMANCE-BASED ASSISTANCE

I am pleased to issue this EPA Policy on Performance-Based Assistance. This document was developed by a task force composed of representatives from EPA Headquarters and Regions, State environmental agencies and Executive Branch Organizations to establish a consistent, Agency-wide approach toward negotiating and managing assistance agreements with States.

The three major components of the policy describe how assistance agreements should be negotiated, how a State's performance against negotiated commitments should be assessed, and what actions should be taken to reward accomplishments and correct problems. The overall approach is one of EPA/State cooperation in setting and attaining environmental goals through effective State programs.

I anticipate strong Agency commitment to the principles of this policy and look forward to the strengthening of the EPA/State partnership I believe will result from this approach.



Lee M. Thomas
Administrator

5/21/85
Date

EPA POLICY ON PERFORMANCE-BASED ASSISTANCE

PURPOSE

This policy establishes an Agency-wide approach which links U.S. EPA's assistance funds for continuing State environmental programs to recipient performance. The approach employs assistance as a management tool to promote effective State environmental programs. The policy's goal is the consistent and predictable application of the performance-based approach across Agency programs and among Regions.

Mechanisms for tying EPA assistance to a recipient's accomplishment of specific activities agreed to in advance are contained in EPA's regulations governing State and Local Assistance (40 CFR Part 35, Subpart A). The degree and manner in which EPA programs and Regions have applied these regulations has varied greatly. Through this policy, the Agency articulates how it will consistently manage its intergovernmental assistance.

SCOPE

EPA's Regions will be expected to implement the portions of this policy governing the management of assistance agreements ("Oversight" and "Consequences of Oversight" sections) upon the policy's issuance. To the greatest extent possible, this policy should also guide the negotiation of grants and cooperative agreements for fiscal year 1986.

This policy supersedes all previous policies on performance-based assistance to the extent they conflict with the approach outlined below. It elaborates on regulations governing State and and Local Assistance (40 CFR Part 35, Subpart A) promulgated October 12, 1982, and the General Regulation for Assistance Programs (40 CFR Part 30) promulgated September 30, 1983. This policy does not replace funding or grant/cooperative agreement requirements established by Federal statutes or EPA regulations. States applying for Federal financial assistance are required to have adequate financial management systems capable of ensuring proper fiscal control.

The policy complements and is in complete accordance with EPA's Policy on Oversight of Delegated Programs (April 4, 1984) and the Policy Framework for State/EPA Enforcement "Agreements" (June 26, 1984).

While this policy will refer to all assistance recipients as "States" (since States receive most of EPA's assistance for continuing environmental programs), it applies equally to interstate and local agencies which receive similar support.

PRINCIPLES AND APPROACH

PRINCIPLES

This policy on performance-based assistance is designed to strengthen the EPA/State partnership by ensuring that EPA assistance facilitates the implementation of national environmental goals and promotes and sustains effective State environmental programs. The policy provides a framework within which EPA and States can clarify performance expectations and solve problems through a system of negotiation, according to a predictable but flexible set of national guidelines. This framework is built around several fundamental principles which will also guide the policy's implementation:

- o EPA will use performance-based assistance as a management tool to promote and recognize the effective performance of State environmental programs, and to ensure mutual accountability;

- o EPA Regions and programs will retain flexibility to tailor the performance-based approach to their needs and the policy's guiding principles;

- o States and EPA should share a common set of expectations regarding performance commitments and likely responses to identified problems. There should be no surprises as EPA and States relate to each other under this policy;

- o In negotiating State performance objectives, EPA and the States will seek realistic commitments and presume good faith in their accomplishment;

- o EPA and the States should maintain continuous dialogue for the rapid identification, solution and escalation of problems to top level managers;

- o EPA is fully committed to the success of State environmental programs and will seek opportunities to acknowledge their accomplishments.

APPROACH

The policy consists of three basic parts. The first section describes components of assistance agreements and how they are to be negotiated. The second section lays out EPA's expectations for the review and evaluation of assistance agreements and escalation of significant findings. The final section describes how EPA should respond to the findings of oversight: rewarding strong performance; applying corrective actions to solve problems; escalating significant conflicts to top management; and, in cases of persistent performance problems, imposing sanctions.

ASSISTANCE AGREEMENT

Clear expectations for program performance are crucial to an effective EPA/State partnership. Annual assistance agreements provide a key vehicle for expressing these performance expectations. Negotiated work programs, contained in an assistance agreement, form a fundamental basis for evaluation of State performance.

An assistance agreement should include three components: 1) a work program; 2) identification of support (other than federal assistance funds) a State needs from EPA to accomplish work program commitments; and, 3) a monitoring and evaluation plan.

APPROACH

EPA will require that the top national priorities as identified in Agency guidance be explicitly addressed in all State work programs. As EPA and States negotiate outputs, national priorities should be tailored to the real environmental conditions of each State and Region.

Assistance agreements may include outputs based on a State's priorities if those activities promise to deliver a greater environmental benefit than a national priority. State priorities should represent only those activities allowable under Federal statutes.

The appropriate mix of national and State priorities will vary from work program to work program, according to the unique features of each environmental program in each State. Regional offices must exercise their judgment and negotiate with States over what combination of national and State priorities can deliver the greatest environmental benefit with resources available after EPA's top national priorities have been addressed.

To better facilitate the negotiation of assistance agreements, the Agency's Operating Guidance should be strengthened through early State involvement in defining the order and scope of Agency priorities, a realistic consideration of funding limitations throughout its development, and specific identification of top priorities by Program Offices.

The development and oversight of an assistance agreement should be supervised by one senior Regional manager. EPA Regional Administrators are ultimately accountable for all assistance agreements made with States and should be familiar with the significant outputs and conditions of each agreement. They will be responsible for all major assistance-related decisions.

Assistance agreements may be amended by mutual agreement of the Regional Administrator and his/her State counterpart. A major change in national or State priorities, environmental emergencies, and the discovery of greatly overestimated commitments are examples of the types of circumstances which may necessitate renegotiation.

WORK PROGRAM

The work program should specify the outputs a State will produce under its federal assistance award (including the State match and level of effort) and the resources and time frames for completing the outputs.

- o Outputs should be measurable commitments, reflective to the extent possible of real environmental results. They should be ambitious but realistic commitments -- achievable objectives rather than lofty goals.

- o Work programs should focus on the objectives a State will meet, not how the State will accomplish an output.

- o Past performance should affect work programs. The good or poor performance of a State (or EPA) identified through oversight should influence the outputs and conditions contained in the next annual assistance agreement.

- o Work programs should specifically identify completion timeframes for outputs. EPA may also specify interim milestones and reporting requirements based on the priority needs of national programs and in keeping with good management practice. Reporting required under an assistance agreement should be consistent with EPA's information systems.

- o States should draft their work programs but may request assistance from EPA Regions in developing them.

- o States should be encouraged to volunteer a comprehensive work program that indicates activities, if any, outside those paid for with the federal and State funds included in the federal assistance agreement budget. Awareness of State responsibilites not related to federal assistance greatly enhances EPA's understanding of the scope of State environmental programs. Should a State choose to submit plans for its entire program, it need not indicate resource levels, but only program activities. EPA will not examine these activities in the course of assistance oversight except when necessary to ascertain the cause of a performance problem or to identify the corrective action which can best address a problem.

SUPPLEMENTAL EPA SUPPORT TO STATES

An assistance agreement should describe the types of support EPA will endeavor to provide in addition to an assistance award to enable a State to meet its work program outputs. Regions should consult with Headquarters about support which will require Headquarters action.

- o The assistance agreement should describe the specific research, technical advice, guidance, regulations, contractor assistance or other support EPA will furnish States to enable them to fulfill specific work program outputs, making clear that accomplishment of the outputs is contingent upon the receipt of the EPA support. If EPA does not furnish the support described in the assistance agreement, the State will be relieved of output commitments contingent upon that support.

EVALUATION PLAN

The final component of an assistance agreement is a plan for EPA's evaluation of State performance. The evaluation plan should be mutually acceptable to EPA and a State.

- o The plan should outline the schedule and scope of review EPA will conduct and should identify areas the evaluation will focus on.

- o An evaluation plan must specify at least one on-site review per year, performance measures, and reporting requirements.

ASSISTANCE OVERSIGHT

EPA should oversee assistance agreements both informally and formally. Regions and States should maintain continuous dialogue so that States may alert EPA to problems they are experiencing and EPA can monitor State progress toward accomplishing outputs. EPA should also periodically conduct a formal evaluation of State performance. Oversight should identify the successes and problems States have encountered in meeting their commitments. Oversight also entails the joint analysis of identified problems to determine their nature, cause, and appropriate solution, and the escalation of significant findings (both positive and negative) to top managers in the Region and the State.

APPROACH

The formal assessment of State performance under assistance agreements should occur as part of EPA's comprehensive review and evaluation of State programs. This process is governed by EPA's Policy on Oversight of Delegated Programs which states that evaluations should focus on overall program performance (within a given program), rather than individual actions; they should be based on objective measures and standards agreed to in advance; they should be conducted on-site at least once a year by experienced, skilled EPA staff; they should contain no

surprises for States regarding content or expectations; and results should be documented in a written report.

EPA should adhere to these principles of oversight and to the scope and schedule of evaluation agreed to in the assistance agreement.

FEATURES

- States are responsible for notifying EPA in a timely manner of problems they experience in trying to accomplish their outputs. Likewise, EPA is responsible for promptly notifying States of its inability to supply promised support.
- Formal and informal evaluations by EPA should be constructive, conducted in the spirit of promoting good performance through problem-solving, not fault-finding.
- EPA's review and evaluation should emphasize overall performance within each program, concentrating on the composite picture revealed by total outputs and the quality of accomplishments.
- EPA should focus on a State's performance against work program outputs and conditions unless other aspects of a State's program (procedures, processes, other activities) must be examined to analyze a problem or find its appropriate solution.
- Formal review of State performance under the assistance agreement will entail, at a minimum, one on-site annual evaluation of each assistance agreement.
- Review and evaluation of assistance agreements should be conducted by skilled, experienced EPA evaluators.
- Oversight findings, successes as well as problems, should be documented to establish an accurate record of State performance over time.
- Assistance oversight should use existing reporting and evaluation mechanisms to the extent possible.

CONSEQUENCES OF OVERSIGHT

Once the assistance oversight process has identified and documented areas in which States have had success or difficulty in meeting their commitments under the assistance agreement, EPA should respond to those oversight findings. Potential responses range from rewards and incentives for good performance, application of corrective actions to solve uncovered problems, and the imposition of sanctions to address persistent, serious performance problems.

APPROACH TO OVERSIGHT RESPONSE

The Agency's goal in providing performance-based assistance is to promote national program objectives by supporting effective State environmental programs. Actions in response to oversight findings will be oriented toward finding the most effective ways to maintain or improve a State program's performance. Wherever possible, EPA should acknowledge excellent performance and help States solve problems which impede performance through corrective actions.

If problems regarding State achievement of work program commitments persist, EPA should pursue corrective steps as necessary based on experience with a given State. In general, sanctions should be imposed only when corrective actions have failed to solve persistent, significant performance problems. Before taking any sanction against a State, EPA should raise the performance issue to the highest levels of the Region and State necessary to negotiate an effective solution to the underlying problem. Sanctions should not be necessary if both parties are explicit, straightforward and realistic in their expectations of one another and approach the assistance agreement process in the spirit of cooperation.

INCENTIVES

- When a State meets its negotiated commitments or otherwise demonstrates success, the EPA Regional Office should take steps to acknowledge excellent State performance at the conclusion of the oversight review or at the end of the assistance agreement period.

- EPA is committed to publicizing State program success. Assured recognition of a State's environmental achievements is one of the most effective incentives at EPA's disposal. Publicizing accomplishments also benefits States with performance problems by providing them with models for success.

- In general, when a State demonstrates steady progress or a sustained level of high performance against negotiated commitments, EPA will institute the most appropriate rewards for achievement and incentives to promote continued success. Possible actions include but are not limited to:

    - Reducing the number, level, scope and/or frequency of reviews, reporting, or inspections to the minimum necessary for effective national program management;

    - Increasing State flexibility in using funds for special projects or State priorities;

    - Offering financial incentives (within existing resources), such as supplemental funding;

- Publicizing program successes through joint media presentations, awards, special letters of commendation to the Governor, or technology transfer to other States, EPA Regions and Headquarters.

CORRECTIVE ACTIONS

o When oversight review uncovers a performance problem and determines its cause, EPA and the State must act on those findings by taking appropriate corrective steps.

o Regions must initiate discussions with those States where problems have emerged, and work cooperatively with them to establish effective remedial strategies. This negotiated strategy should specify the time frame during which EPA will expect the problem to be resolved, and any interim milestones that will be necessary to monitor State progress.

o Regions and States should follow a corrective action strategy based on the unique history and needs of a given State. This policy does not prescribe any particular sequence of corrective actions which must be undertaken, nor does it link specific corrective actions to particular types of performance problems.

o Possible corrective actions include but are not limited to: providing EPA technical or managerial assistance, training, or additional resources; increasing the number and/or frequency of reporting and oversight requirements; and shifting State resources or otherwise renegotiating the assistance agreement.

o If a Region is not able to provide a particular essential type of specialized assistance to a State, the Region should bring this corrective action requirement to the attention of Headquarters program managers for action as appropriate.

o The intent of this policy is to see that EPA assumes a constructive approach in responding to State performance problems. When corrective actions have failed, or EPA and a State cannot agree on a corrective action, the Region may consider imposing a sanction. If a sanction is contemplated, the performance issue should be escalated to the highest appropriate level of EPA and the State. The following sequence should be observed whenever possible to ensure that significant problems receive prompt attention and are solved expeditiously:

  a. The Regional Division Director responsible for managing the assistance agreement will raise the issue to the attention of the Deputy Regional Admininstrator or Regional Administrator and advise his/her State counterpart of this notification.

b. The Regional Administrator will personally contact the State Environmental Director or other appropriate State manager to attempt to reach agreement on a corrective action, and to discuss the contemplated sanction.

c. National Program Managers should be advised of any State program problems warranting a sanction, and should be notified of any final decision to take such action.

d. If negotiations between the Regional Administrator and State counterpart fail to solve the problem, the Regional Administrator should judge under what circumstances notification of the Governor should occur.

SANCTIONS

- Regional Administrators must recognize that national responsibility for any State environmental program continues after the imposition of a sanction. They should make arrangements for completion of crucial outstanding outputs and should take steps to promote and sustain activities the State is performing effectively.

- As with corrective actions, any decision to impose a sanction must be based on EPA's particular experience with any given State. The Regional Administrator is responsible for determining when a problem may be significant enough to warrant such action, and for determining the appropriate type of sanction to apply.

- Current regulations detail those sanctions traditionally available to EPA. They include: stop-work actions, withholding payment, suspension or termination of agreement for cause, agreement annulment, and other appropriate judicial or administrative actions.

- Adjusting the schedule for award or payment of assistance funds to quarterly, semi-annual, or other similar restrictive disbursement schedules is considered a sanction under the terms of this policy. (The customary mechanisms for the release of funds, such as standard letter of credit procedures, are not affected by this policy.)

- 40 CFR Part 30 Subpart L details formal procedures for resolving EPA/State disputes concerning assistance agreements. These procedures provide the opportunity for a State to document the grounds for any objections to the imposition of a sanction and for EPA to review its decision and address the State's objections on the basis of a written record.

Policy on Performance-Based Assistance
Question and Answer Package

PURPOSE

1. What is the purpose of this policy?

This policy lays out a framework for managing EPA's assistance to States for continuing environmental programs. It ties performance against negotiated work program outputs to federal financial assistance funds. It provides a consistent approach for managing assistance programs through negotiating work outputs, overseeing States' performance against agreed upon commitments, solving problems through corrective action strategies, and imposing sanctions when corrective actions have failed or EPA and a State cannot agree on a corrective action strategy.

Although the policy aims for a consistent approach toward managing assistance agreements, it provides Regional managers with flexibility to use their best judgment in applying the provisions of this policy to specific conditions that exist within their Regions and among programs.

TIMING

2. How will this policy affect FY'86 assistance agreements?

Any FY'86 assistance agreement negotiated after the issuance of this policy will be expected to conform to all of its provisions.

Assistance agreements for FY'86 agreed upon prior to the issuance of the Policy on Performance-Based Assistance will not have to be renegotiated. However, EPA's Regions will be expected to manage these assistance agreements according to the approach outlined in the "Oversight" and "Consequences of Oversight" sections of the policy.

FY'86 assistance agreements may be amended if a Region and State both agree to do so, under the terms of governing regulations.

All assistance agreements for FY'87 will be negotiated and managed according to this policy.

PRIORITIES

3. Why should EPA assistance support some State priorities in addition to national priorities?

"State priorities" refer to activities which are allowable for funding under federal statutes and which, although not always important enough nationwide to warrant a place

on or at the top of the national priority list, are of great concern to a particular State due to that State's unique environmental conditions. Recognizing that each of EPA's continuing environmental programs requires a combination of Federal and State resources, EPA may direct some of its assistance to support what States view as their most significant initiatives, if those activities promise to deliver a greater environmental benefit than a national priority. (National priorities include Regional priorities). In many instances, a State's priority activities will correspond closely to the list of national priorities in a given program, but the State may wish to distribute resources among those activities with a slightly different emphasis. The Regions have flexibility under this policy to negotiate support for those activities, consistent with Program Guidance.

4. How is the proper balance between national and State priorities to be achieved?

The appropriate mix of national and State priorities will vary from work program to work program, according to the unique features of each environmental program in each State. After ensuring that top national priorities as identified in the Agency Operating Guidance and Regional Guidance are included in a work program, Regional officials must exercise their judgment and negotiate with a State over what combination of national and State priorities can deliver the greatest environmental benefit given the remaining resources available.

GUIDANCE

5. How should the Agency Operating Guidance be refined to facilitate improved work planning?

EPA's annual Operating Guidance should clearly articulate national priorities. The Agency Priority list should be limited to those top priorities across all media. Each Program Office should also list priority activities in its media area, ranking them and identifying those which must be reflected in every State work program. The Program Office and Agency priority lists should complement one another. EPA will involve states early on in defining the order and scope of Agency and Program Office priorities.

EPA Regions should negotiate work program outputs based upon priorities as identified and ranked in the Guidance. Carefully delineated priorities will help ensure work programs that contain clear and measureable output commitments.

ESCALATION

6. What is the purpose of the escalation sequence outlined in the policy?

The Policy on Performance-Based Assistance establishes a problem-solving approach toward managing EPA assistance to States. It has been designed to promote the prompt identification and resolution of any problems States encounter in trying to fulfill the output commitments they agree to meet. The purpose in laying out a process by which issues can be surfaced quickly up the chain of command in both Regions and States is to ensure that significant problems receive the prompt attention of managers capable of solving those problems expeditiously. This sequence was included in the policy to address concern that State performance problems too frequently lie unattended at the lower levels of Regions and States where they become bigger problems.

While this process calls for consultation with State representatives and notification of the National Program Manager, EPA's Regions are responsible for managing the escalation sequence and rendering any final decision to impose a sanction.

7. Under what circumstances should the escalation sequence be followed?

The escalation sequence was designed specifically as a mechanism for obtaining quick decisions on whether EPA will impose a sanction on a State demonstrating performance problems. By establishing a predictable process for addressing these major conflicts, the policy seeks to expedite, not encumber with formality, resolution of the most serious problems likely to be encountered in an assistance relationship. While this escalation sequence applies uniquely to decisions regarding sanctions, the policy encourages the escalation of any significant information (positive and negative) regarding the performance of a State program within both Regions and States as appropriate.

QUARTERLY DISBURSEMENTS

8. Why does this policy classify quarterly disbursement schedules (or similar restrictive disbursement schedules) as sanctions?

Quarterly disbursement schedules involve awarding a portion of a State's grant each quarter or imposing quarterly performance-based restrictions on standard payment procedures. The Task Force agreed that putting States on quarterly or semi-annual disbursement schedules makes it difficult for

States to plan their programs, which are generally based on a yearly cycle. The Task Force felt that this type of action would signify a lack of faith in a State's ability to perform. Consequently, the Task Force viewed this type of action as a sanction which would reflect a State's inability to perform. As with other sanctions, quarterly disbursement schedules, should not be imposed before attempting to resolve the problem through more cooperative efforts (corrective actions) or after a demonstration of continued past performance problems by a State. As with all sanction decisions, the decision to place a State on a quarterly disbursement schedule should be made at the highest level of the Region.

A quarterly disbursement schedule signifies that the recipient's performance would be reviewed after each quarter to determine whether full release of funds would be made for the next quarter. Under the policy, putting a State on this type of schedule is considered to be a sanction.

9. Does this policy affect draw-downs under the letter of credit or other payment mechanisms?

The customary mechanisms for the release of funds are not affected by this policy. For example, letter of credit procedures, which are used by most Regions, provide a system whereby the recipient may promptly obtain the funds necessary to finance the Federal portion of a project, and which precludes the withdrawal of funds from the Department of the Treasury any sooner than absolutely necessary. (Payment procedures are described in the Assistance Administration Manual, 12/3/84, Chapter 33.) However, to the extent that Regions impose performance-related restrictions on letter of credit or other payment mechanisms, these restrictions would be considered a sanction under the policy.

10. How will this policy affect States currently on quarterly disbursement schedules?

Currently, a number of States are on quarterly disbursement schedules, primarily under the RCRA program. This policy does not prohibit the practice of imposing a quarterly schedule on a State, but it does consider this practice a sanction. It is not necessary to amend FY'85 or FY'86 assistance agreements that already place States on quarterly disbursement schedules. However, States should not automatically be either extended or taken off of quarterly schedules for the following year's grant cycle. In deciding whether to continue or discontinue quarterly disbursements, Regions should review State performance. A decision to continue or discontinue a quarterly schedule should be based on the presence or absence of performance problems, or successful or unsuccessful attempts to resolve the problems through corrective steps. Regional and programatic differences call for Regional managers to use their best judgment in making such decisions.

11. What does this policy imply for withholding funds for problems that are not directly related to a State's performance of negotiated outputs under the assistance agreement?

This policy relates primarily to a State's performance of negotiated outputs under an assistance agreement. The decision to withhold funds from a State for output-related problems is a sanction which should be preceded by appropriate corrective actions and notification of high-level managers. However, funds are sometimes withheld for problems not directly related to a State's accomplishment of negotiated outputs under an assistance agreement. This may occur as a result of problems with a State's financial reporting and accounting system. For problems resulting from improper fiscal management or administrative practice (but not directly related to a State's performance on work outputs), the Regions may withhold funds in accordance with governing regulations.

OTHER QUESTIONS AND ANSWERS

12. Do assistance administration procedures need to be changed?

No. The policy was developed carefully so as not to conflict with the Agency's existing procedures for managing assistance agreements. Procedural details for administration are provided in the current (12/3/84) Assistance Administration Manual and they are consistent with the policy.

13. Why does the policy encourage the submission of comprehensive State work plans but not require them?

The current policy is consistent with existing regulations for State and Local Assistance (40 CFR Part 35, Subpart A). The policy encourages but does not require States to volunteer a comprehensive work program that indicates all activities the State is conducting under its environmental program.

14. Why does this policy call for a mutually acceptable evaluation plan?

The policy calls for EPA's evaluation of State performance to be described in a plan that is mutually acceptable to EPA and the State before the assistance agreement is finalized. This is consistent with the regulation which calls for the Regional Administrator to develop an evaluation plan in consultation with the State, and it reflects the principles of EPA's Policy on Oversight of Delegated Programs. Under the policy, changes to the original evaluation plan could occur as corrective actions.

15. How can the assistance agreement be amended?

Both the policy and the regulation allow for the assistance agreement to be amended at any time by mutual agreement between the Regional Administrator and the State. Either party (State or Region) may ask for amendment of the assistance agreement. (See 40 CFR Part 30-700, Subpart G.)

16. Do Regions have discretion to devise corrective action strategies and determine the timing and sequence of corrective actions?

Yes. Regions should attempt to implement corrective action strategies which respond to the problem in a timely and appropriate manner.

17. Why doesn't the policy deal with the "quality" of outputs?

While this Policy on Performance-Based Assistance focuses on State performance against measureable outputs, it complements and is in complete conformance with EPA's Policy on Oversight of Delegated Programs, which calls for review and evaluation activities which ensure quality State programs. Most of EPA's programs have instituted evaluation programs which examine not only "beans," but the quality of those beans. The oversight of work program outputs should occur as part of a comprehensive examination of State program performance.

18. How do State output commitments relate to SPMS commitments?

EPA should always discuss with States any State commitments to be included in EPA's Strategic Planning and Management System. Under a system of performance-based assistance, it is imperative that work program outputs which are also SPMS commitments be agreed upon in advance by Regions and States. Since poor performance may have fiscal consequences under a performance-based system, it would be unfair to hold States accountable for SPMS measures they were not aware of or did not accept.

APPENDIX M

CARRYOVER POLICY (COMPTROLLER POLICY ANNOUNCEMENT 88-09)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 6 1988

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

COMPTROLLER POLICY ANNOUNCEMENT
No. 88-09

MEMORANDUM

SUBJECT: Disposition of Unobligated Balances of Assistance Awards

FROM: David P. Ryan
Comptroller

TO: Assistant Regional Administrators
Management Division Directors
Senior Budget Officers
Regional Comptrollers
Financial Management Officers

This Policy Announcement clarifies EPA policies and procedures for the disposition of unobligated balances of assistance awards, i.e., grants and cooperative agreements. It describes the circumstances when EPA may carry these funds forward and provides specific procedures to ensure proper accounting for assistance awards.

POLICIES AND PROCEDURES

There are three attachments to this Policy Announcement. Attachments I and II describe policies and procedures applicable to the disposition of these funds. These policies and procedures address all financial assistance programs except those funded from no-year appropriations. Guidance on two of the no-year appropriations can be found in Comptroller Policy and Procedure Memorandum 9-F, "Recovery and Use of Construction Funds," and will be found in the Resources Management Directives System 2550D, Superfund Financial Management, which will be issued shortly.

Attachment III contains examples of how this guidance applies to specific types of assistance agreements.

EFFECTIVE DATE

Allowance Holders must ensure that assistance awards made from their respective allowances are administered in accordance with this Policy Announcement no later than June 30, 1988.

FOR ADDITIONAL INFORMATION

If you would like additional information on the specific policies and procedures described in this Policy Announcement, please contact Bob Cluck, Fiscal Policies and Procedures Branch, Financial Management Division, at 382-5113.

Inquiries about the Agency's general policies and procedures on the administration of assistance projects should be made to Scott McMoran, Grants Policies and Procedures Branch, Grants Administration Division, at 382-5293.

Questions concerning recoveries of funds under Agency appropriations and about the scope of this Policy Announcement (i.e., the statutory authorities to which it applies) should be directed to Rick Peterson, Budget Control Section, Budget Formulation and Control Branch, at 382-4212.

"SUNSET PROVISIONS"

The guidance in this Policy Announcement will be incorporated in the Resources Management Directives System (RMDS) chapter on assistance projects (RMDS Division 2550C, Chapter 2). This chapter, which covers all financial management guidance relevant to assistance awards, is currently under development and will be issued later this fiscal year. The RMDS chapter will supersede this document.

Attachments

cc: Harvey Pippen
J. Richard Bashar
John Sandy
Alvin Pesachowitz
Vincette L. Goerl
Tony Musick
John Elliott
Carole Ansheles
FMD Branch Chiefs

POLICIES FOR THE DISPOSITION OF UNOBLIGATED BALANCES OF ASSISTANCE AWARDS

Accounting for the disposition of recipients' unobligated balances of assistance awards requires at least two actions: a downward adjustment to one budget period's funding and a complementary accounting entry to show the disposition of those funds. Regarding the disposition of unobligated balances of project type assistance awards, these funds generally remain available to recipients until the project is completed. With respect to continuing environmental programs, funds can be made available in subsequent budget periods only if the source appropriation for those funds has not expired. A detailed description of these policies is found below in Section II. The policies are also summarized on the chart following page 4 of this Attachment.

I. BACKGROUND AND BASIS FOR POLICIES

A. EPA Appropriations. Each year EPA receives several appropriations from Congress to fund the numerous programs for which it is responsible. Besides appropriating funds to pay our internal expenses, Congress also gives EPA appropriations that are intended to fund a wide variety of assistance agreements (grants and cooperative agreements), among other things.

The appropriations may limit the time periods within which the funds are available for Agency obligation. Grants and cooperative agreements are generally funded under either two-year or "no-year" (i.e., indefinite period) appropriations.

When Congress limits the time period in which funds are available, it increases its control over the resources available to EPA to carry out authorized programs. If EPA does not obligate appropriated funds for assistance awards or other approved purposes during the life of the appropriation, the funds will expire. Should Congress wish to fund activities in subsequent periods, new funding would be provided in later appropriations.

In contrast, when Congress appropriates "no-year" funds, these funds remain available until fully expended -- they do not expire. Both the Construction Grants Program and Superfund activities have historically been funded with such appropriations. Congress may choose to add to the Agency's "no-year" balances through subsequent appropriations.

B. EPA Assistance Awards. When EPA awards a grant or cooperative agreement, the agreement defines a specific "budget period" during which the funds obligated by EPA are available to the recipient. Assistance agreements also define the project period, which is the length of time EPA specifies to complete the "project" described in the agreement. The project period may be made up of one or more budget periods. (In some cases, such as the Asbestos School Hazard Abatement Act program, it may be appropriate to have open-ended work progress milestones or similar criteria.)

The recipient (e.g., a State or local government agency, or a university) uses the EPA award as its authority to enter into its own "obligations" 1/ for internal expenses, contracts, etc., to carry out program/project objectives during the budget period. For various reasons, a recipient may not be able to obligate all the funds awarded by EPA. At the end of each budget period the recipient must report any "unused" funds to EPA on their Financial Status Report. The "unused" amounts are shown as the unobligated balance of Federal funds. The final disposition of those unobligated balances depends on several factors, as discussed in Section II below.

c. GAO Review. In 1984 GAO reviewed EPA compliance with the Federal Managers Financial Integrity Act (FMFIA). In that review, they raised questions about EPA's apparent inclusion of unexpended balances carried forward to grants several years after the source appropriation expired. As a result, in our letter to the President on FMFIA weaknesses, we made a commitment to review our current practices for making recipients' unexpended balances available in later budget periods. The policies and procedures set out in the following sections are a result of that review and seek to strengthen our management of those funds.

II. GENERAL POLICIES

a. Adjustments for Unobligated Balances. EPA assistance awards are recorded as Agency obligations in EPA's Financial Management System (FMS). They are identified in FMS by obligation document numbers, which are derived from the assistance identification number that EPA assigns to the assistance award. Both a project number and budget period are encoded in this identifier.

When adjustments are to be made to obligation balances, they must be supported by written amendments to the assistance agreement that established the original obligation. Assistance award officials must provide to their servicing financial management offices (FMO) copies of the documents used to effect the amendments.

b. Decreases in Obligation Amounts. Decreases in budget period funding levels typically occur after a budget period ends

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1/ In order to understand and implement the policies and procedures described in this document, it is very important to distinguish between EPA obligations and recipient obligations.

and the recipient determines what, if any, portion of the award was unused (i.e., unobligated by the recipient) during the budget period. However, decreases could be executed for various reasons during the budget period. In either case, the adjustments must be properly documented and provided timely to the FMOs, as noted above.

The financial management office (FMO) will record the decreases in budget period funding in the Financial Management System (FMS). The accounting procedures are outlined in section III of this attachment. Whether the decreases against one budget period may be available in a subsequent budget period depends on the factors described below.

c. Disposition of Adjusted Amounts. Unobligated balances of assistance awards from one budget period have generally been made available in subsequent budget periods either as additional funding for the later budget period or as partial funding in lieu of a like amount from a new Agency appropriation. However, before taking either action, an award official must first determine which of the following criteria fit:

1. Project agreements. Project type assistance agreements involve undertakings with a discrete outcome, product or report. Most of EPA's assistance agreements awarded in Headquarters are examples of this type, although project agreements may be made in the regions and by other EPA offices as well. The project periods and funding for these projects are often provided incrementally over several years. Any reports submitted at the end of a budget period, or at any time prior to the final report, product or outcome, would be merely informational and are not independent or separate from the final project outcome, product or report.

Criterion: With respect to project agreements, unobligated funds from one budget period may be made available in a subsequent budget period of the same project by properly executing an assistance amendment as long as the general project scope of work remains unchanged. If there are major changes in the scope of work, the unexpended balances may be carried forward only if the source appropriation for those balances has not expired prior to the date of the amendment.

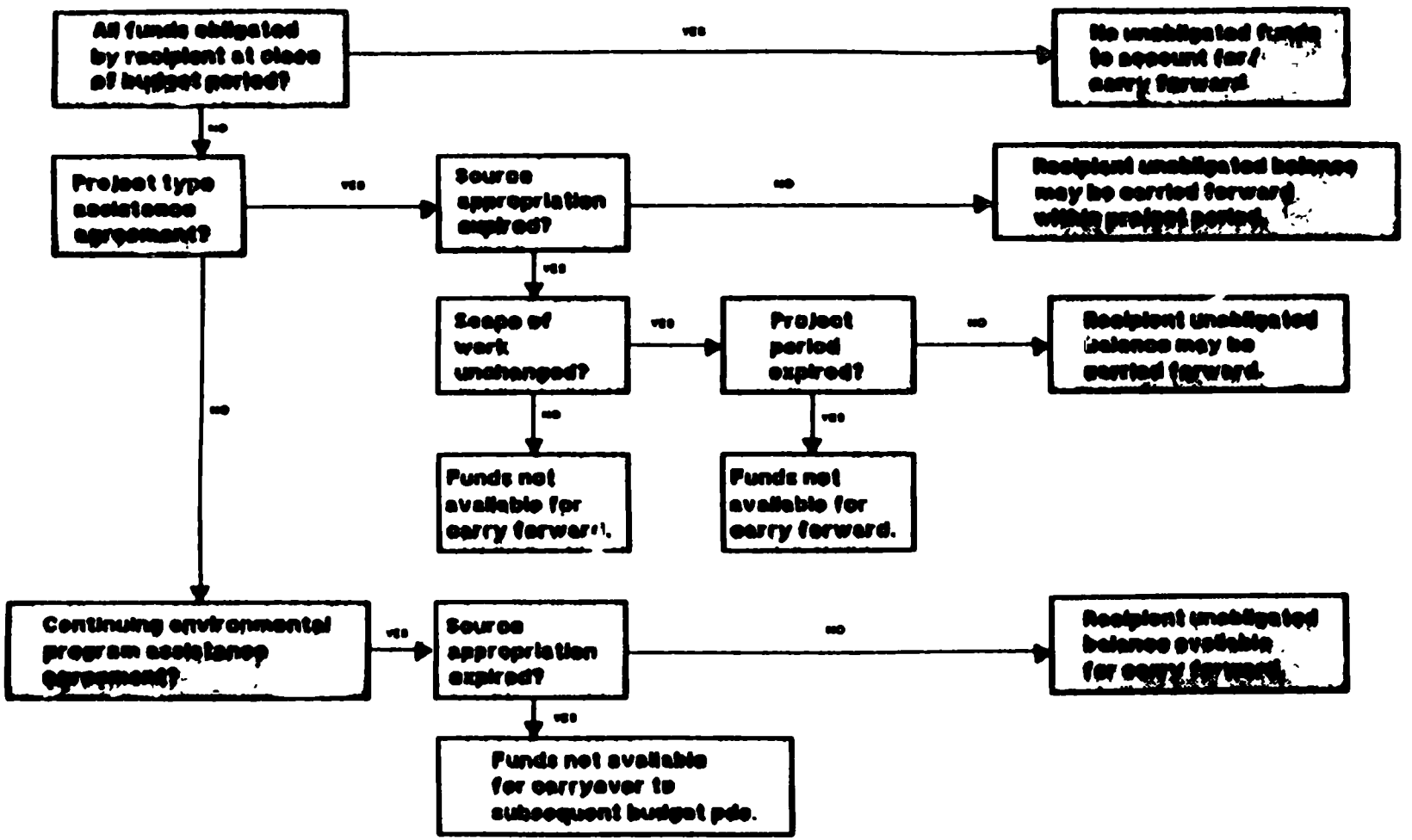
2. Continuing Environmental Program and Other General Support Assistance Agreements. In addition to project type assistance, EPA provides funding for a number of environmental programs or other continuing activities. The recipients are often State or local governments, but may include organizations involved in general research activities.

Criterion: With respect to program agreements, unobligated balances from one budget period of a continuing

environmental program or activity may be made available in a subsequent budget period of that program or activity as long as: 1) the transfer to the subsequent budget period is made before the source appropriation for those funds expires, and 2) the assistance agreement includes a special condition limiting the recipient's obligation of these funds before the end of the subsequent budget period or within one year of the amendment, whichever is earlier.

3. Recoveries of Assistance Award Balances. If a recipient's unobligated balances will not or cannot be available in a subsequent budget period, the downward adjustment will be considered a recovery to the source appropriation.

DISPOSITION OF UNOBLIGATED BALANCES OF ASSISTANCE AWARDS.
WHEN CAN I CARRY FORWARD FUNDS?



PROCEDURES FOR THE DISPOSITION OF UNOBLIGATED BALANCES OF ASSISTANCE AWARDS

I. TRANSFER OF FUNDS FROM ONE BUDGET PERIOD TO ANOTHER

Transfers of funds from one budget period to another must be documented by the execution of two complementary and concurrent EPA Assistance Agreement/Amendments (EPA Form 5700-20A). (EPA's optional amendment form, 5700-20B, or other appropriate form, may be used in the following procedures in lieu of the 5700-20A to amend agreements as long as the same accounting information outlined below is included on the form.) The executed forms must be provided to the servicing financial management office when signed both by EPA and the recipient.

The first Form 5700-20A/B will decrease funds awarded for the earlier budget period. For the succeeding budget period, the second 5700-20A/B may: 1) provide interim funding, 2) increase the funds availal or 3) replace "current year" (i.e., new obligational authority) funds. In the last instance, the displaced funds could be used by the regions as discretionary funding for other approved purposes.

a. Decrease to prior budget period. In order to decrease funds awarded for one budget period, so that they may be carried forward to a subsequent budget period, a Form 5700-20A/B must be completed and signed by the Award Official. If a decrease is made before the end of the budget period, or at any time without the support of a signed FSR or other signed authorization, the Form 5700-20A/B must be signed by the recipient's authorizing official.

In lieu of the recipient official's signature on the 5700-20A/B, an award official can use the recipient's interim or final FSR if the FSR: 1) covers the full budget period, and 2) is signed by an authorized recipient official. If this option is used, the award official must provide the FSR along with the 5700-20A/B signed by the award official to the Financial Management Official to document the transaction.

The financial data will be entered on the Form 5700-20A as follows:

1) Item 1. The assistance ID in item 1 serves as the obligating document number for the Financial Management System (FMS), thus serving as a common data element for grants and finance.

2) Item 22. The narrative in this item will include a brief description of the action being taken by this amendment to the original award.

3) Item 30. Item 30 ("EPA Amount this Action") will include the former award, the amount of the decrease in "( )" and the amended total. [(The financial management office will use Transaction code 050.2 to record the decrease in the Financial Management System (FMS)].

4) Items 34 and 38. Items 34 (Recipient Contribution) and 38 (Allowable Project Cost) will be modified to show the effect, if any, of this amendment on these categories.

5) Item 39. Item 39 (Fiscal) includes the standard accounting information for the funds being transferred. The amount of the decrease will be entered in parentheses in the last block on that line.

b. Transfer to Succeeding Budget Period. A properly completed Form 5700-20A must also be executed to make prior year balances available, where allowable, for the recipient's obligation during the succeeding budget period. The financial data will be entered as follows:

1. Item 1. Again, the assistance ID will be entered here.

2. Item 22. A brief explanation of the action will be included in the narrative.

3. Item 30. This item would be completed only if the amount of the award for the "current" budget period were being decreased, i.e., the amount being carried forward was displacing current year funds. The amount of the decrease would be placed in "( )."

4. Item 32. This item will include the former award, if any, the amount being transferred forward from the prior budget period, and the amended total for this category of funds. (The financial management office will use Transaction Code 059.1 to record the increased amount available under this obligation document number.)

5. Items 34 and 38. Items 34 (Recipient Contribution) and 38 (Allowable Project Cost) will be modified to show the effect, if any, of this action on these categories.

6. Item 39. Item 39 (Fiscal) includes the standard accounting information for the prior budget period's funds that EPA is transferring to this budget period for the recipient's obligation. The dollar amount being brought forward will be entered in the last position on that line, following the other accounting data.

If the amount being transferred forward is intended to displace amounts already awarded from current year funds, a second line of accounting data must be entered on line 39. The data would be the accounting information associated with the decrease, and the amount of the decrease would be placed in parentheses in the final block of that line item.

If the less structured Form 5700-20B is used to execute the preceding actions, the same information must be contained in readily identifiable form on that document.

II. DISPOSITION OF AWARD BALANCES AT END OF A CONTINUING ENVIRONMENTAL PROGRAM OR AT END OF PROJECT PERIOD FOR OTHER ASSISTANCE PROJECTS

If a continuing environmental program is terminated, or whenever a project period ends for other types of assistance awards (e.g., project type agreements), the FSR for these projects may contain balances of Federal funds unobligated by the recipient. In such a case, a Form 5700-20A/B must be completed to decrease the award by that amount. The 5700-20A/B and FSR will be submitted to the servicing financial management office so that the deobligated amount can be recorded in EPA's FMS.

The deobligated amount would create a recovery to the source appropriation. Detailed information on recoveries is found in Office of the Comptroller Policy and Procedure Memorandum (PPM) 13-B, "Overrun and Recovery of Prior Year Obligations." This PPM was amended in part by the OC memorandum of September 12, 1984, entitled "Recertification of Funds," and is being revised.

III. DEOBLIGATION OF EXPIRED FUNDS

Generally, effective management of assistance awards and timely processing of financial reports (e.g., the FSR) both by the recipient and by EPA can keep expired, unavailable amounts to a minimum. Charging outlays first against older funding sources of an assistance agreement, where otherwise appropriate, is one way of avoiding the loss of funds.

In the following two instances, deobligations would be necessary. First, an assistance recipient might submit a final FSR for a program grant budget period after the appropriation which originally funded that budget period had expired. If the recipient reports on that FSR that they have an unobligated balance of Federal funds, EPA would prepare a 5700-20A to document the decrease and to use as a basis to record a corresponding deobligation in FMS. Second, if as a result of an audit, costs are disallowed and the source of funding for these costs has expired, the amount of the receivable for the disallowed costs would be deobligated.

IV. FUNDING BUDGET PERIODS THAT EXTEND BEYOND THE LIFE OF AN APPROPRIATION

In some instances, assistance project budget periods are not concurrent with the Federal fiscal year. When they are not concurrent, a budget period could very possibly be funded by an appropriation that expires before the budget period itself ends. Such awards are allowable as long as EPA's obligation of the assistance funds occurs before the source appropriation expires. In the case of amendments transferring unobligated balances to a subsequent budget period, the criteria in Attachment I, Section II.c must also be met.

APPLICATION OF POLICIES AND PROCEDURES

ON THE

DISPOSITION OF RECIPIENT UNOBLIGATED BALANCES

The following examples show how EPA's policies and procedures on the disposition of recipient unobligated balances would apply to EPA assistance projects. In reality, of course, how these rules apply to any specific assistance project will be affected by many possible variables. These variables include the State fiscal year (whether it is coincident with the Federal fiscal year or not), the type of assistance program, differing regional practices, when the action was taken (before or after the end of the budget period), the options chosen for the disposition of the funds, etc. Nevertheless, these examples should be helpful.

EXAMPLE A -- Continuing Environmental Program, Unexpired Appropriation

EPA awarded a $1,000,000 grant to a State for a continuing environmental program. The one-year grant budget period covered the grantee's fiscal year. The award was recorded as an EPA obligation in EPA's Financial Management System (FMS).

The award was made from a regional allowance for Fiscal Year 1987, and the obligation for that award was recorded against the 1987 account number for that program and region. (The allowance was derived from the Agency's 87/88 Abatement, Compliance and Control (AC&C) appropriation.)

The State made its own obligations against the EPA award during the budget period. As the State needed funds to pay program costs, it drew down funds from EPA through its letter of credit and contributed its own required cost share.

Shortly after the end of the fiscal year, the recipient submitted a Financial Status Report (FSR) that shows an unobligated balance of $50,000 in Federal funds after paying all their allowable costs for the budget period. The FSR thus established at $950,000 EPA's share under the grant agreement for the State's costs for that year. To accurately account for this assistance award, the Region prepared a 5700-20B showing the reduction, and provided a copy (along with a copy of the FSR) to their financial management office (FMO). The FMO recorded the downward adjustment using Transaction Code 050.2, and the accounting data for those funds.

Based on earlier discussions with the State, the Region had agreed to make the $50,000 available as additional funding in the then-current budget period. Before the appropriation expired, an amendment increased the current year funding.

The amendment was provided to the FMO with the documents effecting the decrease. The FMO recorded the increase against the current year obligation document number using Transaction Code 059.1, and the accounting data for these funds.

* * * * *

EXAMPLE B -- Continuing Environmental Program, Expired Appropriation

In the previous example, all the necessary actions to make these funds available in the subsequent budget period, including execution of the amendment, occurred before the appropriation expired. Assume in Example B that there were delays in the submission of the FSR.

The Region had intended to take the balances remaining from the prior budget period and substitute them for current year funds awarded for the grantee's ongoing budget period. The current year funds would have then been available to the Region. However, the FSR was not received until after the source appropriation had expired. Because the appropriation had expired, the recipient's $50,000 in unobligated balances were no longer available to the Agency, the Region or the recipient.

To ensure proper accounting for the Agency's funds, the award official was responsible for executing an assistance amendment to document the decrease in the Agency's estimated liability (i.e., obligation) for the assistance agreement. The amendment and FSR were provided to the FMO, who recorded the decrease, which is reflected in FMS, as a recovery to the expired appropriation.

* * * * *

EXAMPLE C -- Project Agreement, Availability of Funds in the Second and Later Budget Periods

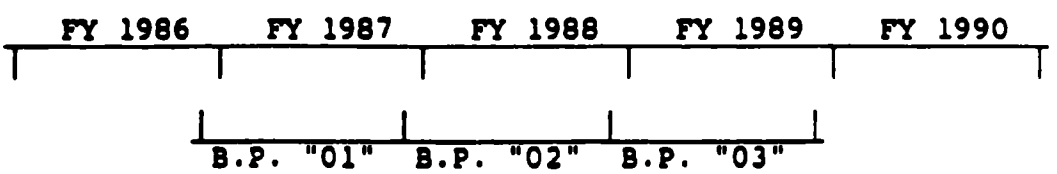
The Headquarters Grants Operations Branch awarded a research cooperative agreement to a University to support investigation of the environmental fate of certain pesticides. At the end of the project, the recipient was required to provide a detailed final report of the project and findings.

For effective oversight and administration, the project period was divided into three budget periods. At the end of each budget period, and at other times during the project, the University researchers would submit progress reports to EPA. These reports merely provided information which was not independent or separate from the final project outcome, product or report.

Using an unexpired R&D appropriation as its source of funding, EPA made the initial award (budget period "01") for the project late in Fiscal Year 1986 (see Figure 1 on next page). The project

proceeded satisfactorily during budget period "01," and the University submitted a continuation application for budget period "02." EPA provided incremental funding for this project through a continuation award (budget period "02") made late in Fiscal Year 1987. A third, and final, budget period was approved in Fiscal Year 1988 to conclude the project.

Figure 1 -- Example B



During early fiscal year 1988, the University submitted its final FSR for budget period "01." The FSR reported that $10,000 of the original award was unused, and requested that these funds be made available in budget period "02" for continued work on the project. Upon approval from the Office of Research and Development, the award official executed an amendment to make these funds available in addition to the previously awarded amounts for budget period "02." As costs were incurred and drawdowns made during Fiscal Year 1988, the drawdowns were charged off first to the funds awarded for budget period "01."

The recipient's unobligated balances for budget period "02" were reported in budget period "03," during our Fiscal Year 1989. Again, the balances were made available, but in this instance no additional funding was required to complete the project. Thus, Fiscal Year 1988 funding awarded for budget period "03" was replaced by the funds made available from budget period "02." The source appropriation for these "displaced" funds was the two-year R&D appropriation available for obligation in Fiscal Years 1988 and 1989, and therefore these funds became available for the Budget Division to recover and reissue.

The FSR for budget period "03" contained unobligated balances as well, but since the project was now over, the balances were treated as recoveries to the appropriation.

APPENDIX N

APPENDIX N

USE OF DISADVANTAGED BUSINESS ENTERPRISES (DBE)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 15 1992

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: The 8% Plan for the Utilization of Disadvantaged Business Enterprises in Procurement Under Assistance Programs

FROM: F. Henry Habicht II
Deputy Administrator

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrators
Regional Administrators
Staff Office Directors
Laboratory Directors

On February 15, 1991, the Agency issued guidance entitled "FY-91 Program for Utilization of Disadvantaged Business Enterprises in Procurement Under Assistance Programs". That guidance implemented the 1991 Appropriations Act, P.L. 101-507, which authorized EPA to establish a minimum 8% goal for the use of disadvantaged business enterprises in all procurements under its assistance programs.

In the Conference Report to EPA's FY-92 Appropriation Act, the conferees reaffirmed their support for this program. Based on P.L. 101-507 and the Conference Report, EPA will continue to establish an 8% goal each fiscal year. Accordingly, the plan, as cited in my February 15, 1991 memorandum, remains in full force and effect.

I am positive that each of you will join me in making this commitment work.

Should you have questions regarding the technical application of this plan, the Office of Small and Disadvantaged Business Utilization stands ready to offer any assistance deemed necessary. All requests for information on this program should be directed to John M. Ropes, Director, Office of Small and Disadvantaged Business Utilization, or George K. Mori, Senior Program Officer. John can be reached at FTS 365-7777 and George on 365-6301.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

FEB 15 1991

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: FY-91 Program for Utilization of Disadvantaged Business Enterprises in Procurement Under Assistance Programs

FROM: F. Henry Habicht, II
Deputy Administrator

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrators
Regional Administrators
Staff Office Directors
Laboratory Directors

On November 5, 1990, President Bush signed into law, the 1991 Appropriations Act, P.L. 101-507, which includes the appropriations for the Environmental Protection Agency.

The Administrative Provisions of this Act contains the following language:

> "The Administrator of the Environmental Protection Agency shall, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purpose of this section, economically and socially disadvantaged individuals shall be deemed to include women..."

As a result of the above, EPA is required to establish a minimum eight percent goal on all procurements emanating from any grant, cooperative agreement or loan awarded during FY-91. This will, of course, also include any new procurement under FY-91 grant amendments which involve the use of additional Agency funds.

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The enactment of this section will also require grant or cooperative agreement recipients who, in the past, have not been required to establish a "fair share" objective or to report on their procurement activities, to now conduct both. An example of such activity will include those recipients who heretofore came under the authority of OMB Circular A-110. These recipients were primarily universities and colleges, non-profit organizations and hospitals. As stated, these entities were required to negotiate a "fair share" objective and to use positive efforts to assist disadvantaged (minority and women) businesses. However, such recipients were not required to report on their activities concerning these business elements. With the passage of P.L. 101-507, these recipients are now required to report on an annual basis. Additional information is covered in the attachment on how a recipient may operate in order to meet the 8 percent requirements.

Congress has also directed that the Administrator shall report upon conclusion of the fiscal year, the Agency's efforts in achieving the minimum 8 percent level.

A review of all program activities should be undertaken to determine the extent in which the 8 percent goal for disadvantaged businesses may impact your programs. A special attachment has been prepared to assist you in assuring that you have considered all aspects on the impact of this section of current law on EPA's procurement under assistance programs. All of the requirements cited in the attachment are effective as of October 1, 1990.

I am positive that each of you will join me in making a firm commitment to enhance the utilization of disadvantaged businesses, including the Historically Black Colleges and Universities in all Agency programs. Working together we can achieve a more equitable distribution of Federal dollars to the benefit of the underutilized segment of our Nation's economy.

The Office of Small and Disadvantaged Business Utilization (OSDBU) is prepared to offer technical assistance to individuals who are assigned responsibility in these areas. All requests for information on this program should be directed to John M. Ropes, Director, OSDBU, or George Mori, Senior Program Officer. John can be reached at FTS 557-7777 and George on FTS 557-9301.

Attachment

U.S. ENVIRONMENTAL PROTECTION AGENCY

Disadvantaged Business Enterprise Program Plan

Financial Assistance Programs

I. BACKGROUND.

Under the authority of Executive Orders 11625, 12432 and 12138, the Agency established annual objectives for minority and women-owned businesses. These objectives are accomplished by mandating that the recipient and the prime contractor carry out six affirmative steps if any subcontracting was to be performed.

The Executive Orders also provided the authority for the Agency to require quarterly reporting from the States and local governments to inform the Agency how well they were doing in meeting their "Fair Share" objectives.

Prior to Fiscal Year 1991, the Environmental Protection Agency's (EPA's) "Fair Share" policy for utilization of small, minority and women-owned businesses applied to State and local governments only and did not affect universities, colleges, hospitals and other non-profit institutions which came under the purview of OMB Circular A-110. Under that Circular institutions of higher education and other non-profit organizations had only to exert "positive efforts" in their attempts to utilize small and minority businesses. Additionally, all of the non-profit institutions and universities were exempt from any reporting requirements.

II. GENERAL INFORMATION.

A. This Plan sets forth the manner in which EPA proposes to implement the requirements of the Administrative Provisions pertaining to the 8 percent objective for Disadvantaged Business Enterprises, (DBEs), required by Public Law 101-507.

B. The Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for developing policy and providing procedural guidance for the utilization of disadvantaged businesses under the Agency's financial assistance programs.

III. SPECIFIC INFORMATION.

In EPA's FY-1991 Appropriations Act, Congress requires EPA to ensure, to the fullest extent possible, that at least 8 percent of Federal funding for prime and subcontracts awarded in support of authorized EPA programs for FY-91 go to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals (see VII. "definition"). Accordingly, any grant, cooperative agreement or loan awarded by EPA in FY-91 must stipulate that a minimum objective of 8% of such funding be directed to DBEs.

To the extent that the requirements of OMB Circulars A-102 and A-110 as they pertain to the utilization of minority and women-owned businesses conflict with the FY-91 Appropriations Act language, the Circular provisions are superseded. State government agencies receiving EPA funding will be required to establish a minimum 8% "Fair Share" objective for disadvantaged business utilization in contracting for goods and services in their grants, cooperative agreements and

loans, including State Revolving Fund (SRF) loans. Likewise, institutions of higher education, hospitals and other non-profit organizations receiving grants, cooperative agreements or loans, including those for research and development (other than research awards under the Clean Air Act) will be subject to the same requirement, "positive efforts" (as required in OMB Circular A-110) for the utilization of small businesses and minority businesses are not sufficient to meet the requirement of P.L. 101-507.

The Appropriations Act specifically includes Historically Black Colleges and Universities (HBCUs) as part of the definition of DBEs. Therefore, EPA will require that all recipients, including institutions of higher education, include HBCUs, in their definition of DBEs.

The following is taken verbatim from P.L. 101-507 signed by the President on November 5, 1990. The Administrative Provisions contains the following language:

> "The Administrator of the Environmental Protection Agency shall, to the fullest extent possible, ensure that at least 8 percentum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a) (5) and (6) of the Small Business Act (15 U.S.C 637(a) (5) and (6), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women..."

Therefore, it is imperative that all EPA program managers understand that the requirements for utilization of disadvantaged businesses in the award of prime and subcontracts have changed considerably.

IV. AUTHORITY.

The Administrative Provisions of the EPA's FY-91 Appropriations Act, P.L. 101-507, is the Agency's statutory authority for its "Fair Share" policy in FY-1991.

V. POLICY.

It is EPA policy that recipients of EPA financial assistance awards utilize the services of DBEs to the maximum extent practicable. P.L. 101-507 establishes a minimum objective of 8% of total contract and subcontract awards. It is EPA's policy that such business entities be afforded the maximum practicable opportunity to participate as contractors, subcontractors, suppliers and otherwise in EPA awarded financial assistance programs. This policy applies to all contracts and subcontracts for supplies, construction, equipment and services under EPA grants, cooperative agreements or loans awarded in FY-91. For the SRF program, the policy applies to funds provided to States in Capitalization grant awards in FY-91. Recipient's small purchases are also subject to this policy.

VI. OBJECTIVE.

The objective of the Disadvantaged Business Enterprise Program Plan is to

encourage recipients and their prime contractors to seek out DBEs as subcontractors to the maximum extent possible.

VII. DEFINITIONS.

The following definitions are used in this Plan. The definitions as cited herein are for use of grant-making personnel and small and disadvantaged business utilization officers to assure consistency.

A. Disadvantaged Business Enterprise (DBE). DBE is a business concern which meets the criteria of Sections 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6)). Sections 8(a) (5) and (6) are cited below:

1. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. (Section 8(a) (5)).

2. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration shall consider, but not be limited, to the assets and net worth of such socially disadvantaged individuals. In determining the economic disadvantage of an Indian tribe, the Small Business Administration shall consider, where available, information such as the following: The per capita income of members of the tribe excluding judgement awards, the percentage of local Indian population below the poverty level, and the tribe's access to capital markets. (Section 8(a) (6)).

For purposes of this definition, individuals who are socially disadvantaged shall include the following:

a. Black Americans.

b. Hispanic Americans.

c. Native Americans.

d. Indian Tribes.

e. Asian Pacific Americans.

f. Native Hawaiian Organizations.

g. Women.

h. Historically Black Colleges and Universities.

B. Historically Black Colleges and Universities (HBCUs). The HBCUs are identified by the Department of Education Listing of Minority Colleges and Universities. The authority vested in the Department of Education by law and Executive Order 12320 dated September 15, 1981, is included as Attachment No. 1. For purposes of the above cited documentation the Department of Education recognizes HBCUs as any institution established prior to

1964. A copy of the listing of predominantly minority institutions, including HBCUs is included as Attachment No. 2.

C. Plan. EPA's proposed program of action for the utilization of DBEs in financial assistance programs. The Plan will contain, as a minimum, methods for encouraging grant recipients and their prime contractors to utilize DBEs.

D. Financial Assistance. The term financial assistance is synonymous with "grant-making" in the Act, and is meant to include any Federal support whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to a State or local Government, or other recipient, in order to accomplish a public purpose of support or stimulation authorized by Federal Statute.

E. Goal. The use of the term goal or goaling is to be used synonymously with "Fair Share" objective. A recipient's minimum objective will not be less than 8% of all extramural funds contained in the award document. Recipients must establish a separate "Fair Share" objective for both minority business enterprises (MBEs) and women-owned businesses (WBEs). HBCUs will be included in the MBE objective.

VIII. THE DISADVANTAGED BUSINESS ENTERPRISE PLAN FOR FINANCIAL ASSISTANCE PROGRAMS.

A. The Plan. EPA's plan is to require that each financial assistance agreement awarded by EPA in FY-91 contain a requirement for a minimum goal of 8% for DBEs. In order to accomplish this goal, States will have to look more closely at their overall spending with respect to extramural funds and to place greater emphasis on projects where the chances to exceed the minimum can be expected. This will allow the recipient to lower their goal on projects having few or no qualified DBEs available to perform the work; conversely, it will require higher goals being established in areas having substantial qualified DBEs. Recipients below the State level must use their resources wisely in order to meet the minimum 8% goal for DBEs.

B. Implementation. With the passage of P.L. 101-507, the following implementation activities are now required:

1. Program. Each program will need to immediately examine its FY-91 plans for extramural expenditures to identify areas, projects and activities that will need to direct their efforts toward complying with the above statutory requirements. Each grant, cooperative agreement or loan awarded in FY-91 will contain a special condition establishing a minimum goal of 8% for the utilization of DBEs, including HBCUs, in the award of prime and subcontracts. However, in the SRF program, State selected equivalency loans resulting from a Capitalization grant awarded in FY-91 are used to comply with the overall negotiated "Fair Share" amount for that grant. The SRF program also is discussed separately below.

Programs which primarily place work with institutions of higher education can achieve their 8% goal by utilizing HBCUs either on a direct basis, as part of a consortium or as a subcontractor. If an HBCU receives an award as a recipient or as part of a consortium, a negotiated "Fair Share objective must be established by the HBCU or the consortium.

2. Contracts. Procurement actions which originate from the recipient must include an objective of at least 8% of the Federal share of the value of contracts and subcontracts be placed with DBEs.

3. State Grants, Cooperative Agreements and Loans. States receiving grants, cooperative agreements or loans must include as a minimum an objective of 8% of all extramural funds will be placed with DBEs.

4. Local Level Grants, Cooperative Agreements, and Loans. Local units of governments receiving grants, cooperative agreements and loans to local recipients must include as a minimum objective that 8% of all extramural funds will be placed with DBEs.

5. Research and Development Programs. All universities, colleges, hospitals and other non-profit organizations receiving R&D funds or any other Agency funds will have a minimum objective of 8% for DBEs, including HBCUs, in the award of prime and subcontracts. (Except for research awards under the Clean Air Act).

6. "Fair Share" Objectives. The Award Official or his designee will negotiate a "Fair Share objective with the recipient. "Fair Share" objectives should be negotiated to a level that is achievable; however, the floor of any objective shall be at least 8%. On programs which have Statewide application, e.g., SRF or Superfund, the recipient may apply the "Fair Share" objective on a Statewide basis. This provides the State some flexibility in the "Fair Share" objective of each grant; in some cases, especially in areas having few qualified DBEs available to perform the work, the State may elect to set a lower target for participation; however, in areas having a substantial number of qualified DBEs available a greater target for participation would be required in order for the the State to meet an overall minimum 8% goal objective. The Agency strongly encourages maintenance of effort provisions where previous "Fair Share" accomplishments have exceeded the statutory level.

7. Bidding Requirements. States and/or recipients are required to include in their bid documents the negotiated "Fair Share" objectives separated into two categories, i.e., MBEs, (including HBCUs) and WBEs. Additionally, prime contractors are to include in their bid documents the recipient's "Fair Share" objectives.

8. To comply with this policy, recipients of assistance awards and their prime contractors must comply with the following affirmative steps before a contract is awarded:

a. placing DBEs on solicitation lists;

b. making sure that DBEs are solicited whenever they are potential sources;

c. dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by DBEs;

d. establishing delivery schedules, where the requirements of work will permit, which would encourage participation by DBEs;

e. using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and

f. requiring the contractor to take the affirmative steps in subparagraphs a. through e. of this part if subcontracts are awarded.

9. SRF equivalency loans are subject to EPA's "Fair Share" objective, which is a minimum of 8%, and must comply with the requirements of paragraph B.7. above. SRF equivalency loans are those identified as such by the State and which equal the total amount of the Capitalization grant. States should not count refinancing projects toward meeting their "Fair Share" objective except in unusual cases. In such cases, prior approval must be obtained from OSDBU and the Headquarters program office. If a State accomplishes its "Fair Share" objective by requiring only certain equivalency projects to undertake the six affirmative steps, other SRF equivalency projects are not required to undertake them. A State may, however, require such other SRF equivalency projects to do so. That is the State's prerogative and not EPA's.

10. All actions taken in carrying out the affirmative steps [see 40 CFR §33.240, §31.36(e), §35.6580(a) and §35.3145(d)] must be fully documented and retained in the official files.

C. Agreement Conditions. All EPA grants, cooperative agreements and loans, made in FY-91 must contain a condition requiring recipients to meet the requirements of the Act. Citation of the "Fair Share" objectives for MBEs (including HBCUs) and WBEs must be inserted as well as the total "Fair Share" objective in the condition. These conditions are retroactive to October 1, 1990. SRF conditions are cited in c. and d. below:

1. "Fair Share" Conditions.

a. If the Award Official or his designee HAS NEGOTIATED a "Fair Share" with the recipient, use the following condition or equivalent. The "Fair Share" must be at least 8%.

> "The recipient must ensure to the fullest extent possible that at least (insert the negotiated "Fair Share" percentages) of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.
>
> The recipient agrees to include in its bid documents a (insert the negotiated "Fair Share" percentages) and require all of its prime contractors to include in their bid documents for subcontracts a (insert the negotiated "Fair Share" percentages) "Fair Share" percentage.
>
> To evaluate compliance with the "Fair Share" policy, the recipient also agrees to comply with the six affirmative steps stated in 40 CFR §33.240, §31.36(e) or §35.680(a), as appropriate."

b. If the Award Official or his Designee HAS NOT NEGOTIATED a "Fair Share" with the recipient, use the following condition or equivalent. The "Fair Share" must be at least 8%:

> "The recipient agrees to negotiate a "Fair Share" percentage of not less than 8% with EPA before the recipient begins the process to award any contracts under this agreement.

The recipient must ensure to the fullest extent possible that at least the negotiated "Fair Share" percentage of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities."

The recipient agrees to include in its bid documents a (insert the negotiated "Fair Share" percentages) and require all of its prime contractors to include in their bid documents for subcontracts a (insert the negotiated "Fair Share" percentages) "Fair Share" percentage.

To evaluate compliance with the "Fair Share" policy, the recipient also agrees to comply with the six affirmative steps stated in 40 CFR §33.240, §31.36(e) or §35.6580(a), as appropriate."

c. If the Award Official or his designee HAS NEGOTIATED a "Fair Share" with the recipient for Capitalization grants use the following condition, or equivalent. "Fair Share" for these grants must be at least 8%:

"The recipient must ensure to the fullest extent possible that at least (insert the negotiated "Fair Share" percentages) of equivalency funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available by the State and/or SRF assistance recipient to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities."

The recipient agrees to select certain equivalency projects to achieve, to the fullest extent possible, the State's "Fair Share" objective and to require those selected equivalency projects to comply with the six affirmative steps. The recipient agrees to require (and to assure that the selected assistance recipients also require) that all prime contractors include in their bid documents for subcontracts the (insert the negotiated "Fair Share" percentage) "Fair Share" percentage.

d. If the Award Official or his designee HAS NOT NEGOTIATED a "Fair Share" with the recipient for Capitalization grants use the following condition or equivalent. The "Fair Share" for these grants must be at least 8%:

"The recipient agrees to negotiate a "Fair Share" percentage of not less than 8% with EPA before the recipient begins the process to award any contracts under this agreement.

The recipient must ensure to the fullest extent possible that at least (insert the negotiated "Fair Share" percentages) of equivalency funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available by the State and/or SRF assistance recipient to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.

The recipient agrees to select certain equivalency projects to achieve to the fullest extent possible, the State's "Fair Share" objective and to require those selected equivalency projects to comply with the six

affirmative steps. The recipient agrees to require (and to assure that the selected assistance recipients also require) that all prime contractors include in their bid documents for subcontracts the (insert the negotiated "Fair Share" percentage) "Fair Share" percentage

5. Reporting Conditions. The above stated conditions (a.- d.) must also include the following statement with the appropriate reporting requirements, i.e., a., b., c. or d.:

a. For Project Grant Recipients (except Institutions of Higher Education and Other Non-Profits) and Loan Recipients:

"The State and/or recipient agrees to submit a SF-334 "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and other Federal Financial Assistance", to the EPA award official beginning with the Federal fiscal year quarter the recipient awards its first contract and continuing until all contracts and subcontracts have been reported. These reports must be submitted to the award official within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30 and October 30)."

b. For Continuing Environmental Program Grants:

"The State and/or recipient agrees to submit a SF-334 "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and other Federal Financial Assistance", to the EPA award official within 30 days of the end of each Federal fiscal year, i.e., by October 30th of each year."

c. For Grants to Institutions of Higher Education and Non-Profits:

"The State and/or recipient agrees to submit a SF-334 "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and other Federal Financial Assistance", to the EPA award official within 30 days of the end of each Federal fiscal year, i.e., by October 30th of each year.

D. Responsibilities.

1. The OSDBU will provide copies of the approved Plan to all Program and Regional offices associated with financial assistance programs.

2. Award Official or their designee will negotiate a "Fair Share" objective for each program. The negotiated "Fair Share" objective will include separate objectives for MBEs, (including HBCUs), and WBEs. Negotiated objectives should be developed on the basis that the minimum can be no less than 8%; however, those States and recipients who have negotiated a higher percentage in the past should be strongly encouraged to maintain the higher level. Percentage ranges e.g., 4-9 percent or 6-8 percent etc., are not authorized.

3. The (SDBUO) must provide the Grants Management Offices (GMOs) with the negotiated "Fair Share" objective for each State or other recipient at the earliest practicable date, but in no event later than August 31st of each fiscal year for the following year. In addition, the SDBUO will be responsible for the following actions:

a. Ensure that the State or recipient is fully cognizant of the requirements of this Plan and the necessity for compliance.

b. Follow-up with recipients if they do not submit the MBE/WBE Report.

4. The GMOs. GMOs will:

a. Include the appropriate condition in this policy (VIII.C.)

b. Assuring the timely receipt of quarterly and/or annual reports as required by the Conditions. Reports are due within 30 days after the close of each Federal fiscal quarter or fiscal year, as the the case may be.

5. Reporting. Reporting will be carried out by any entity receiving EPA funds. Universities, Hospitals and other Non-Profit Institutions, which were formerly not required to report are now required to report in order for the Agency to determine if it has met the 8% goal for each EPA-funded program. No waivers will be approved for reporting requirements. Quarterly or annual reporting will be conducted by using the Standard Form 334.

6. The Clean Air Act Research Grants. The 8 percent goal for the utilization of DBEs in EPA-funded procurement under assistance programs applies to all programs, except for research awards funded under the Clean Air Act. The Clean Air Act Amendments requires a 10% goal for research programs awarded by EPA for DBEs. This requirement will be addressed under separate cover.

2 Attachments

APPENDIX O

APPENDIX O

POLICY ON THE TIMELY AWARD OF ASSISTANCE FUNDS FOR CONTINUING ENVIRONMENTAL PROGRAMS

SEP 14 1992

MEMORANDUM

SUBJECT: Policy on the Timely Award of Assistance Funds for Continuing Environmental Programs

Original signed by Harvey Pippen, Jr.

FROM: Harvey G. Pippen Jr., Director
Grants Administration Division

TO: Assistant Regional Administrators
Regions I-X

Attached is a policy entitled "Timely Award of Assistance Funds for Continuing Environmental Programs." This policy is issued in conjunction with a memorandum dated June 26, 1992, from the Office of Comptroller which clarifies general Agency policy on when funds are available for award.

If you have any questions concerning this matter, please contact Bruce Feldman at 202 260-5268.

Attachment

cc: Howard Corcoran, OGC, (LE-132G)
Becky Fredericks, HQ, Budget Division (PM-225)
Kathy Payne, HQ/OW (WH-556)
Jerry Kurtzweg, HQ - Office of Air & Radiation (ANR-443)
Dick White, HQ - Pesticides & Toxic Substances (TS-788)
Judy Kertcher, HQ - Hazardous Waste (OS-110)
Doug Barrett, HQ - OC/FMD (PM-226F)
Jane Ephrimedes, HQ - OW (WH-546)
Carol Crow, HQ - OW (WH-546)
Robbie Savage, ASWIPCA
Marian Cody, HQ, (PM-216F)
Corinne Allison, HQ, (PM-216F)

bcc: Official R. Johnson B. Feldman
Reading Grants Management Offices - Regions I-X
Division GPPB Staff GAD Branch Chiefs

PM-216F:RJohnson:RAJ:260-5296:FC 801:Disk - RJ:MEMO2.FNL

TIMELY AWARD OF ASSISTANCE FUNDS FOR CONTINUING ENVIRONMENTAL PROGRAMS

PART I: PURPOSE

PART II: POLICY

PART III: BACKGROUND

PART IV: ROLES AND RESPONSIBILITIES

PART V: Appendices

I. PURPOSE

The purpose of this policy is to clarify existing policy concerning the timeliness of awarding assistance funds for Continuing Environmental Programs. Continuing environmental programs are generally those programs cited in 40 CFR Part 35, Subpart A. See Appendix 3 for a listing, as of September 1992, of Continuing Environmental Program grants.

II. POLICY

It is EPA's policy to award assistance funds for Continuing Environmental Programs as quickly as possible after funds become available, in accordance with 40 CFR 35.141, "EPA Action on Application". The procedures in this policy apply to awards made under a normal or a late Appropriation Act as well as under a Continuing Resolution(s).

III. BACKGROUND

During the past year, some States have raised concerns about the timing of assistance awards which fund continuing environmental programs. Frequently EPA does not award its environmental program grants until after the start of the grant budget year. There are a number of causes for the delays. Two examples often cited are confusion about when funds become available for obligation and difficulties in work plan approvals. Due to the confusion on the availability of funds and the degree of flexibility the Regions' have to plan and to award grants within their quarterly Operating Plan, the Regions frequently delay awarding grants. Additionally, work plan negotiations between State and EPA program officials are often not completed in a timely manner due to disagreements over State and EPA initiatives and requirements. Such disagreements can hold up a grant award until all work plan issues are resolved and the work plan is approved.

Most States, by law, cannot operate their programs in a deficit mode. With a tightening economy, States face laying off workers or changing to shorter work weeks if Federal funding is delayed for Continuing Environmental Programs. Additionally, due to the Cash Management Improvement Act, the Agency could be liable for interest penalties when grants are awarded late.

To help clarify EPA policies and the concepts governing the use and availability of funds, Budget Director, Richard Brozen, issued a policy memorandum dated June 26, 1992, to the ARAs and Senior Budget Officers. See Appendix 1.

Funding Availability and Flexibility

- Under an Annual Appropriation

The Office of Management and Budget has historically apportioned funds for the AC&C account in a quarterly split of 80-

10-5-5 percent of total (i.e. 80 percent of the funds are available in the first quarter; 10 percent are available for the second quarter; and five percent each are available for the remaining two quarters of the fiscal year). The apportionment reflects the quarterly split for the entire appropriation. During Phase III of the President's Budget, this quarterly split is equally applied to every program element in the appropriation. Regional Offices **may** adjust the amount awarded under each program element provided the total awards do not exceed their quarterly split.

By adjusting the Regional resources during Phase III, Regional Comptroller Offices, working with the Regional Grant Management and Program Offices can, to the maximum extent possible, fully fund their continuing environmental program grants in the first quarter while funding project grants, contracts, or IAGs later in the year. Thus, the decision rests with the Region to determine which awards to make using the Region's first quarter allowance of AC&C funds. (The assumption is that sufficient resources are available to permit the Region to fund 100 percent of fundable continuing environmental grants.)

o Under a Continuing Resolution

Under a Continuing Resolution (CR), all affected agencies receive limited funds based on constraints written by Congress and OMB applicable for the time period covered by the CR.

During the CR, funds are available to the regions based on a percentage of their total appropriation and they are not restricted by program element or object class totals. Regional offices may adjust the amounts funded under each program element provided the Region does not exceed its total available allowance. Thus, depending on its priorities and the amount of funds available, the Region may fully fund its continuing environmental program grants even under a CR.

PART IV. GMO ROLES AND RESPONSIBILITIES

This Section outlines the basic roles and responsibilities of the Grants Management Office (GMO) in awarding assistance funds for continuing environmental programs.

FUNDING AVAILABILITY

1. GMOs must coordinate with the Regional Comptroller to ensure inclusion on distribution lists of information received from the Office of Comptroller relating to assistance funds. This information includes the Regional Operating Plan (and any revisions) and all other pertinent grant correspondence and policy issued by the Office of Comptroller.

2. GMOs must work jointly with program offices and the Regional Comptroller to adjust individual Program Elements within the quarterly allowance to allow to the maximum extent practicable 100 percent funding of acceptable grant applications for continuing environmental programs.

3. GMOs and the Program Offices should jointly ensure grants awards are made as soon as possible after the funds are available to the Regional offices.

Conditional Approval. If an application is conditionally acceptable, and only minor revisions to the workplan are required, the award should be made as soon as possible after Federal funds become available, either partially or at 100 percent. The award must include the condition(s) which the applicant must meet to secure final approval and the date by which those conditions must be met.

Disapproval. If the application cannot be either approved or conditionally approved, and negotiations to revise the work plan fail, the GMO working with the program office should provide a formal written notification to the recipient which states the reasons for disapproval of the Application, in accordance with 40 CFR 35.141(c).

KEY MILESTONES IN THE AWARDS PROCESS

1. GMOS should coordinate with the program offices in the forwarding of application kits and program guidance to continuing program grants applicants. GMOs should send application kits to continuing program grants applicants three and one half (3 1/2) months before the end of the current grant budget period.

2. GMOs should jointly work with the program offices to provide a formal written notification to applicants regarding the status of award of their continuing environmental applications within 45 days after receipt of the application. This notification must include whether the application is acceptable, conditionally acceptable, or unacceptable and inform the applicant of any outstanding administrative issues which would delay award. (See Appendix 2 for a sample status report.)

3. GMOs should make their final determination on whether an application is approved, conditionally approved, or disapproved within 60 days of receipt of the application.

4. GMOs and the program offices should jointly ensure that

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 26 1992

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Availability of Funds

FROM: Richard M. Brozen
Budget Director (PM-225)

TO: Assistant Regional Administrators
Senior Budget Officers

This memo is intended to clarify some of the general policies and concepts that govern funds availability and flexibility in the Agency when a fiscal year begins. The "financial environment" has been rapidly changing over the last few years both inside EPA as well as government-wide. These changes have raised questions as to the fundamental core responsibilities of the Agency's management of our financial resources. These issues are extremely complex and highly variable, requiring an understanding of the inter-relationship of four core funding documents. This memo provides an overview of the fundamental core responsibilities. The Budget Division is currently in the process of updating the Planning and Budget Manual and the Funds Control Manual which will incorporate the more detailed guidance. As part of this process, I would welcome comments and suggestions for additional clarifications, as needed.

Background

Several recent events have focused our attention on how the division is communicating resource decisions and providing information concerning the release of funds to the Agency. First, many new and complex laws have been enacted that affect the Agency's funds. These include the Budget Enforcement Act of 1990, The Chief Financial Officer Act of 1990, Federal Credit Reform Act of 1990 and the Cash Management Improvement Act of 1990. Second, we have implemented the Integrated Financial Management System (IFMS) within the last few years which has had a significant impact on the flow of information concerning financial resources and added new responsibilities for the Responsible Planning and Implementation Officers (RPIOs).

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Third, a quality action team was convened by the Office of Wastewater Enforcement and Compliance for the purpose of addressing State concerns on the grants process. And finally, we recognize that there has been significant turnover in the Agency's resource community, resulting in many new employees new to the budget world.

It has come to our attention that there are many unanswered questions on fund availability and flexibility. In particular, it is clear that there has been some confusion about when funds become available for obligation and how much flexibility the Agency has in making resource management decisions. I would like to take advantage of these circumstances and take a first step in providing some clarification on the general concepts, controls, and procedures which make funds available for obligation.

Availability of Funds

At any time, the funds available to the Agency is governed by four basic documents: (1) the Congressional Budget Justification; (2) the Appropriation Law under which the Agency is funded; (3) the OMB Apportionment; and (4) the Agency's approved financial Operating Plan. In general, each document governs a different aspect of the Agency's cash flow and flexibility.

(1) **Congressional Budget Justification** provides Congress and the Administration with the Agency's basic blueprint on where we are spending our money, what results we expect to achieve, and our accomplishments for the previous two fiscal years. Since OMB and Congress consider this document to be the basis of our budget, deviation from it usually requires action by either Congress and/or OMB.

(2) **Appropriations Law** provides the Agency with the basic requirements established by Congress. It includes the total level of funds available within each financial account and specific guidance to the Agency through specific appropriations language, report language, and other legislative history. The law enacts the underlying structure of our appropriations accounts and Congressional Budget Justification with modifications spelled out in the legislative history. The Law provides both restrictions (account transfers; Travel ceilings; PC&B floors) and flexibility (reprogramming authority; appropriation charging).

(3) **OMB Apportionments** control the rate at which obligations can be made by the Agency and in some instance the exact purpose for the obligations. Usually, OMB apportions the Agency's funds by quarter. There are, however, other cases where OMB limits the use of funds either through a set aside (in a "category B") or through footnotes to the apportionment. One recent use of these restrictions has been OMB's establishment of a clean-up category in the Superfund apportionment.

(4) **Approved Financial Operating Plan** implements the Congressional Budget Justification, Appropriations Law, and OMB Apportionment. The Operating Plan essentially governs the purposes for which the Agency expends funds. The Operating Plan is the document against which the Agency is monitored for compliance with Congressional and OMB directives.

In an attempt to maintain communication with the resource community and to implement these four governing documents, the Budget Division has established several institutional methods of communication that provide guidance as to the availability of resources to the Agency's managers. The are: (1) Advice of Allowance for each appropriation to each Responsible Planning and Implementation Officer (RPIO); (2) an online financial Operating Plan contained in the Integrated Financial Management System (IFMS); and (3) the Appropriations Analysis, Bills and Reports digest.

These sources of information establish spending limits at a detailed level to ensure compliance with appropriated amounts, directives, and guidance (including add-ons and reductions) as well as OMB apportionment restrictions. The use and applicability of each guidance source is dependent upon the status of the Agency's appropriations and Operating Plan.

Appropriations

At the beginning of the fiscal year, the Appropriations Law governing the Agency will take one of two forms: either an annual Appropriations Bill covering the full year or a Continuing Resolution that covers a shorter period of time. (If the Agency has no Appropriations Law, the Agency must "shut-down" operations which is addressed by EPA Order on Actions in the Event of an Appropriations and/or Debt Ceiling Hiatus). The status of the Agency's appropriations significantly affects the level of funds available to the Agency and the amount of flexibility with which the Agency can operate. The following lays out general principles for the availability of funds under each appropriation scenario and attempts to illustrate the interrelationship between the controlling documents listed above.

One special note, however, is that the specific rules and conditions under which the Agency operates can vary significantly from year to year. Congress and OMB generally provide us with a complex set of rules that can be modified yearly, quarterly, or monthly. The resource community should stay in close contact with the Budget Division to determine specific needs during any fiscal year and should follow the yearly guidance and Advice of Allowance to implement the special needs identified.

Availability of Funds Under an Annual Appropriation

The budget statutes that govern the federal budget process provide that the Agency begins its fiscal year on October 1 with an enacted Appropriations Bill. Once the Appropriations Bill is signed by the President, EPA has 30 days to provide an enacted Operating Plan to the Office of Management and Budget (OMB) and the Congress for their approval. This Operating Plan uses the Congressional Budget Justification as its baseline and modifies it according to Congressional directives contained in the Appropriations Law. In addition, OMB has 30 days following enactment to provide the Agency with the apportionment of its appropriations.

After enactment of the annual Appropriations bill, the Comptroller transmits the Appropriations Analysis, Bill and Report digest to each RPIO. This digest is an analysis of the Appropriations bill, its legislative history, and its requirements. This transmittal represents a formal delegation from the Comptroller to the RPIOs of the program responsibilities contained in our Appropriations Law and its legislative history.

During the interim period prior to approval of the enacted Operating Plan, the Operating Plan based on the President's request (Phase III) is loaded in the IFMS. A guidance memo based on initial temporary estimates included in OMB apportionments is issued to the RPIOs on how to proceed until the Agency has an approved Operating Plan. We try to provide the maximum amount of funding to allow normal Agency operations. However, RPIOs are advised that the Operating Plan in IFMS has not been adjusted to reflect Congressional actions or the final Administrator distribution of resources. Therefore, Agency managers must be prudent and careful in managing their 1st quarter resources that have been made available in the event that the modifications reduce the amounts available.

Once the Operating Plan has been approved, the RPIO is notified through the normal Advice of Allowance letter. This letter sets out the funding available to the allowance holders for that quarter as well as provides guidance on the limitations and flexibilities on the use of funds (ceilings, floors, reprogramming requirements).

Availability of Funds Under a Continuing Resolution

In recent years, our annual Appropriations Bill has not been enacted by the start of the fiscal year. In this situation, the Agency begins the fiscal year under a Continuing Resolution (CR). During this time, the RPIOs are provided general guidance memoranda from the Comptroller Budget Division on the rules governing Agency operations until we have a full year Appropriations Law and the resulting enacted Operating Plan. These rules include, but are not limited to, the use of funds for the purposes for which they were requested in the Congressional Budget Justification, as well as the restraints included in the Continuing Resolution, as written by Congress, and OMB's Apportionment of the Continuing Resolution funds.

Generally, CRs hold the Agency to a more restrictive level than our proposed President's Budget. At that more restrictive level, the Agency is provided sufficient funds for the time period covered by the CR. The CR, however, rarely provides enough funds to cover "normal" operations. While operating under a CR, each RPIO is provided a portion of their total appropriation to obligate. Because of the allotment process that we have agreed to with OMB, the Agency maintains significant flexibility. Therefore, monitoring and lockout of funds during this time are done at the highest possible level for each Allowance Holder. Maximum flexibility by program element and object class is permitted.

Funding Flexibility

During the execution phase of the budget, the Agency must take care to adhere to the limits and constraints of its four governing documents. Within the limits, however, the Agency maintains considerable flexibility in the use of funds. Some of the flexibility is laid out in the Agency's Appropriation Law. For example, the Agency is allowed to reprogram funds up to a certain level ($500,000 for FY 1992) between programs in the operating plan.

Another example of flexibility is in the quarterly apportionments by OMB. During the development of the Operating Plan, the anticipated quarterly splits are equally applied to every program element in the appropriation. These anticipated quarterly splits to resources may be adjusted, however, to obtain desired flexibility while as long as the quarterly split at the RPIO level for that appropriation is maintained.

Flexibility is, therefore, within the limits established in the justification, Appropriations Law, and the OMB Apportionment. The situations and variables are far to numerous and complex to set out specific guidance in this memo. The attachment to this memo gives one specific case example of flexibility within our limitations. Within these limitations, the Agency does maintain a significant amount of flexibility in funding.

Closing

I hope this information clarifies some of the confusion on these issues. In addition, I would like your input, comments and questions regarding the type of specific guidance you believe would be helpful to you in managing the Agency's resources. Please direct your comments and inquiries to Delia Scott, Chief, Formulation and Control Branch, at 260-1176 or Becky Fredericks, Chief, Management and Policy Staff, at 260-2470.

Attachment

ATTACHMENT

CASE EXAMPLE

The Agency begins the year on a Continuing Resolution (CR) for 30 days which provides us with an automatic apportionment for 30/365ths or approximately 8% of each of our appropriations based on the levels of the year just ended.

The status of our Appropriation's Bill is still delayed in Congress or the White House and we cannot yet operate at the levels expected for the current year or use the Phase III Operating Plan (OPLAN) which is awaiting action to incorporate Congressional add-ons and reductions following enactment.

How do Agency managers operate under this scenario?

In terms of the four funding documents needed, we have two at this point...a limited Appropriations Bill (CR) and the (automatic CR) apportionment. The full-year Appropriations Bill based on the Congressional Budget Justification, and the Operating Plan, are still pending. Funds are now available, however, as is guidance and flexibility.

The Comptroller/Budget Division issues a series of status and guidance memoranda (or EMAIL) providing as much specific information and general funding guidance as is available to EPA. Among other features, this guidance always stresses:

1. Caution and prudent management

2. Availability of funds (CR percentage) at the Appropriation/Allowance Holder total level for each RPIO/Region. Allowance Holders are not held to lower program element/object class level during a CR.

So, even under the most restrictive (CR) circumstances, maximum flexibility is being provided within the total pool of resources available for the RPIO/[illegible] to fund the highest priorities based on their own determination. If S&E travel is [illegible] or an AC&C grant to a particular State is the highest priority, then the opportunity for obligation is in place.

END OF THE CR - As soon as the CR is ended (usually during the first quarter) by the enactment of EPA's Appropriations Bill and signature by the President, the full year Phase III Operating plan is loaded into IFMS and guidance to obligate cautiously while Congressional add-ons and reductions are implemented is issued.

Now that a full year's appropriation is enacted, the budget planning process, if followed correctly should provide the Program Offices with availability of funds opportunities to award any priority items (e.g. grants) in the first quarter of the fiscal year The budget process includes steps to ensure that we have this flexibility. Appropriations such as Construction Grants, Lust, AC&C and R&D are disproportionately "front loaded" in the 1st quarter apportionment to allow Program Offices to fund Priorities (such as grants in the 1st quarter should they choose to do so during the phases of Operating Plan development.

CONCLUSION

In terms of proper budget planning, the following steps by the Program Offices will allow for priority items to be funded in the first quarter:

A. Regional distributions of the Pres. Budget resources have been made by the National Program Manager and incorporated into the OPLAN.

B. Priority items (such as grants) have all been budgeted in the 1st quarter OPLAN by the RPIO during Phase III.

C. RPIOs begin the obligating paperwork for the priority items as soon as the year begins so it is ready to go as soon as sufficient funds are.

D. Commitments are entered promptly as soon as the Appropriations Bill is signed and IFMS is open.

E. Obligating documents are promptly forwarded to Grants Offices, Contracts Offices, etc. for obligation.

APPENDIX P

APPENDIX P

STATE GRANT GUIDANCE, "INTEGRATION OF POLLUTION PREVENTION"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 1992

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: State Grants Guidance: Integration of Pollution Prevention

FROM: F. Henry Habicht II
Deputy Administrator

TO: Assistant Administrators
Regional Administrators

Attached is the new Agency-wide Guidance incorporating pollution prevention into EPA's media grant programs, beginning in FY'94. This Guidance builds on the Agency's pollution prevention commitment, already reflected in many exciting activities throughout our programs and in the States.

I want to thank all those who labored so effectively to develop this Guidance. The document reflects the many constructive comments provided by Agency headquarters, Regional Offices, and State governments. In response to those comments the final product is shorter, tighter, and less prescriptive in tone.

With this Guidance in hand, the Agency can now move quickly to develop specific Guidance documents for our individual media grant programs in concert with our State partners.

Attachment

This is an important direction for EPA & the States - We want a more aggressive but a very flexible approach with statutory mandates and the need for flexibility and a minimum of red tape. Thanks for your ideas & support -

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 1992

MEMORANDUM

OFFICE OF
THE ADMINISTRATOR

SUBJECT: State Grants Guidance: Integration of Pollution Prevention

FROM: F. Henry Habicht II
Deputy Administrator

TO: Assistant Administrators
Regional Administrators

This memorandum announces the Agency-wide pollution prevention Guidance, beginning with the FY'94 State grants cycle. It has four goals:

- Promoting pollution prevention in State programs supported through Federal grants by establishing National Principles to guide workplans negotiated between Regional Offices and States;
- Ensuring that grant requirements as interpreted by EPA/State workplans are flexible enough to support innovative State pollution prevention activities;
- Establishing a simple accounting process to share information on successful State projects, and identify statutory or other barriers to funding State proposals; and
- Building sustained State capacity in pollution prevention to the extent consistent with statutory grant requirements.

All of these objectives are subject to any statutory and regulatory limitations that apply in specific circumstances.

The Guidance should help integrate pollution prevention into the Agency's activities as required by the Pollution Prevention Act of 1990. By emphasizing flexibility, the Guidance complements other Agency efforts to build a productive environmental management system in partnership with the States, and improve coordination with existing State pollution prevention programs.

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In general, this Guidance applies to all of the Agency's media-specific State grant programs, but particularly to the following: Clean Air Act §105--Air Pollution Planning and Control; Resource Conservation and Recovery Act §3011--Hazardous Waste; Federal Insecticide, Fungicide, and Rodenticide Act §23(a)(1)--Pesticides; Toxic Substances Control Act §28--Enforcement and Enforcement Activities under §313 of the Emergency Planning and Community Right-to-Know Act; and Clean Water Act §106--Surface Water, §104(b)(3)--Wetlands and Water Quality Management, and §319(h)--Non-Point Source Management.

Building on the Agency's many successful pollution prevention efforts, beginning in FY'94 EPA's grant programs--working with States--should explicitly promote pollution prevention in State workplans (also called agreements). This memorandum will be incorporated into the annual Agency Operating Guidance as well as program-specific Guidance developed this winter with the advice of the State/EPA Operations Committee. Program Guidance, intended to tailor the Agency-wide commitment to each grant program, will be applied by Regional Offices and States in the development of grant-assisted work.

The National Principles stated below should help guide development of EPA/State workplans. These should be reflected in program-specific Guidance, weighed in workplan discussions, and used to qualitatively assess program progress in integrating pollution prevention. In applying these Principles, Regional Offices should use or expand upon the menu of flexibility options below to respond to State needs to the extent possible. Annual accomplishment reports, discussed below, will help assess EPA's progress in supporting pollution prevention-oriented State workplans and initiatives.

National Principles

Guidance for each grant program covered by this document should make clear that pollution prevention--as defined in the Agency-wide memorandum of May 28, 1992 (attached)--is EPA's preferred approach to environmental management where technically and economically feasible. Consistent with the Pollution Prevention Act, the Guidance should further the integration of pollution prevention into State activities--e.g. inspections and permits--that are supported by EPA grants. While pollution prevention is not mandated, the Principles are intended to ensure that it is considered fairly in EPA/State workplans.

Specific proposals from States that are consistent with these Principles should be considered good candidates for funding through the grant programs. In addition, Regional Offices should take the initiative to suggest pollution prevention approaches, drawing upon program-specific Guidance and implementation workshops. Regional Offices and States are expected to use their

discretion in applying these Principles; they are not obligatory elements of every negotiated workplan, but rather factors for serious consideration in the negotiation process.

The Principles are:

1) The workplan applies the EPA definition of pollution prevention (see memorandum of May 28, 1992) consistent with the Pollution Prevention Act of 1990 and the 1991 EPA Pollution Prevention Strategy.

2) The workplan reflects an explicit preference for pollution prevention and identifies pollution prevention activities, products, or approaches.

3) The workplan incorporates pollution prevention as a priority in environmental management decisions made by the grantee as part of the grant-assisted activities.

4) The workplan encourages opportunities to modify existing or to develop new equipment, technology, processes, procedures, products, or educational or training materials to promote pollution prevention.

5) The workplan encourages institutional coordination--including coordination with existing State pollution prevention programs--and multi-media opportunities for pollution prevention.

6) The workplan complements or builds upon existing EPA pollution prevention projects (e.g. the work of multi-media industry clusters such as the Source Reduction Review Project, and the use of pollution prevention in enforcement settlements).

7) The workplan identifies and applies measures and ways of documenting pollution prevention progress as part of the grant-assisted activities (e.g. provides opportunities for measurable pollution prevention).

8) The workplan includes activities or approaches that may serve nationally as innovative models for other State or local programs. Workplans also should encourage innovative approaches already developed by other State or local programs, and improve coordination to build on existing successes.

9) The workplan structures grant output information so that EPA can make pollution prevention data and experience available to other States and the Pollution Prevention Information Clearinghouse.

Clearly, both partners must comply with any applicable statutory or regulatory requirements and take into account other factors that may be important. Regional Offices and States may identify

additional Principles to guide workplan requirements.

Flexibility

Many Regional Offices already have made adjustments to accommodate flexibility needs. The purpose of this Guidance is to encourage such flexibility. Whenever possible, workplans should accommodate State flexibility needs associated with incorporating pollution prevention approaches into their grant-assisted activities. That means working within the parameters of statutory and regulatory requirements to arrive at an agreement that is practical and meets the parties' needs. Options for flexibility include (but are not limited to):

a) Adjustments in numbers or types of required outputs including, for example, (1) tradeoffs or disinvestment from traditional requirements (non-statutory and non-regulatory) and (2) multiple credit for a single "multi-media" inspection that emphasizes pollution prevention.

--An example of (1) is RCRA's RIP-Flex Guidance, which allows disinvestment from national priority activities and re-investment in Regional or State priorities: up to 25% of enforcement resources in FY'92 and '93.

--An example of (2) is being tested in Region One with Massachusetts' Blackstone project. The key issue is how to "bean-count" a single multi-media inspection claiming to satisfy enforcement requirements under multiple statutes and promote pollution prevention technical assistance.

b) Adjustments in timing of non-statutory and non-regulatory EPA deadlines.

c) Identification of a percentage of funds for pollution prevention within each media program, coordinated by a pollution prevention office.

--For example, Region 10 has agreed to Alaska's request to allow the State to identify 3% (5% over the next two years) of grant program monies--RCRA, air, and water--for pollution prevention, to be coordinated by the pollution prevention office. The monies will be reflected in specific activities reasonably related to each program's contribution and statutory objectives. The annual EPA/State Agreement will explicitly identify pollution prevention activities and specific disinvestments in each program.

d) Adjustments in traditional or administrative procedures or schedules to ease EPA/State interaction.

Annual Accomplishment Report

To allow EPA to evaluate progress in integrating pollution prevention into State grant programs, each Regional Office should

provide an annual report summarizing pollution prevention accomplishments (e.g. activities, products, approaches, etc.), as reflected in grants-assisted work. The report may take any form and may draw upon reports developed to satisfy other requirements.

While program-specific Guidance may elaborate further, each report should identify: a) success stories, including innovative State projects funded under this Guidance; and b) any barriers (statutory or otherwise) that led a program to reject State proposals or to decide against including pollution prevention approaches. In addition, recommendations on regulatory, administrative, or other changes to improve flexibility would be helpful. Your contribution of this information is key to making pollution prevention a reality in EPA's on-going bread and butter work.

Conclusion

Incorporating pollution prevention into EPA's policies and programs is a collaborative effort requiring EPA to work in concert with our State partners. The National Principles and Annual Reports described above will help us to measure our progress and build on our successes.

Attachment

APPENDIX Q

APPENDIX Q

SF 424, "APPLICATION FORM"

OMB Approval No 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Pre-application ☐ Construction ☐ Non Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4 DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT *(enter appropriate letter in box)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School Dist
I State Controlled Institution of Higher Learning
J Private University
K Indian Tribe
L Individual
M Profit Organization
N Other (Specify) _____

8. TYPE OF APPLICATION

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B Decrease Award C Increase Duration
D Decrease Duration D Other *(specify)*

_____

9 NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE

11 DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b Project

15. ESTIMATED FUNDING:

a. Federal	$	00
b Applicant	$	00
c State	$	00
d Local	$	00
e Other	$	00
f Program Income	$	00
g TOTAL	$	00

16. IS APPLICANT SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b NO ☐ PROGRAM IS NOT COVERED BY E O 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4 88)
Prescribed by OMB Circular A 102

BUDGET INFORMATION -- Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A -- BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$		$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B-- BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

SECTION C -- NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 - 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

APPENDIX R

APPENDIX R

LIST OF HEADQUARTERS AND REGIONAL MBE/WBE COORDINATORS

REGION I

Josiah N. Fripp, SDBUO — (617) 565-3289
FAX (617) 565-3346

James Younger, SDBUO — (617) 565-3427
FAX (617) 565-3415

U.S. Environmental Protection Agency
Region I
John F. Kennedy Federal Building
One Congress Street
Boston, MA 02203

REGION II

Dana P. Williams, SDBUO — (212) 264-8218
FAX (212) 264-8100

U.S. Environmental Protection Agency
Region II
Jacob K. Javitts Federal Building
26 Federal Plaza
New York, NY 10278

REGION III

Mary Zielinski, SDBUO — (215) 597-6795
FAX (215) 597-6170

U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

REGION IV

James F. Favoro, SDBUO — (404) 347-2200
FAX (404) 347-1043

U.S. Environmental Protection Agency
Region IV
345 Courtland Street, NE
Atlanta, GA 30365

REGION V

Robert Richardson, SDBUO — (312) 353-5677
FAX (312) 353-9096

U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3507

REGION VI

Reta J. Brown, SDBUO — (214) 655-7407
(214) 655-2146

U.S. Environmental Protection Agency
Region VI
First Interstate Bank Tower at Fountain Place
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REGION VII

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Carol Rompage, SDBUO — (913) 551-7346
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Maurice Valasquez, SDBUO — (303) 294-7506
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FAX (415) 744-1678

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

REGION X

Marie I. McPeak — (206) 553-2894
FAX (206) 553-4957

U.S. Environmental Protection Agency
Region X
1200 Sixth Avenue
Seattle, WA 98101

CINCINNATI PMD

Norm White, SDBUO — (919) 366-2024
FAX (919) 366-2004

U.S. Environmental Protection Agency
Cincinnati Contracts Management Division
Cincinnati, OH 45268

HEADQUARTERS

OSDBU (A-149C)

George K. Mori — (703) 305-6301
Rebecca D. Neer — (703) 305-5023
FAX (703) 305-6462

Superfund (OS 200)

Jan Baker — (202) 260-2180
FAX (202) 260-4386

State Revolving Fund (WH-547)

Kit Farber — (202) 260-3973
FAX (202) 260-0116

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Lupe Saldana, SDBUO — (202) 260-5245
Richard Johnson — (202) 260-5296
FAX (202) 260-1828

General Counsel (LE 132G)

Mark Gordon — (202) 260-8886
FAX (202) 260-8392

APPENDIX S

OFFICIAL PROJECT AND GMO FILES

OFFICIAL EPA PROJECT FILE

Project File: The official file developed and maintained by the Project Officer to serve as a collection of documents and or items that provide programmatic and/or fiscal information on the purpose, performance and history of an award to a sepcific recipient.

Contents:

Part I

1) Copy of application and any application amendments with Work Plan/Budget (copy)

2) Administrative Review Checklist signed by the Grants Specialist and the Project Officer (copy)

3) Quality Assurance documentation

Part II

1) Correspondence relating to the application and/or summaries of same

2) Application reviews, in-house and extramural

3) Programmatic reviews

4) Program Program memo regarding funding recommendation to Regional Administrator

Part III

A copy of Assistance Agreement and any amendments (a copy of agreement should be retained until a signed original is returned by recipient to the Grants Management Office (GMO).

Part IV

1) Copies of Correspondence relating to the awards

A. Award letter
B. Acceptance letter
C. Close-out letter

2) Correspondence concerning negotiations and agreements

3) Recipient requests for deviation; EPA approval or denial

4) Correspondence concerning continuation or renewal of project

5) Site visit reports

6) Administrative reports

7) Stop-work order and related correspondence

8) Correspondence concerning termination actions

9) Correspondence concerning disputes and appeals

10) Final determinations

11) Audit reports

12) Regional and General Counsel opinions

13) End of year evaluation

Part V

1) Reimbursement requests (copy)

2) Payment vouchers (copy)

3) Financial Status Reports (copy)

4) Automated Clearinghouse Authorization (copy)

5) Increase and decrease amendments (copy).

6) Close-out checklist/memo (copy)

7) Commitment Notices (copy)

Part VI

Technical Reports -- if the report is too bulky, place it in an accordian file and rubber band it to the six part file. If it is a film, computerized disk, etc., a document spelling out its location must be filed in this section.

2) Payment vouchers

3) Financial Status Reports

4) Automated Clearinghouse Authorization (ACH)

5) Increases and decreases

6) Close-out check list

7) Commitment Notices

Part VI

Funding recap

OFFICIAL EPA GMO FILE

Official EPA GMO File: The official file developed and maintained by the Grants Management Office to serve as a composite collection of documents and or items that provide programmatic and fiscal information on the purpose, performance and history of an award to a specific recipient.

Contents:

Part I

1) Complete application and any application amendments (original signed)

2) Administrative Review Checklist (original signed by Grants Specialist and the Project Officer).

3) Procurement System Certification (original signed)

4) Governor's letter and certification for Superfund enforcement.

5) Anti-Lobbying Certification (original signed)

6) Debarment/Suspension Certification (original signed)

Part II

1) Correspondence relating to the application (copy)

2) Applciation reviews, in-house and extramural (copy)

3) Programmatic reviews (copy)

4) Program memo regarding funding recommendation (copy)

Part III

Assistance Agreements and any amendments (a copy of agreement should be retained until a signed original is returned by the recipient)

Part IV

1) Correspondence relating to the awards

   A. Award letter
   B. Acceptance letter
   C. Interim close-out letter
   D. Close-out letter

2) Correspondence concerning negotiations and agreements

3) Recipient requests for deviation; EPA approval or denial

4) Correspondence concerning continuation or renewal of project

5) Site visit reports

6) Administrative reports

7) Stop-work order and related correspondence

8) Correspondence concerning termination actions

9) Correspondence concerning disputes and appeals

10) Final determinations

11) Annulment

12) Requests for audit

13) Audit reports

14) Correspondence related to audit reports and resolution of audit findings

15) Regional and General Counsel opinions

16) Interim and final audit reports, comments and resolution

17) Final disputes decision and any appeal or reconsideration determination/resolution documents

Part V

1) Reimbursement requests

APPENDIX T

CLOSEOUT POLICY FOR ASSISTANCE AGREEMENTS

AUG 27 1992

MEMORANDUM

SUBJECT: Final Closeout Policy For Assistance Agreements

FROM: Harvey G. Pippen, Jr., Director
Grants Administration Division

Signed by
Scott McMoran for

TO: Assistant Regional Administrators
Grants Management Offices
Regions I-X
Millie Lee, Chief, Grants Operations Branch
Carlene Foushee, Acting Chief, Grants Information and Analysis Branch

We are pleased to issue the attached final Closeout Policy. This policy establishes EPA's closeout requirements for closing out completed grants and cooperative agreements and deobligating unliquidated obligations for all of EPA's assistance programs. This policy represents the combined efforts of all of the members of the Closeout/Deobligation task force over the past year. We greatly appreciate their time and many contributions in developing this policy document.

We strongly encourage you to use the policy and again emphasize the importance of continuously closing out completed projects and deobligating unliquidated obligations in a timely manner. Closeout is an essential function of prudent grants administration.

Finally, we ask that you develop your own specific Regional (or headquarters) procedures to implement the closeout requirements in this policy.

If you have any questions regarding this policy, please contact Bruce Feldman on 260-5268.

Attachment

CC: Official Reading Division
M. Ross
L. Ross
M. Lee
Taskforce Members
R. Johnson
S. McMoran
C. Allison
R. Mitchell
A. Mason
C. Foushee
B. Feldman
M. Cody
E. Haffa
C. Thomas
V. Martin
R. Meunier

PM-216F: V.Martin:RM 801 FC:260-9294:8/14/92

EPA CLOSEOUT POLICY FOR GRANTS AND COOPERATIVE AGREEMENTS

Introduction

Part I: *Purpose and Objectives*

Part II: *Basic Closeout Requirements for Grants and Cooperative Agreements*

- *A. Roles and Responsibilities*
- *B. GICS Requirements*
- *C. Notification and Follow Up*

Part III: *Program Specific Requirements*

- *A. State Revolving Fund Program*
- *B. Superfund*
- *C. Construction Grants*

Part IV: *Record Retention Requirements*

Part V: *Audit Resolution and Disputes*

Appendix A: *Listing of Existing EPA Closeout Regulations, Policies, and Related Guidance*

Appendix B: *Listing of GICS Data Elements Used in Closeout*

Appendix C: *Types of Construction Grant Awards*

PART I PURPOSE AND OBJECTIVE

The purpose of this document is to establish EPA policy for closing out completed grants and cooperative agreements for all EPA Assistance Programs.

Closeout is the systematic process by which EPA determines that all required technical work under a grant or cooperative agreement has been completed by the recipient and EPA, and all applicable administrative requirements met. Protection of the government's interest and prudent grants administrative practices require that sufficient time and effort be devoted to the closeout process.

This document includes the closeout requirements basic to all grants and cooperative agreements, the roles and responsibilities of EPA and its recipients, and the specific closeout requirements unique to the Superfund, Construction Grants, and the State Revolving Fund (SRF) Programs.

The procedures to follow for timely closeout of all completed projects are contained in 40 CFR Part 31 Subpart D, 40 CFR Part 30 Subpart H, 40 CFR Part 35.6780, and the EPA Assistance Administration Manual (Chapter 40). This policy supplements and clarifies existing agency closeout policy.

EPA should close out non-construction grant projects within 180 days after receipt of all required reports and other deliverables. Delays can unnecessarily tie up obligated but unexpended funds. Also, closeout becomes more difficult with the passage of time because persons responsible for managing various aspects of a project may resign, retire, or transfer; memories of events are less clear; the interests of the Project Officer and Project Manager may shift to other priorities; and award documents may become lost or destroyed.

For Construction Grants, closeout should occur within six months of the last grant action which can be any one of the following actions:

- Final audit resolution
- Project screenout
- Project returned unaudited by OIG
- Administrative completion for grants less than $1 million
- Regional or Headquarters issuance of a decision of an appeal filed in accordance with 40 CFR Parts 30 and 31.
- Final debt collection, forgiveness of debt or dismissal of debt.

PART II BASIC CLOSEOUT REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

A. Roles and Responsibilities

This section outlines the basic closeout roles and responsibilities of the Recipient, the Program Office, the Grants Management Office (GMO) and the Financial Management Office (FMO).

Recipient

1. Complete all work satisfactorily and timely as specified in the assistance agreement.

2. Submit the following required reports to EPA within 90 days after the project completion date:

   - o Final Technical Report
   - o Final Financial Status Report (Standard Form 269 or 269A)
   - o Federally Owned Property Report, if applicable
   - o Invention Disclosure Report (EPA Form 3340-3), if applicable
   - o Final Request for Payment (Standard Form 270), if applicable
   - o Final EPA ACH Payment Request, if applicable
   - o Outlay Report and Request for Reimbursement (Standard Form 271), if applicable
   - o Property Inventory of all Federally Owned Property, if applicable
   - o Final Minority Business Enterprise/Women Business Enterprise Report (Standard Form 334), if applicable

3. Submit a written request to EPA's award official to request an extension of time to the 90 day period required for submittal of the FSR (or other required reports), along with a justification for the extension.

4. Submit all manuals, plans, specifications, data, or other deliverables as required in the assistance agreement to EPA, or make the deliverables available for EPA inspection.

The Program Office (Project Officer)

1. Review and approve all technical reports, including final technical/performance reports in accordance with the requirements of the award and the statement of work.

2. Ensure that any/all deliverables required under the award are received when required by the award, and are acceptable.

3. Certify to the GMO within 90 days of completion of the project that all work has been satisfactorily completed. For continuing programs, specific work elements may be carried forward and funded in the next year provided the recipient submits an application with an acceptable workplan. For additional information, refer to Comptroller Policy Announcement N. 88-09, "Disposition of Unobligated Balance of Assistance Awards."

4. Certify to the GMO within 90 days of project completion that all tehnical (programmatic) award conditions have been met.

The Grants Management Office (GMO)

1. Ensure receipt of final certification of project completion from the project officer, receipt of all required reports including the final FSR, MBE/WBE, invention disclosure, and Federally owned property reports, and compliance with all terms and conditions of the grant.

2. Provide property disposition instructions (as necessary) to recipients, and ensure receipt/acceptability of property inventory report; and ensure reimbursement to EPA of its proportionate share of equipment or supply inventories, if applicable.

3. Receive and approve the Final Financial Status Report (except for construction grants) and:

   - o ensure timely receipt and distribute copies to program and finance offices as necessary;
   - o review and analyze FSR's contents, including recipient's cost share;
   - o maintain/update current information in the Grants Information and Control System (GICS), i.e., FINANCIAL-STATUS-CODE, FINANCIAL-STATUS-DATE, and ACTION-CODE;
   - o ensure that financial data on FSR is reconciled with the Integrated Financial Management System (IFMS);
   - o determine allowability of any reported indirect costs based on the provisions of the assistance agreement and the final negotiated indirect cost rate;
   - o determine amount of any unliquidated obligations and/or funds owed to EPA by the recipient and provide instructions to the FMO for the disposition of those funds.

4. Request final audit (if applicable and required for closeout)

5. Prepare close-out amendment.

   - Ensure receipt of request for final payment; review and approve appropriateness of such payments and notify the FMO to process or deny the payment.

   - Ensure compliance with Agency's carryover policy.

   - Ensure that the FMO makes necessary adjustments to IFMS and **deobligates any unliquidated obligations as appropriate.**

   - Complete Assistance Adjustment Notice (EPA Form 5700-42) or Assistance Amendment and distribute to FMO and Program Offices.

6. Prepare close-out letter

   - Issue final close-out letter to recipient and provide copies to the appropriate Project Officer and FMO.

7. Retire file and follow appropriate record retention requirements. (See page 11, Part IV)

Financial Management Office (FMO)

1. Assist GMO in reconciling IFMS data with reported FSR data.

2. Review close-out amendment and either **deobligate any unliquidated obligations,** or bill the recipier' for any funds due EPA; establish an accounts receivable if appropriate and perform follow-up collecuon efforts.

3. Make necessary entries to IFMS for any deobligations and collections.

4. Approve/process final payment request.

B. The Grants Information and Control Systems (GICS) Requirements

The Grants Information and Control System (GICS) is EPA's official assistance information management system and plays an integral part in the closeout process. It provides grants managers with information to manage and track progress on grant agreements. The system contains a collection of closeout data elements to track a grant's progress through the

closeout process. Grant specialists update the closeout milestones in GICS by accessing the appropriate closeout screens in EPA's Automated Grants Document Systems, i.e. the Regional Automated Grants Document System (RAGDS), the Headquarters Automated Grants Document System (HAGDS), the Fellowship Automated Document System (FADS), and the Interagency Agreement Management System (IAMS), as each milestone is achieved. The most frequently used closeout milestones for non-construction grants are incorporated into a Table below. Appendix B contains definitions for these milestones and general information on the closeout screens used for Construction Grants. Further information on these data elements can be found in the GICS Data Dictionary [GIRD] and the Headquarters and Regional procedural manuals.

- COMP-LTR-SENT-CODE/DATE (M1)
- FINANCIAL-STATUS-CODE/DATE (M5)
- REAL-PROPERTY-CODE/DATE (L7)
- PERS-PROPERTY-CODE/DATE (L2)
- INVENTION-CODE/DATE (L4)
- FINAL-REPORT-CODE/DATE (L8)
- AUDIT-REQUEST-DATE (N8)
- AUDIT-RESULTS-CODE (N9)
- FINAL-AUDIT-DATE (91)
- ACTION-CODE/DATE

C. Notification and Follow Up

1. Closeout Notification

Monthly

The GMO should provide each Grants Specialist a Grants Information and Control Systems (GICS) printout each month which identifies those projects/agreements that are in the closeout process or are scheduled to end in the next 90-120 days. These printouts (Status Report of Projects Completed But Not

Closed Out) list projects in sequence by project-end-date and indicate the status of each milestone event leading to close out and the date that it was entered as such.

90 Days Before End of Project Period

The Grants Specialist prepares for the EPA Project Officer a "completion alert" 90 days before the end of the project period. The memo requests information on whether the project/budget period needs to be extended or if the assistance award can be closed out.

2. **Follow up Schedule**

0-30 Days after Completion.

A letter requesting the necessary closeout reports should be mailed to the individual who accepted the most recent award document on behalf of the recipient, with a copy to the EPA Project Officer.

90 Days after Completion

The recipient will submit final progress (technical) reports to the Project Officer 90 days after the project's completion or end date, whichever comes first and notify the GMO of their receipt and acceptability. Other reports, including the final Financial Status Reports, are also due within 90 days, and should be submitted to the Grants Specialist. The Grants Specialist will then review those projects that have overdue reports (over 90 days) and determine whether another followup letter should be sent to the recipient. This letter must be tailored to address specific deficiencies of the project, e.g., what required deliverables were not received and are overdue? A copy of this letter should also be sent to the FMO\PO.

120 Days after Completion

If the recipient has not provided the information required for closeout 4 months after completion of the project, the Grants Specialist should confer with the Project Officer and send another follow-up letter. This letter shall be signed by the RA/ARA or Director, GAD (for headquarters projects), and addressed to the head of the recipient organization, with a copy to the FMO\PO. It should provide a chronology of earlier efforts to obtain the materials required by the agreement, enclose a copy of previous reminders and follow-up correspondence, and establish a specific date (suggest 2 to 3 weeks) for receipt of a response.

180 Days after Completion

Closeout should be completed within 6 months (180 days) after the end of the agreement. When closeout has been completed, the Award Official should provide the recipient with the closeout letter or a letter of final determination, with copies to the FMO and PO. (See Disputes Section in Part V)

Part III: Program Specific Requirements

A. State Revolving Fund Loan Program

This section defines the basic policy on the timing of capitalization grant closeout and highlights specific SRF requirements. Capitalization closeout procedures parallel closeout procedures for continuing program grants.

In general, closeout will occur at the end of each capitalization grant's budget period, i.e. when all the cash is drawn down from that grant providing, however, that the audit for the State fiscal year in which the last cash draw occurred has been issued and any findings resolved. Closing a capitalization grant will not mean that all statutory work and regulatory requirements have been satisfied.[1] Nor will closeout indicate that all the "work" agreed to in the assistance agreement has been completed or that all the loans have been repaid. Rather, closeout will indicate that EPA is satisfied that the State has established a viable and fiscally sound SRF loan program. EPA will assure continued compliance with statutory and regulatory requirements by reviewing a State's Intended Use Plan [40 CFR 35.3150], reviewing a State's Annual Report [CWA Title VI, §606(d)], by performing annual oversight visits of the State's operations [CWA Title VI, §606(e)], and by receiving audits of the program [CWA Title VI, §606(b)]. If, however, a State is found to be out of compliance with any part of Title VI or the implementing regulations, 40 CFR Parts 31 and 35, Subpart K, and corrective action has not been initiated by the State, a grant cannot be closed out. To close out a capitalization grant, the GMO, in conjunction with the Project Officer (the SRF Coordinator) would follow the requirements as specified in Part II.

B. Superfund

The following are the additional steps each GMO must follow in closing out a Superfund Cooperative Agreement. Superfund recipients are usually States, Political Subdivisions, or Federally Recognized Indian Tribes, and the closeout procedures in this section apply to these

[1]For example, a Region may decide to closeout a capitalization grant before an equivalency project has met all of its equivalency requirements [Sixteen Title II requirements CWA, Title VI §602(b)(6)].

recipients. Recipients of other Superfund grants, such as; Research and Development; and Technical Assistance Grants (TAG), follow the closeout requirements for project-specific grants.

Superfund Cooperative Agreements

Superfund response Cooperative Agreements (CAs) provide funding from EPA to conduct the response activity at a Superfund site. These CAs can provide funding for the following types of activities:

Pre-Remedial Activities	**Remedial Response Activities**	**Other Activities**
Preliminary Assessment (PA) Site Investigation (SI) Hazardous Ranking System (HRS)	Remedial Investigation (RI) Feasibility Study (FS) Remedy Selection/Record of Decision (ROD) Remedial Design (RD) Remedial Action (RA)	Removal Program Core Program Enforcement Support Agency

In a Superfund CA, closeout of the CA usually occurs when all work, as specified in the scope of work, has been completed. Due to the complexity and "umbrella-like" structure of Superfund CAs, closeout can often become an unduly complicated situation, with many activities taking place over extended periods of time. To improve our management of Superfund CA closeout, it is desirable to close out each diverse activity or operable unit as it is completed. As each activity or operable unit is completed, the activity would be designated as an "Activity Completion" and the same steps in the closeout process would be followed. In the case of a pre-remedial or a remedial CA, as each activity (or operable unit) is completed, activity completion (or operable unit completion) should take place for that discrete activity. This approach is a more manageable way to ultimately achieve closeout of the entire agreement.

Since many Superfund CAs last for many years and may include more than one site, it is important to initiate completion by activity, site, or operable unit. This will simplify the administrative closeout process later on when the entire agreement is closed out, and will help the cost recovery effort which may begin before all activities at the site are complete or when all sites under the multi-site are complete.

For a Superfund site-specific CA, if the CA is terminated when a responsible party takes over the cleanup or the lead changes from State to EPA, the CA should be closed out and any unliquidated obligations balance should be de-obligated.

A Superfund Core Program cooperative agreement provides funds to a State or Indian Tribe to conduct CERCLA implementation activities that are not assignable to specific sites, but are intended to support a State's (or Indian Tribe's) ability to participate in the CERCLA response program. In the Core Program, the CA is closed out when the activities identified in the scope of work are completed. Likewise for Enforcement, Support Agency, or Removal cooperative agreements. When all required work as specified in the scope of work has been completed, the CA should be closed out. To close out a Superfund CA, the GMO and PO must follow the requirements specified in Part II.

C. Construction Grants

Construction Grants are awarded to local municipalities to fund construction of waste water treatment plants. It is EPA policy to close out construction grants promptly; funds not needed on one project can be deobligated and reallotted to finance other treatment works projects. The Construction Grants Program is also different from other EPA programs because this is a delegated program. EPA is responsible for overall program management but most of the day-to-day administrative duties have been delegated to the State water pollution control agencies or the US Army Corps of Engineers. EPA Regional Offices retain some project-related decision authorities that are not legally delegable.

Eligible activities funded by construction grants can include facility plans (Step 1), plans and specifications (Step 2), and the building of a treatment plant (Step 3). A full listing of the different types of construction grants is included in Appendix C.

KEY COMPLETION/CLOSEOUT MILESTONES
Physical Completion: When the scope of the work is completed. For Steps 1 & 2, project completion and physical completion are synonymous. (For steps 2+3, 3, 7 & 9 project completion, physical completion, and construction completion are synonymous.)
Initiation of Operations (IO): When the wastewater treatment works becomes capable of operating for the purposes planned, designed and built. (Steps 3, 2+3, 7 & 9)
Project Performance Certification: One year after IO, the grantee certifies that the treatment facility is meeting project performance standards. (Steps 3, 2+3, 7 & 9) **Please note that the project cannot be sent to audit until the certification is received.**

Administration Completion: All administrative aspects of the project have been completed, final payment has been requested, eligible costs have been determined, all grant conditions have been satisfied and the audit has been requested. All excess balances (unliquidated obligations) should be deobligated at this point.
Audit: Project is sent to the Office of Audit, Office of Inspector General (OIG) for audit.
Audit Resolution: Audit resolution occurs when one of the following actions have been performed by the Regional Office: o Issuance of a final determination letter to the recipient. o Submission of a valid response to the OIG addressing all findings and recommendations contained in the final audit report.
Closeout: All administrative activities have been completed, including corrective actions and debt collection; the reviewing agency issues a standard closeout letter to the recipient and the grant project file is sent to record storage.

NOTE

The time between physical completion and administrative completion can be no less than 14 months because the project performance certification period is one year after physical completion and initiation of operations. The project can not be sent to audit until after project certification. If the IG accepts the project for audit, it may be 24 months before the final audit report is issued.

PART IV: RECORD RETENTION REQUIREMENTS

EPA's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR Part 31.42) establishes minimum records retention requirements for all assistance recipients. In general, a recipient must retain all financial records, supporting documents, accounting books and other evidence of assisted activities for three years from the date of the final Financial Status Report submission. If any litigation, claim, or audit is started before the expiration of the three year period, the recipient must maintain all appropriate records until these actions are completed and all issues resolved. The retention period starts on the day the recipient submits its final Financial Status Report. A recipient may always choose to implement stricter or longer retention periods to meet their own needs. For construction grants, the retention period starts the day the grantee submits the final payment request. For the SRF Program, official records include copies of the State/EPA agreements, SRF Intended Use Plans, SRF Operating Agreements, SRF Annual Reports, and SRF Program Evaluation Reports. Only the grant agreement can be retired after grant closeout. All other documents must be retained for Program Management purposes.

Superfund Assistance Agreements

* **For recipients'records,** the length of retention is 10 years from the date of submission of the final FSR (unless otherwise directed by the award official).

* **For EPA's records,** the retention period is 30 years after closeout of the assistance agreement.

Construction Assistance Agreements

* **For recipients,** the retention period is 3 years from the date of the final payment request.

* **For EPA's records,** the retention period is 20 years from the date of submission of the final payment request.

ALL Other *Assistance Agreements*

* **For recipients,** the length of retention is 3 years from the date of submission of the final FSR.

* **For EPA's records,** the retention period is 7 years after closeout of the assistance agreement.

PART V: AUDIT RESOLUTION AND DISPUTES

A. Audit Resolution - General Information

EPA Order 2750.2A (Management of EPA Audit Reports and Followup Actions) states that audit resolution must occur within 150 days of the final audit report issuance. Resolving audit findings, issues or exceptions is a multi-step process involving many different offices. Audits which cannot be resolved at the Regional or Headquarters level between the OIG and the Audit Action Official are referred to EPA's Audit Resolution Board.

EPA relies primarily on Single Audits of recipients carried out in accordance with the requirements of the Single Audit Act and Federal Audit policy expressed in OMB Circulars A-128 and A-133. Consistent with that policy, most assistance agreements will not receive individual final audits. **A final audit is usually not a prerequisite for closeout.**

All Superfund Cooperative Agreements are subject to audit by the Office of Inspector General. Projects may be audited prior to or even after closeout. The Program Office is usually responsible for requesting an audit. Closeout of all completed phases of response activities should be undertaken regardless of whether or not an audit is actually performed. However, any

findings/issues arising from an audit must be resolved before the cooperative agreement can be officially closed out.

For Construction Grants, an audit request is sent to the appropriate Divisional Inspector General for Audit who determines if an audit will be conducted. For more detailed information on the steps involved in this process, refer to the appropriate Construction Grant Program Audit and Closeout Procedures.

The OIG will normally audit construction grants according to criteria published in the OIG Manual, Chapter 102 -- Audit Planning Appendix 6, Issued October 1984 and revised June 5, 1990.

If the OIG (EPA, contract CPA firm, State Auditor, or GAO) conducts an audit, the project cannot be closed out until the final audit is completed, all findings and recommendations are resolved, corrective actions are completed, and any outstanding debts are collected.

B. Disputes

Definition

Disputes are petitions of review filed by recipients asking EPA to reconsider decisions affecting assistance agreements.

Many (but not all) disputes between recipients and EPA concern the eligibility or allowability of a project or portions of a project for reimbursement by EPA under the provisions of the assistance agreement, usually resulting from an audit or other determination by EPA's award official.

Authority

Disagreements between EPA and applicants/recipients should be resolved at the lowest possible level by the EPA Project Officer and the appropriate Grants Specialist having the authority to resolve the dispute.

The applicable regulations depend on the award date of the grant agreement or amendment. If the award date is before October 1, 1988, 40 CFR Part 30 Subpart L applies. If the award date is after October 1, 1988, 40 CFR Part 31 Subpart F applies. Disputants may not ask EPA to review the following Agency actions:

1. Denials of requests for a deviation under 40 CFR Part 30, Subpart J;

2. Bid protest decisions under 40 CFR Parts 31/33;

3. National Environmental Policy Act decisions under 40 CFR Part 6;

4. Advanced wastewater treatment decisions of the Administrator;

5. Policy decisions of the EPA Audit Resolution Board; and

6. Debarment/suspension actions taken by the Director, Grants Administration Division.

Role of the Disputes Decision Official

The Award Official may act as the Disputes Decision Official (DDO) or appoint a senior EPA Official who is knowledgeable about EPA's assistance programs as the DDO. The DDO reviews and issues the final decision for all disputes. If an applicant or recipient disagrees with the Regional DDO's decision, the disputant may file a request for a review with the Regional Administrator (RA), who will in turn issue a written determination.

If an applicant or recipient disagrees with a RA's decision, they may request a review by the appropriate Assistant Administrator (AA). The AA in the appropriate media Program Office has the authority to review appeals of RA decisions. The AA will analyze the request to determine if it warrants further review. The AA will then notify the recipient in writing of their decision to review or not to review the disputed action. In the limited number of cases which are reviewed, the AA will also provide the results of the review at this time. The recipient may request reconsideration of any decision of the RA or AA.

Impact of Disputes on Closeout

Disputes can be very resource intensive and will bring the audit decision-making process under closer scrutiny. It is for this reason that the Audit Action Official should resolve all audit findings and avoid incomplete final determination letters (see Part V Audit Section). Inadequate or incomplete audit resolution can increase the number of disputes filed by recipients. Unresolved disputes further delay closeout of the award until the action or claim is settled.

APPENDIX A

LISTING OF EXISTING EPA CLOSEOUT REGULATIONS, POLICIES, AND RELATED GUIDANCE

(1) 40 CFR Part 4 (Uniform Relocation Assistance), or 49 CFR Part 24 if applicable;

(2) 40 CFR Part 30 (for non-State and local government recipients);

(3) 40 CFR Part 31 (for State and local governments);

(4) 40 CFR Part 32 (Debarment and Suspension);

(5) 40 CFR Part 33 (Procurement for non-State and local government recipients);

(6) 40 CFR Part 34 (Restriction on Lobbying, interim final rule);

(7) 40 CFR Part 35 (State and Local Assistance);

(8) 40 CFR Part 40 (Research and Demonstration Grants);

(9) 40 CFR Parts 45 and 46 (Training and Fellowship grants);

(10) OMB Circulars A-102 (Grants and Cooperative Agreements to State and Local Governments) and A-128 (Audits of State and Local Governments);

(11) OMB Circulars A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations), A-133 (Audits of Institutions of Higher Education and Other Nonprofit Institutions), and A-21 (Cost Principles for Universities;

(12) OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-122 (Cost Principles for Nonprofit Organizations);

(13) Policy on Performance-Based Assistance (EPA policy memorandum dated May 31, 1985);

(14) Comptroller Policy Announcement No. 88-09 (Disposition of Unobligated Balance of Assistance Awards);

(15) EPA Directive 2750 (Management of EPA Audit Reports and Follow-up Actions).

(16) Chapter 40 of EPA's Assistance Administration Manual

(17) Construction grants Program For Municipal Wastewater Treatment Works Handbook of Procedures

(18) CG-250, Managing Construction Projects Student Manual; and

(19) The Strategy Paper for Closing Out the Construction Grant Program, dated 10/90 and formally released January, 1991.

APPENDIX B

GICS DATA ELEMENTS FOR CLOSING OUT NON-CONSTRUCTION GRANTS

GICS contains a series of data elements used to track grant closeout. This appendix provides definitions and applicable codes for the most commonly used data elements. Note: not all closeout data elements are available in RAGDS, FADS, or IAMS. It is GAD's intention to revise the GICS Data Dictionary and appropriate screens in the Automated Grants Document Systems to make all standard closeout data elements universally available.

COMP-LTR-SENT-CODE/DATE

A code indicating the most recent completion/follow-up letter sent to the recipient

For purposes of Closeout the following codes are applicable:

- **A** Pre-completion reminder mailed
- **B** Completion reminder mailed
- **C** Reminder(s) to signatory of agreement
- **D** Warning to President/chief officer of recipient organization
- **X** Final determination recommendation prepared by Grants Operations Branch and forwarded for required approvals/concurrences

FINANCIAL-STATUS-CODE/DATE

A code indicating the status of the final financial status report (report of expenditures) submitted by the recipient. The date related to this code is contained in Final Financial Status Report Date (Ref No M5-A, Financial-Status-Date).

For purposes of Closeout the following codes are applicable:

- **DE** Financial status report approved; FMC, Las Vegas requested to deobligate
- **DR** Financial status report approved; EPA owes recipient; Recipient advised to draw down
- **NA** Not applicable to this project/budget period
- **OU** Financial status report approved; Recipient owes EPA; Requested to submit refund or adjust letter of credit
- **PU** Financial status report approved; Recipient has paid EPA
- **RA** Received an acceptable/approved report; Zero unobligated balance
- **RP** Received report/acceptability to be determined
- **RU** Received an unacceptable report; Follow-up to recipient initiated

PERS-PROPERTY-CODE/DATE

A code indicating the status of the personal property or equipment inventory purchased under a grant. The date related to this code is contained in Personal Property Inventory Date (Ref No L2-A, Pers-Property-Date).

For purposes of Closeout the following codes are applicable:

DI Disposition instructions issued; further action required
DW Disposition instructions being withheld by Grants Administration Staff
DX Disposition instructions executed/completed; no further property action required
NA Not applicable to this project
PD Project Officer provided disposition recommendation
PR Project Officer received report; Grants Administration staff awaiting disposition recommendation
RF Received and forwarded to Project Officer
RN Received negative report
RP Received positive report

REAL-PROPERTY-CODE/DATE

A code indicating the status of the real property inventory purchased under a grant. The date related to this code is contained in Real Property Inventory Date (Ref No L7-A, Real-Property-Date).

For purposes of Closeout the following codes are applicable:

DI Disposition instructions issued; further action required
DW Disposition instructions being withheld
DX Disposition instructions executed/completed; no further property action required
NA Not applicable to this project
PD Project Officer provided disposition recommendation
PR Project Officer received report; awaiting disposition recommendation
RF Received and forwarded to Project Officer
RN Received negative report
RP Received positive report

INVENTION-CODE/DATE

A code indicating the status of the invention report. The date related to this code is contained in Invention Report Status Date.

For purposes of Closeout the following codes are applicable:

NA Not applicable to this project/budget period
RF Received and forwarded to Office of General Counsel
RN Received negative report
RP Received positive report

FINAL-REPORT-CODE/DATE

A code indicating the status of the final report. The date related to this code is contained in Final Report Status Date (Ref No L8-A, Final-Report-Date).

For purposes of Closeout the following codes are applicable:

AA Report approved; confirmation in official project file; EPA Report Publication Number assigned and recorded in Report Publication Number (Ref No 40-A, Publication-No)
NA Not applicable to this project
PR Project Officer received report; awaiting peer review/approval; (Consider applicability of entering code "FR" in Action Step Code (Ref No 23-A, Action-Code) and date in Action Step Date (Ref No 24-A, Action-Date))
RF Received and forwarded to Project Officer
RU Received an unacceptable report; follow-up to recipient initiated

AUDIT-REQUEST-DATE

The date of the request for a financial audit of a non-Construction grant. Use of this element is limited to grants meeting certain select criteria and is not applicable to Single Audits. For Regions using Audit Request Code (Audit-Request-Code, Ref No N8-A), this is the date related to the code contained in that element.

Positions 1-2 - Year
- 3-4 - Month
- 5-6 - Day

AUDITS-RESULTS-CODE

A code indicating the status of the completion of the financial audit of a non-Construction grant. This element is not used for Single Audits. The date related to this code is contained in Audit Completion Date (Ref No N9-A, Audit-Results-Date).

For purposes of Closeout the following codes are applicable:

CA Cost analysis
FA Final audit
IA Interim audit
RN Received notice of cancellation of audit request
RP Received audit report

FINAL-AUDIT-DATE

The date a final audit is resolved satisfactorily.

Positions 1-2 - Year
" 3-4 - Month
" 5-6 - Day

ACTION-CODE/DATE

A code which identifies the current status and/or disposition of a prospective project, application, or active or completed project for which financial assistance has been requested or given. Codes are from the GICS-ACTION-CODE-TABLE [not GICS-ACTION-CODE-NON-TABLE] The date related to this code is contained in Action Step Date.

For purposes of Closeout the following codes are applicable:

FA Completion of all administrative work connected with an assistance agreement by the administering office. Applicable only to WWT Construction and State Revolving Fund (Project level).

FC Completed assistance agreement closed o For EPA assistance agreements, letter issued by EPA to the recipient closing out the agreement.

FD Project completion: For assistance programs administered in Headquarters, the award official (Chief, Grants Operations Branch) has issued final determination to the recipient.

FR Project close-out complete except for approval of final project report and final disposition of property, if any. Applicable only to assistance programs administered in Headquarters.

FT Assistance terminated by EPA before completion. Termination letter sent from Grants Operations Branch or appropriate Regional grants administration staff to the recipient.

GICS SCREENS FOR CLOSING OUT CONSTRUCTION GRANTS

Closeout milestones for construction grants are found on a number of different screens in GICS. Screens include:

- Post Award/Targeting (PTN) which tracks the completion of certain activities such as WWT Start, Initiation of Operation, development of the O&M Manual, Initiation of Administrative Completion.

- Project Completion (PCN) which tracks a grant's progress through Physical Completion and Administrative Completion.

- Payment Data (PDN) which tracks cumulative payment data.

Because Construction Grants is a delegated program, data entry can take place at the delegated State or in the Regional office. Regional procedures vary greatly.

APPENDIX C

Types of Construction Grant Awards

Step 1: Development of a facilities plan. No new awards were issued after 12/29/81. It is EPA policy that all Step 1 projects should have been completed by 9/30/85.

Step 2: Preparation of plans and specifications for a treatment works. No new awards were issued after 12/29/81. It is EPA policy that all step 2 projects should have been completed by 9/30/85.

Step 3: Building of treatment works and related services and supplies.

Step 2 + 3: Combination design and building of a treatment works and building related services and supplies.

Step 7: Combination design and building of a treatment works wherein a grantee awards a single contract for designing and building a treatment works.

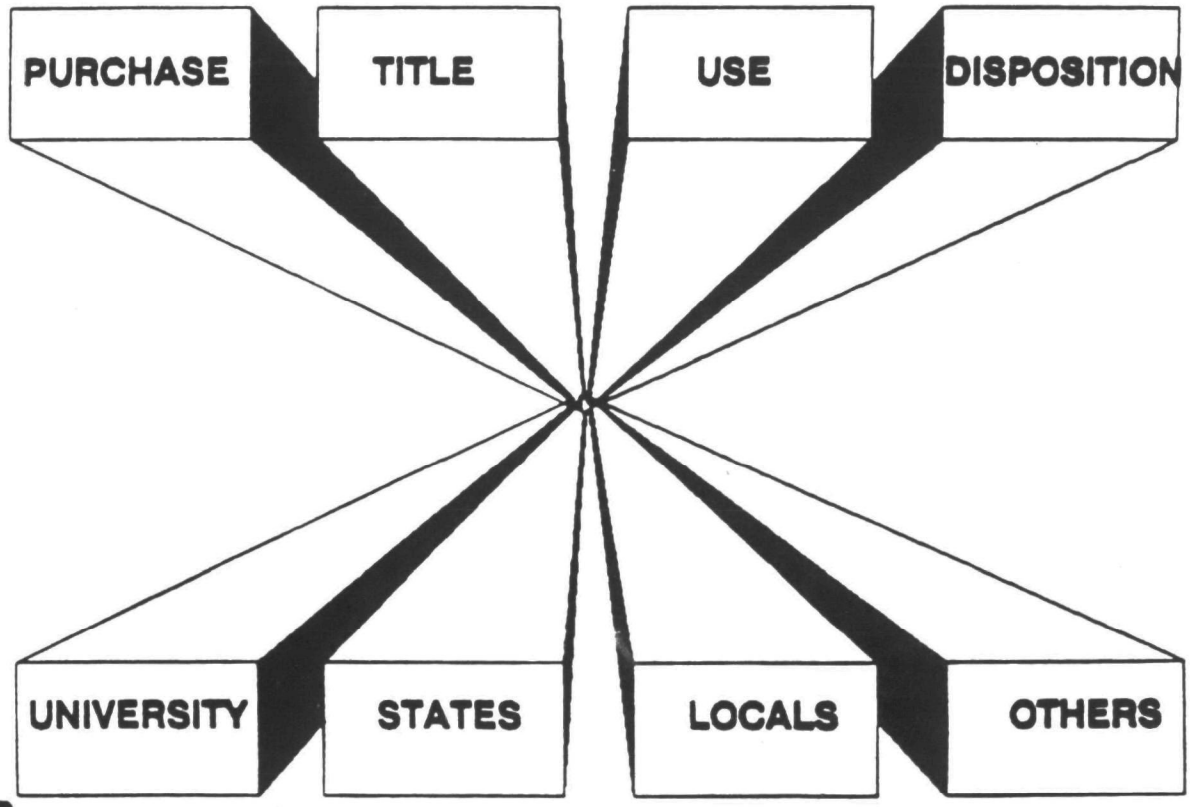
Step 9: Construction of a State training wastewater facility combining design and building for operations and maintenance personnel.

APPENDIX U

APPENDIX U

PERSONAL PROPERTY UNDER EPA ASSISTANCE AGREEMENTS

PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS



PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS

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PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS

NON-PROFIT INSTITUTIONS OF HIGHER EDUCATION conducting basic or applied research and NON-PROFIT ORGANIZATIONS whose primary purpose is the conduct of scientific research [40 CFR Part 30]

A. Purchase

1. The recipient may purchase personal property if authorized to do so in the assistance agreement.

2. If a piece costs $10,000 or more the recipient must receive the Award Official's prior approval.

3. Title is vested in the recipient subject to the following:

   a. EPA may reserve the right to transfer title for property with an acquisition cost of $1,000 or more to the Government or a third party any time within the life of the project or within 120 days after project completion. EPA must identify this property in the assistance agreement or otherwise in writing.

   b. If EPA does not reserve the right to transfer title, the recipient has no other obligations or accountability to EPA.

B. Disposition

1. Non-expendable personal property with a unit acquisition cost of less than $1,000

   a. The recipient has no accountability to EPA.

2. Non-expendable personal property with a unit acquisition cost of greater than $1,000

   a. If EPA reserves the right to transfer title to the Federal Government or a third party

      1) EPA must instruct the recipient to ship the property, and;

      2) EPA must reimburse the recipient for its proportionate share of the fair market value of the property, plus reasonable shipping and storage costs.

3. Expendable personal property

   a. The recipient has no accountability to EPA.

PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS

STATE GOVERNMENTS [40 CFR Part 31]

A. Title

1. Title to equipment is vested in the recipient subject to the following:

   a. EPA may reserve the right to transfer title for property to the Federal Government or a third party any time within the life of the project or within 120 days after project completion. EPA must identify this property in the assistance agreement or otherwise in writing.

B. Use, Management and Disposition

1. A State will use, manage, and dispose of equipment acquired under assistance in accordance with State laws and procedures.

2. When title to equipment is transferred, by EPA, the recipient shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

C. Supplies

1. Title to supplies acquired under an assistance project will vest, upon acquisition, in the recipient.

2. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and the supplies are not needed on other Federally sponsored activities, the recipient shall compensate the awarding agency for its share.

PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS

LOCAL GOVERNMENTS [40 CFR Part 31]

A. Title

1. Title to equipment is vested in the recipient subject to the following:

   a. EPA may reserve the right to transfer title for property to the Federal Government or a third party any time within the life of the project or within 120 days after project completion. EPA must identify this property in the assistance agreement or otherwise in writing.

B. Use

1. Equipment shall be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program is supported by Federal funds.

2. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

3. The recipient must follow the Property Management Standards of 40 CFR 31.32 (d).

C. Supplies

1. Title to supplies acquired under an assistance project will vest, upon acquisition, in the recipient.

2. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and the supplies are not needed on other Federally sponsored activities, the recipient shall compensate the awarding agency for its share.

LOCAL GOVERNMENTS [40 CFR Part 31]

D. Disposition

1. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency:

   a. Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligations to EPA.

   b. Items of equipment with a current per-unit fair market value of $5,000 or more may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by EPA's share of the equipment.

   c. When title to equipment is transferred, by EPA, the recipient shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS

ALL OTHER RECIPIENTS [40 CFR Part 30]

A. Purchase

1. The recipient may purchase personal property if authorized to do so in the assistance agreement.

2. If a piece costs $10,000 or more the recipient must receive the Award Official's prior approval.

3. Title is vested in the recipient subject to the following:

   a. If the acquisition cost is $10,00 or more, the recipient must assure that EPA's interest is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code.

   b. The recipient must follow the Property Management Standards of 40 CFR 30.531.

   c. EPA may reserve the right to transfer title for property with an acquisition cost of $1,000 or more to the Government or a third party any time within the life of the project or within 120 days after project completion. EPA must identify this property in the assistance agreement.

   d. The recipient must follow disposition requirements of 40 CFR 30.532.

B. Use

1. For all personal property purchased with assistance funds, the recipient must adhere to the following:

   a. The property must be used in the EPA project for which it was acquired as long as needed, whether or not the project continues to be supported with EPA funds.

   b. If it is not needed on the original project the property can be used on other EPA project.

   c. If the recipient does not have other EPA projects the recipient may use the property for other Federally-funded projects.

PERSONAL PROPERTY UNDER EPA ASSISTANCE PROJECTS

ALL OTHER RECIPIENTS [40 CFR Part 30]

C. Disposition

1. If EPA reserves the right to transfer title of any non-expendable personal property with a unit acquisition cost of greater than $1,000 to the Federal Government or a third party;

   a. EPA must instruct the recipient to ship the property, and;

   b. EPA must reimburse the recipient for its proportionate share of the fair market value of the property, plus reasonable shipping and storage costs.

2. If the recipient wishes to use the property on other than Federally funded activities, it must follow these rules for disposition:

   a. Non-expendable personal property with a unit acquisition cost of less than $1,000

      1) The recipient, except for a profit maker, may keep the property or sell it and keep the proceeds. There is no further accountability to EPA.

      2) If profit making organizations keep the property or sell it they must reimburse EPA for its proportionate share of the current fair market value.

   b. Non-expendable personal property with a unit acquisition cost of $1,000 or more

      1) The recipient may keep the property, provided they compensate EPA for its proportionate share of the current fair market value.

   c. Expendable personal property with a total aggregate fair market value of $1,000 or more

      1) The recipient may keep the property or sell it if EPA is reimbursed for its proportionate share of the current fair market value.

ALL OTHER RECIPIENTS [40 CFR Part 30]

C. Disposition (continued)

3. If neither the recipient nor EPA has a need for the property, EPA must report the fact to the General Services Administration to determine whether a need exists in another Federal agency.

   a. If a need exists elsewhere, the recipient will be instructed where to ship the property and will be reimbursed for its proportionate share, plus reasonable shipping and storage costs.

   b. If the property is not needed elsewhere, the recipient must sell it and reimburse EPA for its proportionate share of the sales proceeds less any reasonable handling expenses.

APPENDIX V

APPENDIX V

EPA ORDER 2200.4, "REVIEW PROCESS FOR SCIENTIFIC, INFORMATIONAL AND EDUCATIONAL DOCUMENTS"

ENVIRONMENTAL PROTECTION AGENCY

TRANSMITTAL

Address

2200.4

December 28, 1982

PUBLICATIONS AND COMMUNICATIONS MATERIALS - GENERAL

MATERIAL TRANSMITTED:

EPA Order No. 2200.4 - Review Process for Scientific, Informational and Educational Documents.

MATERIAL SUPERSEDED:

None.

FILING INSTRUCTIONS:

File the attached material in numerical order in a three-ring binder established for EPA Directives System.

John P. Horton
Assistant Administrator for Administration

Dist: Directives

ENVIRONMENTAL PROTECTION AGENCY

ORDER

2200.4

PUBLICATIONS AND COMMUNICATIONS MATERIALS - GENERAL

REVIEW PROCESS FOR SCIENTIFIC, INFORMATIONAL AND EDUCATIONAL DOCUMENTS

1. PURPOSE.

a. This Order establishes Agency policy on reviewing scientific, informational or educational materials. The purpose of this review process is to protect the technical and scientific quality of these types of public materials distributed by the Environmental Protection Agency, and ensure that they are based on the best scientific and technical evidence available. Such a review process will further engender the respect and recognition deserved by Agency scientists and staff.

b. The process will provide a clearly defined route for the expeditious review and approval of the publications before their public release. The goal is to establish Agency responsibility for literature published in its name and by its employees when they are acting in an official capacity. This document will not be construed as constituting any suggestion of constraints on the free expression of Agency employees.

c. This Order is intended to supplement other applicable guidelines and recommendations, and supersedes other directives only to the extent that it is inconsistent with them. Any program area or office may adopt procedures consistent with this Order to meet its specific needs.

2. DOCUMENTS SUBJECT TO REVIEW.

a. The review process described in Paragraph 5 is applicable to all scientific, informational, or educational publications, designed for public distribution and created by an EPA employee, contractor, grantee or consultant with the exceptions of:

(1) Congressional testimony;

(2) verbatim testimony from hearings;

(3) Advance Notices of Proposed Rulemakings (ANPRM's), proposed or final regulations subject to a formal comment period;

(4) press releases approved by the Office of Public Affairs within the Office of the Administrator;

(5) legal opinions, briefs or memoranda, including initial, final, or other decisions in quasi-judicial administrative proceedings;

(6) Federal Register Notices;

(7) Notices of Public Hearings;

(8) Request for Proposals;

(9) publications by EPA employees proposed for scientific journals which incorporate peer review (inclusion of a disclaimer statement is appropriate when policy issues are incorporated in the article);

(10) Criteria Documents or other similar documents subject to a formal public comment period or review by the Science Advisory Board or the Science Advisory Panel;

(11) advisory committee statements and reports;

(12) materials generated on an employee's own time using private facilities;

(13) internal policy statements or memoranda; and

(14) official Agency correspondence.

3. APPLICABILITY. These guidelines are applicable to employees acting in an official capacity related to their work for the Agency. They are also applicable to EPA contractors, consultants, and grantees to the extent provided for in their agreement with EPA. Publications by EPA employees are subject to review if they are generated on Agency time or are based on materials derived from EPA supported activities. This Order does not provide for, nor describe, all of the steps in the publication process; it is designed to outline the review procedures. This Order should not be construed to conflict with the disclosure provisions of the Freedom of Information Act.

4. DEFINITIONS.

a. The term "publication" includes all EPA generated materials that may be released in mass to the general public, including:

(1) written statements needed to satisfy a statutory or regulatory requirement;

(2) published or unpublished books, manuals, and research reports;

(3) informational brochures or materials and newsletters or other periodic reports;

(4) publications by EPA employees proposed for outside journals other than those that incorporate peer review;

(5) project reports and other materials filed with the National Technical Information Service (NTIS);

(6) EPA published proceedings resulting from Agency sponsored conferences, workshops, and seminars (papers by non-EPA employees should go through this peer review process or contain an adequate disclaimer);

(7) contributions made to publications by interagency working groups where authorship is to be attributed to EPA or its employees (these publications should go through this peer review process or contain an adequate disclaimer);

(8) audiovisual materials designed to be released to the general public in other than a single presentation; or,

(9) computer software designed for release to the general public.

5. PROCEDURES.

a. Initiation of the Review Process.

(1) The review process is initiated when the author (hereinafter includes authors) submits a publication to his/her immediate supervisor or office director for review, together with recommendations for at least two peer reviewers who should be specialists in the subject. The author may request that a reasonable review schedule be established to ensure timely processing.

(2) The manuscript should be in near-finished form to the satisfaction of the author. Typically, it should be in a double-spaced, typed format with all of the necessary tables, charts, illustrations and figures attached. A designated supervisor evaluates the text and forwards it to, usually, the author's recommended reviewers for scientific and technical review. Reviews may be done simultaneously in order to reduce the time required.

(3) Additional review by other EPA offices and laboratories may be requested by any office through which a publication must pass enroute to its final publication form.

b. Peer Review.

(1) Peer review is designed to identify weak, doubtful, ambiguous or unsupportable statements or conclusions. The peer reviewer is expected to evaluate the manuscript for general content, organization and scope, presentation and quality of data, validity of analytical techniques, soundness of conclusions, and consistency of the text with tables, figures, illustrations and maps.

(2) A reviewer should use marginal notes or interlineations on the draft publication to indicate suggested changes or questions. Where suggestions are numerous or complex, or where more serious questions arise, an attached memorandum is appropriate. Marked-up drafts, and accompanying statements from reviewers, are returned directly to the author unless other directions are provided.

(3) Reviews should be completed in a reasonably prompt fashion. Peer-reviewers and those in the administrative chain should make every attempt to meet the proposed time schedule. A goal would be for review from the office director level up through the Associate, Assistant or Regional Administrator level to be completed within two weeks. Refusal at any level of management to approve a document may be appealed once to the next higher level of management.

c. Redrafting.

(1) The author should make efforts to give thoughtful consideration to and to accommodate the comments provided by reviewers in modifying and redrafting of the text. In preparing a revised draft, acceptable changes and corrections should be incorporated. If only relatively minor differences of opinions on scientific or technical issues exist between the author and reviewers, the author should briefly explain his positions on the revised draft when it is sent out for re-review. The author should also indicate changes that may or may not have been made so as to alert the reviewers of a revised draft.

(2) Where substantial differences or misunderstandings occur, the author should explain his/her views in more formal comments in a memorandum attached to the revised draft of the manuscript. Informal consultation and discussion between reviewers and author are highly desirable in order to clarify points of view and to facilitate agreement when significant differences arise.

(3) The review process is repeated until the author feels that the proposed publication is ready for submission for final administrative and technical review. At this point, statements of concurrence and the signature of the designated peer reviewers should be attached to the text. In cases where the author has not reached a consensus with the reviewers, comments on the nature of their differences, prepared by the reviewers, should be attached to the text and transmitted to subsequent administrative levels for review.

d. Administrative Review.

(1) The prepared publication should then be submitted to the office director level for review. This office is expected to provide final approval for technical and scientific soundness and overall organization and presentation of data.

(2) At this level, or if appropriate at a lower level, a memorandum outlining any expenditures, and sources of funds or priorities, or unusual conditions should be attached. This memo should also include plans for publication, dates, and the anticipated number of copies, as well as the purpose of the publication, the intended audience, a full description of the proposed format (i.e., size, number of pages, design and color) and/or a mockup of the finished product.

(3) The publication and accompanying memorandum then move to the Associate, Assistant or Regional Administrator who has final authority on deciding whether the document is a "major" document which then must be reviewed by the Science Advisor and/or the Office of Public Affairs. In the Office of the Administrator, the office director will have responsibility for the document and make this decision. In some cases, certain documents will be reviewed by both the Science Advisor and the Office of Public Affairs.

(4) All documents which are not "major" should be carefully examined before publication as to their technical and scientific credence and quality. The Associate, Assistant, or Regional Administrator is responsible for these documents with regard to conformity with budgetary and quality guidelines.

e. Review by the Science Advisor

(1) If a document of any cost contains significant scientific or technical uncertainties, it becomes a "major" document subject to review by the Science Advisor or his designated representatives. The Associate, Assistant, or Regional Administrator in whose program, region, or office the document originates, is responsible for determining if the document contains scientific or technical uncertainties. The latter may be determined by examination of peer reviewers' comments and any attachments submitted by the author or reviewers.

(2) The Science Advisor, or his designated representatives, will review the manuscript on behalf of the Administrator. The Science Advisor may send manuscripts related to technical issues to other senior officials in the Agency for additional internal review. Those manuscripts of a complex technical nature may be sent to selected experts outside the Agency for confidential review.

(3) The Science Advisor, or his designate, will review documents for general scientific and technical content, clarity, logic, consistency, soundness of conclusions, organization and scope, presentation and quality of data, validity of analytical techniques and overall conformity with research and publication aims of the Agency. The Science Advisor will develop systems for review, for report of comments to the author, and for notifying program areas of the final decision regarding the publication.

f. Administrative and Technical Review by the Office of Public Affairs

(1) If a document falls into any of the following categories, it is a "major" document subject to review by the Office of Public Affairs:

- any material of any cost that has policy implications. The Associate, Assistant, or Regional Administrator in whose program, region, or office the documents originated, is responsible for determining if a report has policy implications;

- any product from a project funded at $50,000 or more;

- any single product that costs $10,000 or more to print;

- any category or series of reports that costs $25,000 or more a year to print; or,

- any periodical as defined by OMB Circular A-3.

(2) The Director of the Office of Public Affairs, or his designated representatives, will review the manuscript on behalf of the Administrator. The Director of the Office of Public Affairs may send manuscripts related to policy issues to other senior officials in the Agency for additional internal review.

(3) The Office of Public Affairs will review both technical and non-technical information materials for conformity with EPA's Public Information Policy and Graphics Standards System. The Office of Public Affairs will oversee the entire publication and printing system for major documents of the Agency to ensure consistency and to avoid duplication. The Office of Public Affairs will also be responsible for approving the mechanical matters of distribution, manner of printed presentation, conformity to budget requirements, and overall consistency with Agency goals. The Office of Public Affairs will develop systems for review, for report of comments to the author, and for notifying program areas of the final decision regarding the publication.

g. Approval and Publication Process

(1) The final manuscript, if approved by the Associate, Assistant, or Regional Administrator is returned to the author for appropriate distribution or publication. "Major" documents must be approved by the Science Advisor and/or the Office of Public Affairs prior to publication. Following such approval, each administrative office that participated in the review process will be notified of the action. The author is responsible for ensuring publication and distribution in accordance with guidelines established by the Office of Public Affairs.

(2) Papers prepared for publication for outside journals are returned to the author after appropriate approval. Each administrative office that participated in the review process will be notified of this action. The author is responsible for mailing the text to the outside journal and for supplying appropriate offices in the Agency with depository copies. At this point, the paper may be distributed by the author to the general public.

(3) In the event of an unfavorable review by OPA and/or the Science Advisor, the manuscript is returned to the originating office or the author as is appropriate. All comments should be addressed and necessary revisions made.

h. Products of External Contracts and Grants.

(1) EPA encourages the independent publication of the results of its contract and grant research in appropriate scientific journals as an important method of recording and reporting scientific information. Any journal article so published must, however, contain the following statement:

> "Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency through contract or grant (number) to (name), it has not been subjected to the Agency's required peer and policy review and therefore does not necessarily reflect the views of the Agency and no official endorsement should be inferred."

(2) When an author receiving a contract or grant from EPA sends out a paper for publication, a courtesy copy should also be sent to the EPA Project Officer who will forward it to the appropriate Office Director, Associate, Assistant, or Regional Administrator, and the Science Advisor. Following publication, copies of the journal paper should be submitted to addressees in quantities as may be directed by the Project Officer. Provisions to ensure EPA receipt of journal papers by contractors or grantees should be included in research agreements.

(3) Informational materials, reports, and other products produced under an EPA contract, grant, or cooperative agreement should go through a comparable system of review prior to their release to the public as an EPA publication or product. The Project Officer is responsible for insuring that adequate EPA review consistent with the rights and data clauses of EPA contracts, grants or cooperative agreements is conducted, including approvals by appropriate Associate, Assistant, or Regional Administrators and the Science Advisor and/or Office of Public Affairs, if necessary. Grant officers developing grants which involve public information/public participation activities should encourage the use of cooperative agreements which enable EPA to require the grantees to submit their material for review and/or approval prior to its completion and distribution.

Anne M. Gorsuch
Administrator 12/29/81

APPENDIX W

APPENDIX W

SAMPLE INTERAGENCY AGREEMENT

United States Environmental Protection Agency
Washington DC 20460

EPA

Interagency Agreement / Amendment

Part I - General Information

1. EPA / IAG Identification Number	4. Funding Location by Region
DW14936141-01-0	XI
2. Other Agency ID Number	**5. Program Office Abbreviation**
	ERL/COR
3. Type of Action	
NEW	

6. Name and Address of EPA Organization
ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL RESEARCH LABORATORY
200 S.W. 35TH STREET
CORVALLIS, OR 97333

7. Name and Address of Other Agency
INTERIOR, DEPARTMENT OF THE
US GEOLOGICAL SURVEY, WATER RESOURCES
DIVISION, P.O. BOX 1350
ALBANY, NY 12201

8. Project Title Stream Discharge and Water Quality in the Catskill Mountains of New York

9. EPA Project Officer (Name, Address, Telephone Number)
PAULSEN, STEVEN
EPA/ERL
200 S.W. 35TH STREET
CORVALLIS, OR 97333
(503) 754-4428

10. Other Agency Project Officer (Name, Address, Telephone Number)
MURDOCH, PETER S.
DOI/USGS/WRD
P. O. BOX 1397
ALBANY, NY 12201
(518) 472-4574

11. Project Period
03/01/93 to 02/28/96

12. Budget Period
03/01/93 to 09/30/94

13. Scope of Work (Attach additional sheets, as needed)

See attached proposal. The attached proposal contains the scope of work for this agreement.

SIGNED ACCEPTANCE FOR THIS AGREEMENT MUST BE RETURNED
TO ADDRESS IN ITEM 29, PAGE 3 OF THIS EPA FORM

The EPA Grants Specialist for thisIAG is Joseph Faria, (202) 260-8276

Date: 09/09/93 by S.WAUGH

14. Statutory Authority for Both Transfer of Funds and Project Activities
ECONOMY ACT OF 1932 AS AMENDED

15. Other Agency Type
FEDERAL

FUNDS	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
16. EPA Amount	0	51,500	
17. EPA In-Kind Amount	0	0	
18. Other Agency Amount	0	0	
19. Other Agency In-Kind Amount	0	0	
20. Total Project Cost	0	51,500	

Fiscal Information

Program Element	FY	Appropriation	Doc. Control No.	Account Number	Object Class	Obligation/Deoblig. Amt.
CC2A1E	93	683/40107	MW0108	3CC226M014	25.71	51,500

Part II - Approved Budget

EPA IAG Identification Number: DW14936141-01-0

22. Budget Categories	Itemization of This Action	Itemization of Total Project Estimated Cost to Date
(a) Personnel	9,902	9,902
(b) Fringe Benefits	0	0
(c) Travel	1,600	1,600
(d) Equipment	0	0
(e) Supplies	750	750
(f) Procurement / Assistance	3,700	3,700
(g) Construction	0	0
(h) Other	6,450	6,450
(i) Total Direct Charges	22,402	22,402
(j) Indirect Costs: Rate _____ Base $ _____	29,098	29,098
(k) Total: (EPA Share: 100.00%) (Other Agency Share 0.00%)	51,500	51,500

23. Is Equipment authorized to be furnished by EPA or leased, purchased, or rented with EPA funds? (Identify all equipment costing $1000 or more.) ☐ Yes ☒ No

24. Are any of these funds being used on extramural agreements? (See item 22f.) ☒ Yes ☐ No

Type of extramural agreement ☐ Grant ☐ Cooperative Agreement ☒ Procurement (includes Small Purchase Order)

Contractor / Recipient Name (If known)	Total Extramural Amount under this Project	Percent Funded by EPA (If known)
UNKNOWN AT THIS TIME	3,700	100.00

Part III - Funding Methods and Billing Instructions

25.

☒ Funds-Out Agreement (Note: EPA Agency Location Code (ALC) - 68010727)

☒ Disbursement Agreement

☒ Repayment Request for repayment of actual costs must be itemized on SF-1080 and submitted to the Financial Management Office, Cincinnati, OH 45268:

☐ Monthly ☒ Quarterly ☐ Upon Completion of Work

☐ Advance Only available for use by Federal agencies on working capital fund or with appropriate justification of need for this type of payment method. Unexpended funds at completion of work will be returned to EPA. Quarterly cost reports will be forwarded to the Financial Management Center, EPA, Cincinnati, OH 45268.

☐ Allocation Transfer-Out Used to transfer obligational authority or transfer of function between Federal agencies. Must receive prior approval by the Office of the Comptroller, Budget Division, Budget Formulation and Control Branch, EPA Hdqtrs. Forward appropriate reports to the Financial Reports and Analysis Branch, Financial Management Division, PM-226F, EPA, Washington, DC 20460.

26. ☐ Funds-In Agreement

☐ Reimbursement Agreement ☐ Repayment ☐ Advance

☐ Allocation Transfer-In

Other Agency's IAG Identification Number	EPA Program Office Allowance Holder/Resp. Center No.
	26M
Other Agency's Billing Address *(Include ALC or Station Symbol Number)*	**Other Agency's Billing Instruction and Frequency**

Part IV - Acceptance Conditions

EPA IAG Identification Number: DW14936141-01-0

27 General Conditions

The other agency covenants and agrees that it will expeditiously initiate and complete the project for which funds have been awarded under this agreement.

28. Special Conditions *(Attach additional sheets if needed)*

EPA will only honor requests for payment up the amount specified for this project.

Any document produced under the terms of this agreement is subject to the review policies of the EPA.

See attached indirect cost certification and DBE

Part V - Offer and Acceptance

Note: 1) For Funds-out actions, the agreement/amendment must be signed by the other agency official in duplicate and one original returned to the Grants Administration Division for Headquarters agreements or to the appropriate EPA Regional IAG administration office within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. The agreement/amendment must be forwarded to the address cited in Item 29 after acceptance signature.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time may result in the withdrawal of the offer by EPA. Any change to the agreement/amendment by the other agency subsequent to the document being signed by the EPA Action Official, which the Action Official determines to materially alter the agreement/amendment, shall void the agreement/amendment

2) For Funds-in actions, the other agency will initiate the action and forward two original agreements/amendments to the appropriate EPA program office for signature. The agreements/amendments will then be forwarded to the appropriate EPA IAG administration office for acceptance signature on behalf of the EPA. One original copy will be returned to the other agency after acceptance.

EPA IAG Administration Office (for administrative assistance)	EPA Program Office (for technical assistance)
29 Organization/Address Grants Information & Analysis Branch Grants Admin. Div., U.S. EPA 401 M Street, S.W. (3903F) Washington, DC 20460	30. Organization/Address Corvallis Environmental Research Lab. U.S. Environmental Protection Agency 200 S.W. 35th Street Corvallis, OR 97333

Certification

All signers certify that the statements made on this form and all attachments thereto are true, accurate, and complete. Signers acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.

Decision Official on Behalf of the Environmental Protection Agency Program Office

31 Signature	Typed Name and Title	Date
	Thomas A. Murphy Director, ERL-Corvallis	9/15/93

Action Official on Behalf of the Environmental Protection Agency

32 Signature	Typed Name and Title	Date
	W. Scott McMoran, Chief Grants Info. & Analysis Br. GAD	9/5/93

Authorizing Official on Behalf of the Other Agency

33 Signature	Typed Name and Title	Date
	L. Grady Moore, District Chief	9/14/93

DW14936141-01-0

DBE Special Condition

EPA's policy requires at least 8% of its Federal funding for prime and subcontracts be awarded to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals.

As a recipient of monies under this IAG, the Department of the Interior/U.S. Geological Survey must ensure to the fullest extend possible that at least 8% of funds for prime or subcontracts and subgrants for services are made available to businesses owned or controlled by socially and economically disadvantage individuals, women-owned businesses, and Historically Black Colleges and Universities. (DBE)

The Department of the Interior/USGS must submit a report to EPA showing the total extramural funds awarded and the amount and percentage of extramural funds awarded to DBEs by November 15th of current year. Reports should be submitted to:

Office of Small and Disadvantage
Business Utilization (A-149C)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

The Department of the Interior/U.S. Geological Survey certifies: 1) that any indirect costs included in billings to EPA represent, in accordance with GAO principles, indirect costs that are funded out of the Department of the Interior's currently available appropriations and that bear a significant relationship to the performing of the service or work, or 2) that statutory authority exists for charging other than these costs of performance. If an audit determines that any direct or indirect costs charged to EPA are unallowable, EPA will be notified immediately following the resolution of the audit and EPA will be credited for those costs.

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SUBJECT INDEX

SUBJECT INDEX

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GLOSSARY

GLOSSARY/DEFINITIONS

1. ACCRUED EXPENDITURES: THE CHARGES INCURRED BY THE RECIPIENT DURING A GIVEN PERIOD REQUIRING THE PROVISION OF FUNDS FOR (1) GOODS AND OTHER TANGIBLE PROPERTY RECEIVED; (2) SERVICES PERFORMED BY EMPLOYEES, CONTRACTORS, SUBRECIPIENTS, AND OTHER PAYEES, AND (3) OTHER AMOUNTS BECOMING OWED UNDER PROGRAMS FOR WHICH NO CURRENT SERVICES OR PERFORMANCE IS REQUIRED (SUCH AS ANNUITIES, INSURANCE CLAIMS, AND OTHER BENEFIT PAYMENTS. (A-102 & A-110)

2. ACCRUED INCOME: THE SUM OF: (1) EARNINGS DURING A GIVEN PERIOD FROM SERVICES PERFORMED BY THE RECIPIENT AND GOODS AND OTHER TANGIBLE PROPERTY DELIVERED TO PURCHASERS, AND (2) AMOUNTS BECOMING OWED TO THE RECIPIENT FOR WHICH NO CURRENT SERVICES OR PERFORMANCE IS REQUIRED BY THE RECIPIENT. (A-102 & A-110)

3. ACQUISITION COST OF EQUIPMENT: THE NET INVOICE UNIT PRICE OF THE EQUIPMENT, INCLUDING THE COST OF MODIFICATIONS, ATTACHMENTS, ACCESSORIES, OR AUXILIARY APPARATUS NECESSARY TO MAKE THE PROPERTY USABLE FOR THE PURPOSE FOR WHICH IT WAS ACQUIRED. OTHER CHARGES SUCH AS THE COST OF INSTALLATION, TRANSPORTATION, TAXES, DUTY OR PROTECTIVE IN-TRANSIT INSURANCE, SHALL BE INCLUDED OR EXCLUDED FROM THE UNIT ACQUISITION COST IN ACCORDANCE WITH THE RECIPIENT'S REGULAR ACCOUNTING PRACTICES. (A-102 & A-110)

4. ADMINISTRATIVE REQUIREMENTS: THOSE MATTERS COMMON TO GRANTS IN GENERAL, SUCH AS FINANCIAL MANAGEMENT, KINDS AND FREQUENCY OF REPORTS, AND RETENTION OF RECORDS. THESE ARE DISTINGUISHED FROM PROGRAMMATIC REQUIREMENTS, WHICH CONCERN MATTERS THAT CAN BE TREATED ONLY ON A PROGRAM-BY-PROGRAM OR GRANT-BY-GRANT BASIS, SUCH AS KINDS OF ACTIVITIES THAT CAN BE SUPPORTED BY GRANTS UNDER A PARTICULAR PROGRAM. (A-102)

5. ADVANCE: A PAYMENT MADE BY TREASURY CHECK OR OTHER APPROPRIATE PAYMENT MECHANISM TO A RECIPIENT UPON ITS REQUEST EITHER BEFORE OUTLAYS ARE MADE BY THE RECIPIENT OR THROUGH THE USE OF PREDETERMINED PAYMENT SCHEDULES. (A-110)

6. ALLOCABLE COSTS: COSTS THAT ARE ALLOCABLE TO A PARTICULAR COST OBJECTIVE TO THE EXTENT BENEFITS RECEIVED BY SUCH OBJECTIVE. (A-87)

7. ALLOTMENT: AN AMOUNT REPRESENTING A STATE'S SHARE OF FUNDS REQUESTED IN THE PRESIDENT'S BUDGET OR APPROPRIATED BY CONGRESS FOR AN ENVIRONMENTAL PROGRAM, AS EPA DETERMINES AFTER CONSIDERING ANY FACTORS INDICATED BY 40 CFR PART 35--SUBPART A. THE ALLOTMENT IS NOT AN ENTITLEMENT BUT RATHER THE OBJECTIVE BASIS FOR DETERMINING THE RANGE FOR A STATE'S PLANNING TARGET. (40 CFR PART 35--SUBPART A)

8. ALLOWABLE COSTS: THOSE PROJECT COSTS THAT ARE: ELIGIBLE, REASONABLE, NECESSARY, AND ALLOCABLE TO THE PROJECT; PERMITTED BY THE APPROPRIATE FEDERAL COST PRINCIPLES, AND APPROVED BY EPA IN THE ASSISTANCE AGREEMENT. (40 CFR PART 30)

9. AMENDMENT: 1. FORMAL AMENDMENT: A WRITTEN MODIFICATION OF AN ASSISTANCE AGREEMENT SIGNED BY BOTH THE AWARD OFFICIAL AND THE AUTHORIZED REPRESENTATIVE OF THE RECIPIENT. (ASSISTANCE ADMINISTRATION MANUAL)

2. INFORMAL AMENDMENT: PROPOSED PROJECT CHANGE WHICH DOES NOT SUBSTANTIALLY ALTER THE OBJECTIVE OR SCOPE OF THE PROJECT.

10. APPLICANT: ANY ENTITY THAT FILES AN APPLICATION OR UNSOLICITED PROPOSAL FOR EPA FINANCIAL ASSISTANCE UNDER 40 CFR CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY, SUBCHAPTER A -- GENERAL. (40 CFR PART 30)

11. APPROVAL MEMO: A MEMO ORIGINATED BY THE PROJECT OFFICER AND CONCURRED IN BY THE IMMEDIATE SUPERVISOR WHICH DENOTES WORKPLAN AND FEDERAL FUNDING APPROVAL. (REGION 9)

12. APPROVAL OFFICIAL: AN EPA OFFICIAL DELEGATED THE AUTHORITY TO APPROVE OR REJECT APPLICATIONS FOR ASSISTANCE AND THE TECHNICAL/PROGRAMMATIC TERMS AND CONDITIONS OF PROPOSED ASSISTANCE PROJECTS. (ASSISTANCE ADMINISTRATION MANUAL)

13. ASSISTANCE AGREEMENT: THE LEGAL INSTRUMENT EPA USES TO TRANSFER MONEY, PROPERTY, SERVICES, OR ANYTHING OF VALUE TO A RECIPIENT TO ACCOMPLISH A PUBLIC PURPOSE. IT IS EITHER A GRANT OR A COOPERATIVE AGREEMENT AND WILL SPECIFY: BUDGET AND PROJECT PERIODS; THE FEDERAL SHARE OF ELIGIBLE PROJECT COSTS; A DESCRIPTION OF THE WORK TO BE ACCOMPLISHED, AND ANY TERMS AND CONDITIONS/SPECIAL CONDITIONS. (40 CFR PART 30)

14. AUTOMATED CLEARING HOUSE (ACH): ELECTRONIC WIRE TRANSFER SYSTEM TO PAY RECIPIENTS THROUGH THE FEDERAL RESERVE SYSTEM AND THEIR LOCAL BANK. (REPLACED FORMER LETTER OF CREDIT SYSTEM.)
(REGION 9)

15. AWARD: (SEE ALSO "ASSISTANCE AGREEMENT", "COOPERATIVE AGREEMENT", "GRANT", "GRANT AGREEMENT") FINANCIAL ASSISTANCE THAT PROVIDES SUPPORT OR STIMULATION TO ACCOMPLISH A PUBLIC PURPOSE. AWARDS INCLUDE GRANTS AND OTHER AGREEMENTS IN THE FORM OF MONEY OR PROPERTY IN LIEU OF MONEY BY THE FEDERAL GOVERNMENT TO AN ELIGIBLE RECIPIENT. THE TERM DOES NOT INCLUDE: TECHNICAL ASSISTANCE WHICH PROVIDES SERVICES INSTEAD OF MONEY, OTHER ASSISTANCE IN THE FORM OF LEANS, LOAN GUARANTEES, INTEREST SUBSIDIES, OR INSURANCE; DIRECT PAYMENTS OF ANY KIND TO INDIVIDUALS, AND CONTRACTS WHICH ARE REQUIRED TO BE ENTERED INTO AND ADMINISTERED UNDER PROCUREMENT LAWS AND REGULATIONS. (A-110)

16. AWARD OFFICIAL: THE EPA OFFICIAL WITH THE AUTHORITY TO EXECUTE ASSISTANCE AGREEMENTS AND TO TAKE OTHER ACTIONS AUTHORIZED BY 40 CFR CHAPTER I, SUBCHAPTER A AND BY EPA ORDERS. (40 CFR PART 30) (ASSISTANCE ADMINISTRATION MANUAL)

17. AWARDING AGENCY: (1) WITH RESPECT TO A GRANT, THE FEDERAL AGENCY, AND (2) WITH RESPECT TO A SUBGRANT, THE PARTY THAT AWARDED THE SUBGRANT. (A-102)

18. BUDGET PERIOD (SEE ALSO "FUNDING PERIOD"): THE LENGTH OF TIME EPA SPECIFIES IN AN ASSISTANCE AGREEMENT DURING WHICH THE RECIPIENT MAY EXPEND OR OBLIGATE FEDERAL FUNDS. (40 CFR PART 30)

19. CASH CONTRIBUTIONS: 1. THE RECIPIENT'S CASH OUTLAY, INCLUDING THE OUTLAY OF MONEY CONTRIBUTED TO THE RECIPIENT OR SUBRECIPIENT BY OTHER PUBLIC AGENCIES AND INSTITUTIONS, AND PRIVATE ORGANIZATIONS AND INDIVIDUALS (I.E., THIRD PARTIES). WHEN AUTHORIZED BY FEDERAL LEGISLATION, FEDERAL FUNDS RECEIVED FROM OTHER ASSISTANCE AGREEMENTS MAY BE CONSIDERED AS RECIPIENT OR SUBRECIPIENT CASH CONTRIBUTIONS. (A-102)

2. ACTUAL NON-FEDERAL DOLLARS THAT A RECIPIENT EXPENDED FOR GOODS AND SERVICES AND REAL OR PERSONAL PROPERTY USED TO SATISFY COST SHARING REQUIREMENTS. (SEE IN-KIND CONTRIBUTIONS.) (ASSISTANCE ADMINISTRATION MANUAL)

20. CLOSEOUT: 1. THE PROCESS BY WHICH A FEDERAL AWARDING AGENCY DETERMINES THAT ALL APPLICABLE ADMINISTRATIVE ACTIONS AND ALL REQUIRED WORK OF THE AWARD HAVE BEEN COMPLETED BY THE RECIPIENT AND FEDERAL AWARDING AGENCY. (A-110)

2. THE FINAL EPA ACTIONS TO ASSURE SATISFACTORY COMPLETION OF PROJECT WORK AND ADMINISTRATIVE REQUIREMENTS: THE SUBMISSION OF ACCEPTABLE REQUIRED FINAL REPORTS; FINANCIAL SETTLEMENT; THE RESOLUTION OF ANY OUTSTANDING ISSUES UNDER AN ASSISTANCE AGREEMENT, AND THE NOTIFICATION OF THE RECIPIENT. (ASSISTANCE ADMINISTRATION MANUAL)

21. CLOSEOUT MEMO: THE PROJECT OFFICER'S MEMO WHICH DOCUMENTS THEIR REVIEW OF THE RECIPIENT'S FINANCIAL STATUS REPORT AGAINST THEIR PERFORMANCE; STATES THAT PERFORMANCE HAS BEEN COMPLETED, AND IDENTIFIES THE DISPOSITION OF ANY REMAINING FEDERAL FUNDS. (REGION 9)

22. COGNIZANT AGENCY: THE FEDERAL AGENCY WHICH, ON BEHALF OF ALL FEDERAL AGENCIES, IS RESPONSIBLE FOR REVIEWING, NEGOTIATING, AND APPROVING COST ALLOCATION PLANS OR INDIRECT COST PROPOSALS DEVELOPED UNDER A-87. (A-87)

23. COMMITMENT: 1. THE OFFICIAL RESERVATION OF FUNDS AND AUTHORIZATION TO INCUR OBLIGATIONS. (ASSISTANCE ADMINISTRATION MANUAL)

2. A FORMAL ACTION TO RESERVE FUNDS FOR A SPECIFIC PURPOSE IN THE FUTURE (E.G., A GRANT/COOPERATIVE AGREEMENT). FOR FINANCIAL ASSISTANCE, THE COMMITMENT IS REFLECTED BY A COMMITMENT NOTICE. (REGION 9)

24. CONTINUATION: AN EXTENSION OF AN ASSISTANCE AGREEMENT FOR AN ADDITIONAL FUNDING/BUDGET PERIOD FOR A PROJECT THE AGENCY INITIALLY AGREED TO FUND FOR A DEFINITE NUMBER OF YEARS. (ASSISTANCE ADMINISTRATION MANUAL)

25. CONTINUATION AWARD: (SEE ALSO "RENEWAL") AN ASSISTANCE AGREEMENT AFTER THE INITIAL AWARD, FOR A PROJECT WHICH HAS MORE THAN ONE BUDGET PERIOD IN ITS APPROVED PROJECT PERIOD, OR ANNUAL AWARDS, AFTER THE FIRST AWARD, TO STATE, INTERSTATE, OR LOCAL AGENCIES FOR CONTINUING ENVIRONMENTAL PROGRAMS. (40 CFR PART 30)

26. CONTINUING ENVIRONMENTAL PROGRAM: A STATE/INTERSTATE/LOCAL ENVIRONMENTAL AGENCY POLLUTION CONTROL PROGRAM WHICH WILL NOT BE COMPLETED WITHIN A DEFINABLE TIME PERIOD. (SEE 40 CFR PART 35-SUBPART A.)

27. CONTINUING RESOLUTION: LEGISLATION ENACTED BY CONGRESS TO PROVIDE BUDGET AUTHORITY FOR FEDERAL AGENCIES AND/OR SPECIFIC ACTIVITIES TO CONTINUE IN OPERATION UNTIL THE REGULAR APPROPRIATIONS ARE ENACTED. CONTINUING RESOLUTIONS ARE ENACTED WHEN ACTION ON APPROPRIATIONS IS NOT COMPLETED BY THE BEGINNING OF A FISCAL YEAR. ("PRINCIPLES OF FEDERAL APPROPRIATIONS LAW")

28. CONTRACT: (EXCEPT AS USED IN THE DEFINITIONS FOR GRANT AND SUBGRANT AND EXCEPT WHERE QUALIFIED BY FEDERAL) A PROCUREMENT CONTRACT UNDER A GRANT OR SUBGRANT, AND A PROCUREMENT SUBCONTRACT UNDER A CONTRACT. (A-102)

29. CONTRACTOR: ANY PARTY TO WHOM A RECIPIENT AWARDS A SUBAGREEMENT. (40 CFR PART 30)

30. COOPERATIVE AGREEMENT: (SEE ALSO "ASSISTANCE AGREEMENT", "AWARD"): AN ASSISTANCE AGREEMENT IN WHICH SUBSTANTIAL EPA INVOLVEMENT IS ANTICIPATED DURING THE PERFORMANCE OF THE PROJECT (DOES NOT INCLUDE FELLOWSHIPS). (40 CFR PART 30)

31. COST: COST AS DETERMINED ON A CASH, ACCRUAL, OR OTHER BASIS ACCEPTABLE TO THE FEDERAL AWARDING OR COGNIZANT AGENCY. IT DOES NOT INCLUDE TRANSFERS TO A GENERAL OR SIMILAR FUND. (A-87)

32. COST ALLOCATION PLAN (CAP): ANY OF THE FOLLOWING --

A. "CENTRAL SERVICE COST ALLOCATION PLAN" - THE DOCUMENTATION IDENTIFYING, ACCUMULATING, AND ALLOCATING OR BILLING THE ALLOWABLE COSTS OF SERVICES PROVIDED BY A GOVERNMENTAL UNIT ON A CENTRALIZED BASIS TO ITS DEPARTMENTS/AGENCIES AS DESCRIBED IN ATTACHMENT C OF OMB CIRCULAR A-87.

B. "PUBLIC ASSISTANCE COST ALLOCATION PLAN" - THE DOCUMENTATION IDENTIFYING, ACCUMULATING, AND DISTRIBUTING THE ALLOWABLE COSTS OF SERVICES PROVIDED BY A PUBLIC ASSISTANCE AGENCY/DEPARTMENT IN SUPPORT OF ALL FEDERAL FINANCIAL ASSISTANCE PROGRAMS ADMINISTERED OR SUPERVISED BY THAT AGENCY/DEPARTMENT AS DESCRIBED IN ATTACHMENT D OF OMB CIRCULAR A-87.

C."INDIRECT COST RATE PROPOSAL" - THE DOCUMENTATION PREPARED BY A GOVERNMENTAL UNIT OR SUBDIVISION THEREOF TO SUBSTANTIATE ITS REQUEST FOR THE ESTABLISHMENT OF AN INDIRECT COST RATE AS DESCRIBED IN ATTACHMENT E OF OMB CIRCULAR A-87. (A-87)

33. COST OBJECTIVE: A FUNCTION, ORGANIZATIONAL SUBDIVISION, CONTRACT, GRANT, OR OTHER ACTIVITY FOR WHICH COST DATA ARE NEEDED AND FOR WHICH PROVISION IS MADE TO ACCUMULATE THOSE COSTS. (A-87)

34. COST SHARING: (SEE ALSO "MATCHING FUNDS") THE PORTION OF ALLOWABLE PROJECT COSTS THAT A RECIPIENT CONTRIBUTES TOWARD COMPLETING ITS PROJECT (I.E., NON-FEDERAL SHARE, MATCHING SHARE). (40 CFR PART 30)

35. COST-TYPE CONTRACT: A CONTRACT OR SUBCONTRACT UNDER A GRANT IN WHICH THE CONTRACTOR OR SUBCONTRACTOR IS PAID ON THE BASIS OF THE COSTS IT INCURS, WITH OR WITHOUT A FEE. (A-102)

36. DATE OF COMPLETION: THE DATE ON WHICH ALL WORK UNDER AN AWARD IS COMPLETED OR THE DATE ON THE AWARD DOCUMENT, OR ANY SUPPLEMENT OR AMENDMENT THERETO, ON WHICH FEDERAL SPONSORSHIP ENDS. (A-110)

37. DECISION OFFICIAL: (SEE "APPROVAL OFFICIAL")

38. DEVIATION: WRITTEN APPROVAL FROM THE DIRECTOR, GRANTS ADMINISTRATION DIVISION FOR EXCEPTION(S) FROM FINANCIAL ASSISTANCE REGULATIONS NOT BASED ON STATUTORY OR EXECUTIVE ORDER REQUIREMENTS. (GPPB)

39. DISALLOWED COSTS: THOSE CHARGES TO AN AWARD THAT THE FEDERAL AWARDING AGENCY DETERMINES TO BE UNALLOWABLE, IN ACCORDANCE WITH THE APPLICABLE FEDERAL COST PRINCIPLES OR OTHER TERMS AND CONDITIONS CONTAINED IN THE AWARD. (A-110)

40. EQUIPMENT: TANGIBLE, NONEXPENDABLE, PERSONAL PROPERTY INCLUDING EXEMPT PROPERTY CHARGED DIRECTLY TO THE AWARD HAVING A USEFUL LIFE OF MORE THAN ONE YEAR AND AN ACQUISITION COST OF $5,000 OR MORE PER UNIT. HOWEVER, CONSISTENT WITH RECIPIENT POLICY, LOWER LIMITS MAY BE ESTABLISHED. A RECIPIENT MAY USE ITS OWN DEFINITION OF EQUIPMENT PROVIDED THAT SUCH DEFINITION WOULD AT LEAST INCLUDE ALL EQUIPMENT DEFINED ABOVE. (A-102 & A-110)

41. ENVIRONMENTALLY RELATED MEASUREMENTS: ANY DATA COLLECTION ACTIVITY OR INVESTIGATION INVOLVING THE ASSESSMENT OF CHEMICAL, PHYSICAL, OR BIOLOGICAL FACTORS IN THE ENVIRONMENT WHICH AFFECT HUMAN HEALTH OR THE QUALITY OF LIFE. (40 CFR PART 30)

42. EXCESS PROPERTY: PROPERTY UNDER THE CONTROL OF ANY FEDERAL AWARDING AGENCY THAT, AS DETERMINED BY THE HEAD THEREOF, IS NO LONGER REQUIRED FOR ITS NEEDS OR THE DISCHARGE OF ITS RESPONSIBILITIES. (A-110)

43. EXEMPT PROPERTY: TANGIBLE PERSONAL PROPERTY ACQUIRED IN WHOLE OR IN PART WITH FEDERAL FUNDS, WHERE THE FEDERAL AWARDING AGENCY HAS STATUTORY AUTHORITY TO VEST TITLE IN THE RECIPIENT WITHOUT FURTHER OBLIGATION TO THE FEDERAL GOVERNMENT. AN EXAMPLE OF EXEMPT PROPERTY AUTHORITY IS CONTAINED IN THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT (31 U.S.C. 6306) FOR PROPERTY ACQUIRED UNDER AN AWARD TO CONDUCT BASIC OR APPLIED RESEARCH BY A NON-PROFIT INSTITUTION OF HIGHER EDUCATION OR NON-PROFIT ORGANIZATION WHOSE PRINCIPAL PURPOSE IS CONDUCTING SCIENTIFIC RESEARCH. (A-110)

44. EXPENDITURE REPORT: (1) FOR NONCONSTRUCTION GRANTS, THE SF-269 "FINANCIAL STATUS REPORT": (OR OTHER EQUIVALENT REPORT); (2) FOR CONSTRUCTION GRANTS, THE SF-271 "OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT" (OR OTHER EQUIVALENT REPORT). (A-102)

45. FEDERAL AWARDING AGENCY: THE FEDERAL AGENCY THAT PROVIDES AN AWARD TO THE RECIPIENT. (A-110)

46. FEDERAL FUNDS AUTHORIZED: THE TOTAL AMOUNT OF FEDERAL FUNDS OBLIGATED BY THE FEDERAL GOVERNMENT FOR USE BY THE RECIPIENT. THIS AMOUNT MAY INCLUDE ANY AUTHORIZED CARRYOVER OF UNOBLIGATED FUNDS FROM PRIOR FUNDING PERIODS WHEN PERMITTED BY AGENCY REGULATIONS OR AGENCY IMPLEMENTING INSTRUCTIONS. (A-110)

47. FEDERAL SHARE OF REAL PROPERTY, EQUIPMENT, OR SUPPLIES: THAT PERCENTAGE OF THE PROPERTY'S ACQUISITION COSTS AND ANY IMPROVEMENT EXPENDITURES PAID WITH FEDERAL FUNDS. (A-110)

48. FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENT: THE GOVERNING BODY OR A GOVERNMENTAL AGENCY OF ANY INDIAN TRIBE, BAND, NATIONS, OR OTHER ORGANIZED GROUP OR COMMUNITY (INCLUDING ANY NATIVE VILLAGE AS DEFINED IN SECTION 3 OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, 85 STAT 688) CERTIFIED BY THE SECRETARY OF THE INTERIOR AS ELIGIBLE FOR THE SPECIAL PROGRAMS AND SERVICES PROVIDED BY HIM THROUGH THE BUREAU OF INDIAN AFFAIRS. (A-87 & A-102)

49. FINANCIAL STATUS REPORT (FSR): A STANDARD, GOVERNMENTWIDE REPORT RECIPIENTS MUST SUBMIT TO THE FEDERAL FUNDING AGENCY THAT IDENTIFIES THE STATUS OF FUNDS FOR A SPECIFIC GRANT OR COOPERATIVE AGREEMENT. (40 CFR PART 31)

50. FUNDING PERIOD (SEE ALSO "BUDGET PERIOD"): THE PERIOD OF TIME WHEN FEDERAL FUNDING IS AVAILABLE FOR OBLIGATION BY THE RECIPIENT. (A-110)

51. GOVERNMENT: A STATE OR LOCAL GOVERNMENT OR A FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENT. (A-102)

52. GRANT (SEE ALSO "ASSISTANCE AGREEMENT", "AWARD", "COOPERATIVE AGREEMENT", "GRANT AGREEMENT"): AN AWARD OF FINANCIAL ASSISTANCE, INCLUDING COOPERATIVE AGREEMENTS, IN THE FORM OF MONEY, OR PROPERTY IN LIEU OF MONEY, BY THE FEDERAL GOVERNMENT TO AN ELIGIBLE GRANTEE. THE TERM DOES NOT INCLUDE TECHNICAL ASSISTANCE WHICH PROVIDES SERVICES INSTEAD OF MONEY, OR OTHER ASSISTANCE IN THE FORM OF REVENUE SHARING, LOANS, LOAN GUARANTEES, INTEREST SUBSIDIES, INSURANCE, OR DIRECT APPROPRIATIONS. ALSO, THE TERM DOES NOT INCLUDE ASSISTANCE, SUCH AS A FELLOWSHIP OR OTHER LUMP SUM AWARD, WHICH THE GRANTEE IS NOT REQUIRED TO ACCOUNT FOR. (A-102)

53. GRANT AGREEMENT: (SEE ALSO "ASSISTANCE AGREEMENT") AN ASSISTANCE AGREEMENT THAT DOES NOT SUBSTANTIALLY INVOLVE EPA IN THE PROJECT AND WHERE THE RECIPIENT HAS THE AUTHORITY AND CAPABILITY TO COMPLETE ALL ELEMENTS OF THE PROGRAM (DOES NOT INCLUDE FELLOWSHIPS). (40 CFR PART 30)

54. GRANT SPECIALIST: THE EPA OFFICIAL DESIGNATED IN THE ASSISTANCE AGREEMENT AS EPA's ADMINISTRATIVE CONTACT WITH THE RECIPIENT. THE GRANT SPECIALIST PROVIDES ADMINISTRATIVE GUIDANCE TO RECIPIENTS AND PROJECT OFFICERS; REVIEWS AND APPROVES THE ADMINISTRATIVE PORTION OF THE APPLICATION; PREPARES THE ASSISTANCE AGREEMENT; EVALUATES EFFECTIVENESS/COMPLIANCE WITH ADMINISTRATIVE CONDITIONS, AND CLOSES OUT ASSISTANCE AGREEMENTS.

55. GRANTEE (SEE ALSO "RECIPIENT"): THE GOVERNMENT TO WHICH A GRANT IS AWARDED AND WHICH IS ACCOUNTABLE FOR THE USE OF THE FUNDS PROVIDED. THE GRANTEE IS THE ENTIRE LEGAL ENTITY EVEN IF ONLY A PARTICULAR COMPONENT OF THE ENTITY IS DESIGNATED IN THE GRANT AWARD DOCUMENT. (OMB CIRCULAR A-102)

56. INDIRECT COSTS: COSTS (A) INCURRED FOR A COMMON OR JOINT PURPOSE BENEFITING MORE THAN ONE COST OBJECTIVE AND (B) NOT READILY ASSIGNABLE TO THE COST OBJECTIVES SPECIFICALLY BENEFITTED WITHOUT EFFORT DISPROPORTIONATE TO THE RESULTS ACHIEVED. (A-87:PROPOSED REVISION 8/19/93)

57. INDIRECT COST RATE: A DEVICE FOR DETERMINING IN A REASONABLE MANNER THE PROPORTION OF INDIRECT COSTS EACH PROGRAM SHOULD BEAR. IT IS THE RATIO (EXPRESSED AS A PERCENTAGE) OF THE INDIRECT COSTS TO A DIRECT COST BASE. (A-87:PROPOSED REVISION 8/19/93)

58. INDIRECT COST RATE AGREEMENT: AN AGREEMENT BETWEEN THE RECIPIENT AND THE COGNIZANT FEDERAL AGENCY WHICH IDENTIFIES THE BASIS FOR THE INDIRECT COST RATE, USUALLY SUBMITTED ANNUALLY. (REGION 9)

59. INDIRECT COST RATE PROPOSAL: THE DOCUMENTATION PREPARED BY A GOVERNMENTAL UNIT OR SUBDIVISION THEREOF TO SUBSTANTIATE ITS REQUEST FOR THE ESTABLISHMENT OF AN INDIRECT COST RATE AS DESCRIBED IN ATTACHMENT E OF OMB CIRCULAR A-87. (OMB CIRCULAR A-87)

60. IN-KIND CONTRIBUTION: 1. THE VALUE OF A NON-CASH CONTRIBUTION TO MEET A RECIPIENT'S COST SHARING REQUIREMENTS. AN IN-KIND CONTRIBUTION MAY CONSIST OF CHARGES FOR REAL PROPERTY AND EQUIPMENT OR THE VALUE OF GOODS AND SERVICES DIRECTLY BENEFITING THE EPA FUNDED PROJECT. (40 CFR PART 30) NOTE: THE ASSISTANCE AMOUNT MAY ALSO INCLUDE AN EPA IN-KIND CONTRIBUTION. (SEE "COST SHARING" AND "CASH CONTRIBUTIONS.") (ASSISTANCE ADMINISTRATION MANUAL)

61. INTEGRATED FINANCIAL MANAGEMENT SYSTEM (IFMS): EPA'S OFFICIAL AUTOMATED ACCOUNTING SYSTEM.

62. INTERAGENCY/INTERGOVERNMENTAL AGREEMENT/INTERNATIONAL AGREEMENT (IAG):(1) A WRITTEN AGREEMENT BETWEEN FEDERAL AGENCIES UNDER WHICH GOODS AND SERVICES ARE PROVIDED IN EXCHANGE FOR FUNDS, OR WHERE SERVICES ARE PROVIDED WITHOUT PAYMENT.

(2) A WRITTEN AGREEMENT BETWEEN A FEDERAL AGENCY AND A STATE OR LOCAL GOVERNMENT UNDER WHICH THE STATE OR LOCAL GOVERNMENT REIMBURSES THE FEDERAL AGENCY FOR THE COSTS OF PROVIDING A SPECIFIC TECHNICAL SERVICE, E.G., STATISTICAL STUDIES AND COMPILATIONS, TECHNICAL TESTS AND EVALUATIONS, TRAINING, SURVEYS, REPORTS, DOCUMENTS, AND DATA.

(3) A WRITTEN AGREEMENT BETWEEN A FEDERAL AGENCY AND A FOREIGN GOVERNMENT UNDER WHICH WORK WILL BE CONDUCTED FOR, OR SERVICES PROVIDED TO, A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION. (HEADQUARTERS -- GIAB)

63. INTANGIBLE PROPERTY AND DEBT INSTRUMENTS: MEANS BUT IS NOT LIMITED TO TRADEMARKS, COPYRIGHT, PATENTS AND PATENT APPLICATIONS AND SUCH PROPERTY AS LOANS, NOTES AND OTHER DEBT INSTRUMENTS, LEASE AGREEMENTS, STOCK AND OTHER INSTRUMENTS OF PROPERTY OWNERSHIP, WHETHER CONSIDERED TANGIBLE OR INTANGIBLE. (OMB CIRCULAR A-110)

64. LOCAL GOVERNMENT: A COUNTY, MUNICIPALITY, CITY, TOWN, TOWNSHIP, LOCAL PUBLIC AUTHORITY (INCLUDING ANY PUBLIC AND INDIAN HOUSING AGENCY UNDER THE UNITED STATES HOUSING ACT OF 1937) SCHOOL DISTRICT, SPECIAL DISTRICT, INTRASTATE DISTRICT, COUNCIL OF GOVERNMENTS (WHETHER OR NOT INCORPORATED AS A NONPROFIT CORPORATION UNDER STATE LAW), ANY OTHER REGIONAL OR INTERSTATE GOVERNMENT ENTITY, OR ANY AGENCY OR INSTRUMENTALITY OF A LOCAL GOVERNMENT. (OMB CIRCULARS A-87 & A-102)

65. MAINTENANCE OF EFFORT: A REQUIREMENT CONTAINED IN CERTAIN LEGISLATION OR REGULATIONS THAT A RECIPIENT MUST MAINTAIN/CONTRIBUTE A SPECIFIED LEVEL OF FINANCIAL EFFORT IN A SPECIFIED AREA IN ORDER TO RECEIVE FEDERAL ASSISTANCE FUNDS, WHICH ENSURES THAT THOSE FEDERAL FUNDS ARE USED TO SUPPLEMENT, BUT NOT SUPPLANT, EXPENDITURES OF THE RECIPIENT'S FUNDS. (ASSISTANCE ADMINISTRATION MANUAL)

66. MATCHING FUNDS: (SEE ALSO "COST SHARING") THE PORTION OF ALLOWABLE PROJECT COSTS A RECIPIENT CONTRIBUTES TO A FEDERALLY FUNDED PROJECT (SOMETIMES DETERMINED BY STATUTE). THE MATCH MAY INCLUDE IN-KIND AS WELL AS CASH CONTRIBUTIONS. (REGION 9)

67. NEGOTIATION: THE PROCESS OF GIVE AND TAKE BY ASSISTANCE PROJECT OFFICERS AND APPLICANTS TO AGREE ON WORKPLANS AND FUNDS AVAILABLE TO CARRY OUT THE WORKPLAN ACTIVITIES. (REGION 9)

68. NONEXPENDABLE PERSONAL PROPERTY: PERSONAL PROPERTY WITH A USEFUL LIFE OF AT LEAST TWO YEARS AND AN ACQUISITION COST OF $500 OR MORE. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

69. OBLIGATIONS: THE AMOUNTS OF ORDERS PLACED, CONTRACTS AND GRANTS/SUBGRANTS AWARDED, GOODS AND SERVICES RECEIVED AND SIMILAR TRANSACTIONS DURING A GIVEN PERIOD THAT WILL REQUIRE PAYMENT BY THE GRANTEE/RECIPIENT DURING THE SAME OR A FUTURE PERIOD. (OMB CIRCULARS A-102 & A-110)

70. OFFICIAL FILE: 1. THE ADMINISTRATIVE FILE FOR EACH ASSISTANCE AGREEMENT (OR EACH APPLICATION OR UNSOLICITED PROPOSAL) THAT IS ESTABLISHED AND MAINTAINED BY THE APPROPRIATE GRANTS MANAGEMENT OFFICE AND/OR STATE OFFICE WHEN PROVIDED FOR UNDER A DELEGATION AGREEMENT. (THE OFFICIAL TECHNICAL FILE AND THE OFFICIAL FINANCIAL MANAGEMENT FILE BOTH COMPLEMENT THE OFFICIAL ADMINISTRATIVE FILE.)
(ASSISTANCE ADMINISTRATION MANUAL)

71. OMB: THE U.S. OFFICE OF MANAGEMENT AND BUDGET. (OMB CIRCULAR A-102)

72. OUTLAYS OR EXPENDITURES: CHARGES MADE TO THE PROJECT OR PROGRAM. THEY MAY BE REPORTED ON A CASH OR ACCRUAL BASIS. FOR REPORTS PREPARED ON A CASH BASIS, OUTLAYS ARE THE SUM OF ACTUAL CASH DISBURSEMENTS FOR DIRECT CHARGES FOR GOODS AND SERVICES, THE AMOUNT OF INDIRECT EXPENSE INCURRED [CHARGED], THE VALUE OF [THIRD-PARTY] IN-KIND CONTRIBUTIONS APPLIED, AND THE AMOUNT OF CASH ADVANCES AND PAYMENTS MADE TO CONTRACTORS AND SUBGRANTEES [SUBRECIPIENTS]. FOR REPORTS PREPARED ON AN ACCRUED EXPENDITURE [ACCRUAL] BASIS, OUTLAYS ARE THE SUM OF ACTUAL CASH DISBURSEMENTS [FOR GOODS AND SERVICES], THE AMOUNT OF INDIRECT EXPENSE INCURRED, THE VALUE OF [THIRD-PARTY] IN-KIND CONTRIBUTIONS APPLIED, AND THE NEW [NET] INCREASE (OR DECREASE) IN THE AMOUNTS OWED BY THE

GRANTEE FOR GOODS AND OTHER PROPERTY RECEIVED, FOR SERVICES PERFORMED BY EMPLOYEES, CONTRACTORS, SUBGRANTEES/SUBRECIPIENTS, SUBCONTRACTORS, AND OTHER PAYEES, AND OTHER AMOUNTS BECOMING OWED UNDER PROGRAMS FOR WHICH NO CURRENT SERVICES OR PERFORMANCE ARE REQUIRED, SUCH AS ANNUITIES, INSURANCE CLAIMS, AND OTHER BENEFIT PAYMENTS. (A COMBINATION OF OMB CIRCULARS A-102 & A-110; 40 CFR PART 35)

73. OUTPUT: AN ACTIVITY OR PRODUCT WHICH THE APPLICANT AGREES TO COMPLETE DURING THE BUDGET PERIOD.

74. PERCENTAGE OF COMPLETION METHOD: A SYSTEM UNDER WHICH PAYMENTS ARE MADE FOR CONSTRUCTION WORK ACCORDING TO THE PERCENTAGE OF COMPLETION OF THE WORK, RATHER THAN TO THE GRANTEE'S/RECIPIENT'S COST INCURRED. (OMB CIRCULAR A-102)

75. PERSONAL PROPERTY: 1. PROPERTY OF ANY KIND EXCEPT REAL PROPERTY. IT MAY BE TANGIBLE, HAVING PHYSICAL EXISTENCE, OR INTANGIBLE, HAVING NO PHYSICAL EXISTENCE, SUCH AS COPYRIGHTS, PATENTS, OR SECURITIES. (OMB CIRCULAR A-110)

2. PROPERTY OTHER THAN REAL PROPERTY. IT MAY BE TANGIBLE (HAVING PHYSICAL EXISTENCE), SUCH AS EQUIPMENT AND SUPPLIES, OR INTANGIBLE (HAVING NO PHYSICAL EXISTENCE), SUCH AS PATENTS, INVENTIONS, AND COPYRIGHTS. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

76. PLANNING TARGET: THE AMOUNT OF FINANCIAL ASSISTANCE WHICH THE REGIONAL ADMINISTRATOR SUGGESTS THAN AN APPLICANT FOR CONTINUING ENVIRONMENTAL PROGRAM SUPPORT (STATE, INTERSTATE OR LOCAL AGENCY) CONSIDER IN DEVELOPING ITS APPLICATION AND WORK PROGRAM. (ASSISTANCE ADMINISTRATION MANUAL)

77. PRICE ANALYSIS: THE PROCESS OF EVALUATING A PROSPECTIVE PRICE WITHOUT REGARD TO THE CONTRACTOR'S SEPARATE COST ELEMENTS AND PROPOSED PROFIT. PRICE ANALYSIS DETERMINES THE REASONABLENESS OF THE PROPOSED SUBAGREEMENT PRICE BASED ON ADEQUATE PRICE COMPETITION, PREVIOUS EXPERIENCE WITH SIMILAR WORK, ESTABLISHED CATALOG OR MARKET PRICE, LAW, OR REGULATION. (ASSISTANCE ADMINISTRATION MANUAL)

78. PRINCIPAL INVESTIGATOR: (SEE "PROJECT MANAGER")

79. PRIOR APPROVAL: DOCUMENTATION/WRITTEN APPROVAL BY AN AUTHORIZED OFFICIAL EVIDENCING CONSENT PRIOR TO INCURRING SPECIFIC COST. (COMBINATION OF OMB CIRCULARS A-102 & A-110)

80. PROFIT: THE NET PROCEEDS OBTAINED BY DEDUCTING ALL ALLOWABLE COSTS (DIRECT AND INDIRECT) FROM THE PRICE. (BECAUSE THIS DEFINITION OF PROFIT IS BASED ON APPLICABLE FEDERAL COST PRINCIPLES, IT MAY VARY FROM MANY FIRMS' DEFINITION OF PROFIT, AND MAY CORRESPOND TO THOSE FIRMS' DEFINITION OF "FEE".) (40 CFR PART 33)

81. PROGRAM ELEMENT: ONE OF THE MAJOR GROUPINGS OF OUTPUTS OF A CONTINUING ENVIRONMENTAL PROGRAM (E.G., ADMINISTRATION, ENFORCEMENT, MONITORING). (ASSISTANCE ADMINISTRATION MANUAL)

82. PROGRAM INCOME: GROSS INCOME EARNED BY THE RECIPIENT THAT IS DIRECTLY GENERATED BY A SUPPORTED ACTIVITY OR EARNED AS A RESULT OF THE AWARD (SEE EXCLUSIONS IN PARAGRAPHS ____.24(e) AND (h) OF OMB CIRCULAR A-110). PROGRAM INCOME INCLUDES, BUT IS NOT LIMITED TO, INCOME FROM FEES FOR SERVICES PERFORMED, THE USE OR RENTAL OF REAL OR PERSONAL PROPERTY ACQUIRED UNDER FEDERALLY-FUNDED PROJECTS, THE SALE OF COMMODITIES OR ITEMS FABRICATED UNDER AN AWARD, LICENSE FEES AND ROYALTIES ON PATENTS AND COPYRIGHTS, AND INTEREST ON LOANS MADE WITH AWARD FUNDS. INTEREST EARNED ON ADVANCES OF FEDERAL FUNDS IS NOT PROGRAM INCOME. EXCEPT AS OTHERWISE

PROVIDED IN FEDERAL AWARDING AGENCY REGULATIONS OR THE TERMS AND CONDITIONS OF THE AWARD, PROGRAM INCOME DOES NOT INCLUDE THE RECEIPT OF PRINCIPAL ON LOANS, REBATES, CREDITS, DISCOUNTS, ETC., OR INTEREST EARNED ON ANY OF THEM. (OMB CIRCULAR A-110)

2. GROSS INCOME THE RECIPIENT EARNS DURING ITS PROJECT PERIOD FROM CHARGES FOR THE PROJECT. THIS MAY INCLUDE INCOME FROM SERVICE FEES, SALE OF COMMODITIES, TRADE-IN ALLOWANCES, OR USAGE OR RENTAL FEES. FEES FROM ROYALTIES ARE PROGRAM INCOME ONLY IF THE ASSISTANCE AGREEMENT SO STATES. REVENUE GENERATED UNDER THE GOVERNING POWERS OF A STATE OR LOCAL GOVERNMENT WHICH COULD HAVE BEEN GENERATED WITHOUT AN AWARD IS NOT CONSIDERED PROGRAM INCOME. SUCH REVENUES INCLUDE FINES OR PENALTIES LEVIED UNDER JUDICIAL OR PENAL POWER AND USED AS A MEANS TO ENFORCE LAWS. (REVENUE FROM WASTEWATER TREATMENT CONSTRUCTION GRANT PROJECTS UNDER TITLE II OF THE CLEAN WATER ACT, AS AMENDED, IS NOT PROGRAM INCOME. IT MUST BE USED FOR OPERATION AND MAINTENANCE COSTS OF THE RECIPIENT'S WASTEWATER FACILITIES.) (ASSISTANCE ADMINISTRATION MANUAL)

83. PROJECT COSTS: ALL ALLOWABLE COSTS, AS SET FORTH IN THE APPLICABLE FEDERAL COST PRINCIPLES, INCURRED BY A RECIPIENT AND THE VALUE OF THE CONTRIBUTIONS MADE BY THIRD PARTIES IN ACCOMPLISHING THE OBJECTIVES OF THE AWARD DURING THE PROJECT PERIOD. (OMB CIRCULAR A-110)

84. PROJECT MANAGER (SEE ALSO "PRINCIPAL INVESTIGATOR"): THE RESEARCHER, BUSINESS OFFICER, OR OTHER PERSON AUTHORIZED AND DESIGNATED BY THE RECIPIENT TO SERVE AS ITS PRINCIPAL CONTACT WITH EPA.

85. PROJECT NARRATIVE: (SEE "WORKPLAN/WORKPROGRAM")

86. PROJECT OFFICER: THE EPA OFFICIAL DESIGNATED IN THE ASSISTANCE AGREEMENT AS EPA'S PROGRAM CONTACT WITH THE RECIPIENT. PROJECT OFFICERS ARE RESPONSIBLE FOR MONITORING THE PROJECT. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

87. PROJECT PERIOD: 1.THE PERIOD ESTABLISHED IN THE AWARD DOCUMENT DURING WHICH FEDERAL SPONSORSHIP BEGINS AND ENDS. (OMB CIRCULAR A-110)

2. THE LENGTH OF TIME EPA SPECIFIES IN THE ASSISTANCE AGREEMENT FOR COMPLETION OF ALL PROJECT WORK. IT MAY BE COMPOSED OF MORE THAN ONE BUDGET PERIOD. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

88. PROPERTY: UNLESS OTHERWISE STATED, REAL PROPERTY, EQUIPMENT,INTANGIBLE PROPERTY AND DEBT INSTRUMENTS. (40 CFR PART 35; A-110)

89. QUALITY ASSURANCE NARRATIVE STATEMENT: A DESCRIPTION INCLUDED IN AN APPLICATION WHICH EXPLAINS HOW PRECISION, ACCURACY, REPRESENTATIVENESS, COMPLETENESS, AND COMPARABILITY WILL BE ASSESSED, AND WHICH IS SUFFICIENTLY DETAILED TO ALLOW AN UNAMBIGUOUS DETERMINATION OF THE QUALITY ASSURANCE PRACTICES TO BE FOLLOWED THROUGHOUT A RESEARCH PROJECT. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

90. QUALITY ASSURANCE PROGRAM PLAN: A FORMAL DOCUMENT WHICH DESCRIBES AN ORDERLY ASSEMBLY OF MANAGEMENT POLICIES, OBJECTIVES, PRINCIPLES, ORGANIZATIONAL RESPONSIBILITIES, AND PROCEDURES BY WHICH AN AGENCY OR LABORATORY SPECIFIES HOW IT INTENDS TO: (A) PRODUCE DATA OF DOCUMENTED QUALITY, AND (B) PROVIDE FOR THE PREPARATION OF QUALITY ASSURANCE PROJECT PLANS AND STANDARD OPERATING PROCEDURES. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

91. QUALITY ASSURANCE PROJECT PLAN: AN ORGANIZATION'S WRITTEN PROCEDURES WHICH DELINEATE HOW IT PRODUCES QUALITY DATA FOR A SPECIFIC PROJECT OR MEASUREMENT METHOD. (40 CFR PART 30 & ASSISTANCE ADMINISTRATION MANUAL)

92. REAL PROPERTY: LAND, INCLUDING LAND IMPROVEMENTS, STRUCTURES AND APPURTENANCES THERETO, EXCLUDING MOVABLE MACHINERY AND EQUIPMENT. (OMB CIRCULARS A-102 & A-110; 40 CFR PART 30; ASSISTANCE ADMINISTRATION MANUAL)

93. RECIPIENT: (SEE ALSO "GRANTEE") 1. AN ORGANIZATION RECEIVING FINANCIAL ASSISTANCE DIRECTLY FROM FEDERAL AWARDING AGENCIES TO CARRY OUT A PROJECT OR PROGRAM. THE TERM INCLUDES PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION, PUBLIC AND PRIVATE HOSPITALS, AND OTHER QUASI-PUBLIC AND PRIVATE NON-PROFIT ORGANIZATIONS SUCH AS, BUT NOT LIMITED TO, COMMUNITY ACTION AGENCIES, RESEARCH INSTITUTES, EDUCATIONAL ASSOCIATIONS AND HEALTH CENTERS. THE TERM MAY INCLUDE COMMERCIAL ORGANIZATIONS, FOREIGN OR INTERNATIONAL ORGANIZATIONS (SUCH AS AGENCIES OF THE UNITED NATIONS) WHICH ARE RECIPIENTS, SUBRECIPIENTS, OR CONTRACTORS OR SUBCONTRACTORS OF RECIPIENTS OR SUBRECIPIENTS AT THE DISCRETION OF THE FEDERAL AWARDING AGENCY. THE TERM DOES NOT INCLUDE GOVERNMENT-OWNED CONTRACTOR-OPERATED FACILITIES OR RESEARCH CENTERS PROVIDING CONTINUED SUPPORT FOR MISSION-ORIENTED, LARGE-SCALE PROGRAMS THAT ARE GOVERNMENT-OWNED OR CONTROLLED, OR ARE DESIGNATED AS FEDERALLY-FUNDED RESEARCH AND DEVELOPMENT CENTERS. (OMB CIRCULAR A-110)

2. ANY ENTITY WHICH HAS BEEN AWARDED AND ACCEPTED AN EPA ASSISTANCE AGREEMENT. (40 CFR PART 30; ASSISTANCE ADMINISTRATION MANUAL)

94. RECURRENT EXPENDITURES: THOSE EXPENSES ASSOCIATED WITH THE ACTIVITIES OF A CONTINUING ENVIRONMENTAL PROGRAM. ALL EXPENDITURES, EXCEPT THOSE FOR EQUIPMENT PURCHASES WITH A UNIT ACQUISITION COST OF $5,000 OR MORE, ARE CONSIDERED RECURRENT UNLESS JUSTIFIED BY THE APPLICANT AS UNIQUE AND APPROVED AS SUCH BY THE AWARD OFFICIAL IN THE ASSISTANCE AWARD. (ASSISTANCE ADMINISTRATION MANUAL; 40 CFR PART 35)

95. RENEWAL: (SEE ALSO "CONTINUATION AWARD") AN EXTENSION FOR AN ADDITIONAL FUNDING/BUDGET PERIOD FOR A PROJECT HAVING NO PROJECTED COMPLETION DATE, BUT FOR WHICH FEDERAL SUPPORT MUST BE RENEWED EACH YEAR. (ASSISTANCE ADMINISTRATION MANUAL)

96. RESEARCH AND DEVELOPMENT: ALL RESEARCH ACTIVITIES, BOTH BASIC AND APPLIED, AND ALL DEVELOPMENT ACTIVITIES THAT ARE SUPPORTED AT UNIVERSITIES, COLLEGES, AND OTHER NON-PROFIT INSTITUTIONS. "RESEARCH" IS DEFINED AS A SYSTEMATIC STUDY DIRECTED TOWARD FULLER SCIENTIFIC KNOWLEDGE OR UNDERSTANDING OF THE SUBJECT STUDIED. "DEVELOPMENT" IS THE SYSTEMATIC USE OF KNOWLEDGE AND UNDERSTANDING GAINED FROM RESEARCH DIRECTED TOWARD THE PRODUCTION OF USEFUL MATERIALS, DEVICES, SYSTEMS, OR METHODS, INCLUDING DESIGN AND DEVELOPMENT OF PROTOTYPES AND PROCESSES. THE TERM RESEARCH ALSO INCLUDES ACTIVITIES INVOLVING THE TRAINING OF INDIVIDUALS IN RESEARCH TECHNIQUES WHERE SUCH ACTIVITIES USE THE SAME FACILITIES AS OTHER RESEARCH AND DEVELOPMENT ACTIVITIES AND WHERE SUCH ACTIVITIES ARE NOT INCLUDED IN THE INSTRUCTION FUNCTION. (OMB CIRCULAR A-110)

97. SERVICES: A CONTRACTOR'S LABOR, TIME, OR EFFORTS WHICH DO NOT INVOLVE THE DELIVERY OF A SPECIFIC END ITEM, OTHER THAN DOCUMENTS, (E.G., REPORTS, DESIGN DRAWINGS, SPECIFICATIONS). THIS TERM DOES NOT INCLUDE EMPLOYMENT AGREEMENTS OR COLLECTIVE BARGAINING AGREEMENTS. (ASSISTANCE ADMINISTRATION MANUAL)

98. SHARE: WHEN REFERRING TO THE AWARDING AGENCY'S PORTION OF REAL PROPERTY, EQUIPMENT OR SUPPLIES, SHARE MEANS THE SAME PERCENTAGE AS THE AWARDING AGENCY'S PORTION OF THE ACQUIRING PARTY'S TOTAL COSTS UNDER THE GRANT TO WHICH THE ACQUISITION COSTS UNDER THE GRANT TO WHICH THE ACQUISITION COST OF THE PROPERTY WAS CHARGED. ONLY COSTS ARE TO BE COUNTED -- NOT THE VALUE OF THIRD-PARTY IN-KIND CONTRIBUTIONS. (OMB CIRCULAR A-102; 40 CFR PART 31)

99. SMALL AWARD: A GRANT OR COOPERATIVE AGREEMENT NOT EXCEEDING THE SMALL PURCHASE THRESHOLD FIXED AT 41 U.S.C. 403(ll) (CURRENTLY $25,000). (OMB CIRCULAR A-110)

100. STATE: ANY OF THE SEVERAL STATES OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, ANY TERRITORY OR POSSESSION OF THE UNITED STATES, OR ANY AGENCY OR INSTRUMENTALITY OF A STATE EXCLUSIVE OF LOCAL GOVERNMENTS. (OMB CIRCULAR A-87)

101. SUBAGREEMENT: A WRITTEN AGREEMENT BETWEEN AN EPA RECIPIENT AND ANOTHER PARTY (OTHER THAN ANOTHER PUBLIC AGENCY) AND ANY LOWER TIER AGREEMENT FOR SERVICES, SUPPLIES, OR CONSTRUCTION NECESSARY TO COMPLETE THE PROJECT. SUBAGREEMENTS INCLUDE CONTRACTS AND SUBCONTRACTS FOR PERSONAL AND PROFESSIONAL SERVICES, AGREEMENTS WITH CONSULTANTS, AND PURCHASE ORDERS. (40 CFR PART 30; ASSISTANCE ADMINISTRATION MANUAL)

102. SUBAWARD: AN AWARD OF FINANCIAL ASSISTANCE IN THE FORM OF MONEY, OR PROPERTY IN LIEU OF MONEY, MADE UNDER AN AWARD BY A RECIPIENT TO AN ELIGIBLE SUBRECIPIENT OR BE A SUBRECIPIENT TO A LOWER TIER SUBRECIPIENT. THE TERM INCLUDES FINANCIAL ASSISTANCE WHEN PROVIDED BY ANY LEGAL AGREEMENT, EVEN IF THE AGREEMENT IS CALLED A CONTRACT, BUT DOES NOT INCLUDE PROCUREMENT F GOODS AND SERVICES NOR DOES IT INCLUDE ANY FORM OF ASSISTANCE WHICH IS EXCLUDED FROM THE DEFINITION OF "AWARD" IN PARAGRAPH ____(e) OF 0MB CIRCULAR A-110. (OMB CIRCULAR A-110)

103. SUBGRANT: AN AWARD OF FINANCIAL ASSISTANCE IN THE FORM OF MONEY, OR PROPERTY IN LIEU OF MONEY, MADE UNDER A GRANT BY A GRANTEE TO AN ELIGIBLE SUBGRANTEE. THE TERM INCLUDES FINANCIAL ASSISTANCE WHEN PROVIDED BY CONTRACTUAL LEGAL AGREEMENT, BUT DOES NOT INCLUDE PROCUREMENT PURCHASES, NOR DOES IT INCLUDE ANY FORM OF ASSISTANCE WHICH IS EXCLUDED FROM THE DEFINITION OF grant IN 40 CFR PART 31. (OMB CIRCULAR A-102; 40 CFR PART 31)

104. SUBGRANTEE: THE GOVERNMENT OR OTHER LEGAL ENTITY TO WHICH A SUBGRANT IS AWARDED AND WHICH IS ACCOUNTABLE TO THE GRANTEE FOR THE USE OF THE FUNDS PROVIDED. (OMB CIRCULAR A-102; 40 CFR PART 31)

105. SUBRECIPIENT: THE LEGAL ENTITY TO WHICH A SUBAWARD IS MADE AND WHICH IS ACCOUNTABLE TO THE RECIPIENT FOR THE USE OF THE FUNDS PROVIDED. THE TERM MAY INCLUDE FOREIGN OR INTERNATIONAL ORGANIZATIONS (SUCH AS AGENCIES OF THE UNITED NATIONS) AT THE DISCRETION OF THE FEDERAL AWARDING AGENCY. (OMB CIRCULAR-110)

106. SUPPLIES: 1. ALL TANGIBLE PERSONAL PROPERTY OTHER THAN equipment AS DEFINED IN 40 CFR PART 31. (OMB CIRCULAR A-102)

2. ALL TANGIBLE PERSONAL PROPERTY EXCLUDING EQUIPMENT, INTANGIBLE PROPERTY, AND DEBT INSTRUMENTS, AND INVENTIONS OF A CONTRACTOR CONCEIVED OR FIRST ACTUALLY REDUCED TO PRACTICE IN THE PERFORMANCE OF WORK UNDER A FUNDING AGREEMENT ("SUBJECT INVENTIONS"), AS DEFINED IN 37 CFR 401, "RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS." (OMB CIRCULAR A-110)

107. SUSPENSION: (1) AN ACTION BY A FEDERAL AWARDING AGENCY THAT TEMPORARILY WITHDRAWS FEDERAL SPONSORSHIP UNDER AN AWARD, PENDING CORRECTIVE ACTION BY THE GRANTEE/RECIPIENT OR PENDING A DECISION TO TERMINATE THE AWARD BY THE FEDERAL AWARDING AGENCY. SUSPENSION OF AN AWARD IS A SEPARATE ACT FROM SUSPENSION UNDER FEDERAL AGENCY REGULATIONS IMPLEMENTING E.O.s 12549 AND 12689, "DEBARMENT AND SUSPENSION." (OMB CIRCULAR A-110)

2. DEPENDING ON THE CONTEXT, EITHER (1) TEMPORARY WITHDRAWAL OF THE AUTHORITY TO OBLIGATE GRANT FUNDS PENDING CORRECTIVE ACTION BY THE GRANTEE OR SUBGRANTEE OR A DECISION TO TERMINATE THE GRANT, OR (2) AN ACTION TAKEN BY A SUSPENDING OFFICIAL IN ACCORDANCE WITH AGENCY REGULATIONS IMPLEMENTING E.O. 12549 TO IMMEDIATELY EXCLUDE A PERSON FROM PARTICIPATING IN GRANT TRANSACTIONS FOR A PERIOD, PENDING COMPLETION OF AN INVESTIGATION AND SUCH LEGAL OR DEBARMENT PROCEEDINGS AS MAY ENSUE. (OMB CIRCULAR A-102; 40 CFR PART 31)

108. TERMINATION: 1. PERMANENT WITHDRAWAL OF THE AUTHORITY TO OBLIGATE PREVIOUSLY AWARDED GRANT FUNDS BEFORE THAT AUTHORITY WOULD OTHERWISE EXPIRE. IT ALSO MEANS THE VOLUNTARY RELINQUISHMENT OF THAT AUTHORITY BY THE GRANTEE OR SUBGRANTEE. TERMINATION DOES NOT INCLUDE: (1) WITHDRAWAL OF FUNDS AWARDED ON THE BASIS OF THE GRANTEE'S UNDERESTIMATE OF THE UNOBLIGATED BALANCE IN A PRIOR PERIOD; (2) WITHDRAWAL OF THE UNOBLIGATED BALANCE AS OF THE EXPIRATION OF A GRANT; (3) REFUSAL TO EXTEND A GRANT OR AWARD ADDITIONAL FUNDS, TO MAKE A COMPETING OR NONCOMPETING CONTINUATION, RENEWAL, EXTENSION, OR SUPPLEMENTAL AWARD; OR (4) VOIDING OF A GRANT UPON DETERMINATION THAT THE AWARD WAS OBTAINED FRAUDULENTLY, OR WAS OTHERWISE ILLEGAL OR INVALID FROM INCEPTION. (OMB CIRCULAR A-102; 40 CFR PART 31)

2. THE CANCELLATION OF FEDERAL SPONSORSHIP, IN WHOLE OR IN PART, UNDER AN AGREEMENT AT ANY TIME PRIOR TO THE DATE OF COMPLETION. (OMB CIRCULAR A-110)

3. THE CANCELLATION OF AN ASSISTANCE AGREEMENT, IN WHOLE OR IN PART, BEFORE THE SCHEDULED PROJECT COMPLETION DATE. THE RECIPIENT IS ENTITLED TO BE PAID THE EPA SHARE OF ALLOWABLE COSTS INCURRED UP TO THE DATE OF TERMINATION AND OF ALLOWABLE COSTS RELATED TO NON-CANCELABLE COMMITMENTS MADE PRIOR TO TERMINATION. (ASSISTANCE ADMINISTRATION MANUAL)

109. TERMS OF A GRANT OR SUBGRANT: ALL REQUIREMENTS OF THE GRANT OR SUBGRANT, WHETHER IN STATUTE, REGULATIONS, OR THE AWARD DOCUMENT.
(OMB CIRCULAR A-102; 40 CFR PART 31)

110. THIRD PARTY IN-KIND CONTRIBUTIONS: 1. THE VALUE OF NON-CASH CONTRIBUTIONS PROVIDED BY NON-FEDERAL THIRD PARTIES. THIRD PARTY IN-KIND CONTRIBUTIONS MAY BE IN THE FORM OF REAL PROPERTY, EQUIPMENT, SUPPLIES AND OTHER EXPENDABLE PROPERTY, AND THE VALUE OF GOODS AND SERVICES DIRECTLY BENEFITING AND SPECIFICALLY IDENTIFIABLE TO THE PROJECT OR PROGRAM. (OMB CIRCULAR A-110)

2. PROPERTY OR SERVICES WHICH BENEFIT A FEDERALLY ASSISTED PROJECT OR PROGRAM AND WHICH ARE CONTRIBUTED BY NON-FEDERAL THIRD PARTIES WITHOUT CHARGE TO THE GRANTEE, OR A COST-TYPE CONTRACTOR UNDER THE GRANT AGREEMENT. (OMB CIRCULAR A-102; 40 CFR PART 31)

111. UNEXPENDED FEDERAL FUNDS. (SEE ALSO "UNOBLIGATED BALANCE") FEDERAL FUNDS OBLIGATED BUT NOT YET DISBURSED. REPRESENTS THE DIFFERENCE BETWEEN THE AMOUNT OF EPA FUNDS AWARDED TO THE RECIPIENT OF AN ASSISTANCE AGREEMENT AND THE AMOUNT EPA HAS PAID THAT RECIPIENT. (ASSISTANCE ADMINISTRATION MANUAL)

112. UNLIQUIDATED OBLIGATIONS: 1. FOR REPORTS PREPARED ON A CASH BASIS -- THE AMOUNT OF OBLIGATIONS INCURRED BY THE GRANTEE THAT HAVE NOT BEEN PAID. FOR REPORTS PREPARED ON AN ACCRUED EXPENDITURE BASIS, THEY REPRESENT THE AMOUNT OF OBLIGATIONS INCURRED BY THE GRANTEE FOR WHICH AN OUTLAY HAS NOT BEEN RECORDED. (OMB CIRCULAR A-102; 40 CFR PART 31)

2. THE PORTION OF THE FUNDS AUTHORIZED BY THE FEDERAL AWARDING AGENCY THAT HAS NOT BEEN OBLIGATED BY THE RECIPIENT AND IS DETERMINED BY DEDUCTING THE CUMULATIVE OBLIGATIONS FROM THE CUMULATIVE FUNDS AUTHORIZED. (OMB CIRCULAR A-110)

3. AN OBLIGATION FOR WHICH PAYMENT HAS NOT BEEN MADE; CONTINGENT LIABILITIES FOR CONTRACTS AND ORDERS OUTSTANDING. (ASSISTANCE ADMINISTRATION MANUAL)

113. UNOBLIGATED BALANCE: THE PORTION OF THE FUNDS AUTHORIZED BY THE FEDERAL AWARDING AGENCY THAT HAS NOT BEEN OBLIGATED BY THE GRANTEE/RECIPIENT AND IS DETERMINED BY DEDUCTING THE CUMULATIVE OBLIGATIONS FROM THE CUMULATIVE FUNDS AUTHORIZED. (OMB CIRCULARS A-102 & A-110; 40 CFR PART 31)

114. UNOBLIGATED FEDERAL FUNDS: FEDERAL FUNDS THAT THE RECIPIENT HAS NOT SPENT; THE DIFFERENCE BETWEEN THE AMOUNT OF EPA FUNDS AWARDED TO THE RECIPIENT OF AN ASSISTANCE AGREEMENT AND THE EPA SHARE OF THE PROJECT OBLIGATIONS THAT THE RECIPIENT HAS INCURRED UNDER THAT AGREEMENT. (ASSISTANCE ADMINISTRATION MANUAL)

115. UNRECOVERED INDIRECT COST: THE DIFFERENCE BETWEEN THE AMOUNT AWARDED AND THE AMOUNT WHICH COULD HAVE BEEN AWARDED UNDER THE RECIPIENT'S APPROVED NEGOTIATED INDIRECT COST RATE. (OMB CIRCULAR A-110)

116. UNSOLICITED PROPOSAL: AN INFORMAL WRITTEN OFFER TO PERFORM EPA FUNDED WORK FOR WHICH EPA DID NOT PUBLISH A SOLICITATION. (40 CFR PART 30; ASSISTANCE ADMINISTRATION MANUAL)

117. VIOLATING FACILITY: ANY FACILITY THAT IS OWNED, LEASED, OR SUPERVISED BY AN APPLICANT, RECIPIENT, CONTRACTOR, OR SUBCONTRACTOR THAT EPA LISTS UNDER 40 CFR PART 15 AS NOT IN COMPLIANCE WITH FEDERAL, STATE, OR LOCAL REQUIREMENTS UNDER THE CLEAN AIR ACT OR CLEAN WATER ACT. A FACILITY INCLUDES ANY BUILDING, PLANT, INSTALLATION, STRUCTURE, MINE, VESSEL, OR OTHER FLOATING CRAFT. (40 CFR PART 30; ASSISTANCE ADMINISTRATION MANUAL)

118. VOLUNTARY EXCLUSION: A TERM OF SETTLEMENT IN LIEU OF A FINDING FOR DEBARMENT UNDER WHICH A PERSON OR ENTITY AGREES TO VOLUNTARILY ABSTAIN FROM PARTICIPATION IN EPA ASSISTED PROJECTS. (ASSISTANCE ADMINISTRATION MANUAL)

119. WORKING CAPITAL ADVANCE: A PROCEDURE WHEREBY FUNDS ARE ADVANCED TO THE RECIPIENT TO COVER ITS ESTIMATED DISBURSEMENT NEEDS FOR A GIVEN INITIAL PERIOD. (OMB CIRCULAR A-110)

120. WORKPLAN/WORKPROGRAM (SEE ALSO "PROJECT NARRATIVE": THE DOCUMENT WHICH IDENTIFIES HOW AND WHEN THE APPLICANT WILL USE PROGRAM FUNDS TO PRODUCE SPECIFIC OUTPUTS. (40 CFR PART 35; ASSISTANCE ADMINISTRATION MANUAL)

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