INSTRUCTIONS FOR UNDERTAKING

AN APPROVED DEVELOPMENT PROJECT

UNDER THE

LAND AND WATER CONSERVATION FUND

State of California - The Resources Agency

Department of Parks and Recreation

August 1989

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INTRODUCTION

Property developed under the grant programs administered by the California Department of Parks and Recreation (DPR) should be developed in accordance with the guidelines outlined in this manual. DPR has the responsibility to ensure that funds are expended in a manner consistent with state and federal law, and to ensure that the development will provide safe and secure recreation facilities for public use at a reasonable cost.

The following procedures have been developed to create an orderly and expeditious processing of materials and documents requiring state review and approval. The applicant should adhere to all procedures unless exceptions are approved in advance by the California Department of Parks and Recreation.

Laws affecting development by public agencies are continually being amended. It is your responsibility to be aware of all current laws, and to conform to them.

When federal funds are involved with a state project, both federal and state standards also have to be followed, with the stricter requirement prevailing. For instance, in the case of handicap standards, the state requirements are currently more stringent, whereas the federal government has more stringent affirmative action standards.

It is imperative that your grant administrator review the necessary requirements prior to preparing a plans and specification bid package.

Plans and specifications must be reviewed and approved by the California Department of Parks and Recreation prior to going to bid on recreation development projects involving Land and Water Conservation Fund grant funds.

If you have questions on any aspect of grants administered by the department, please contact your LWCF Project Officer by calling (916) 445-4441.

DEFINITIONS

Bidder: Any individual, firm, co-partnership, or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

Bid Documents: A combination of plans and specifications with all of the necessary contract provisions to successfully meet the federal requirements and construct the project.

Contractor: The party of the second part, or his duly authorized agent, entering into contract with the applicant for performance of the work described by plans and specifications.

Department: California Department of Parks and Recreation.

Force Account: Construction using the applicant's own work force, volunteer labor, or, in some cases, individuals paid on a time and material basis.

Notice of Completion and Acceptance of Work for Each Contract: A formal, written statement filed by the applicant at the completion of the contract which states that the work has been completed and is acceptable to the applicant. (This form is provided by the applicant.)

Plans: The detail drawings or exact reproductions which show location, character, layout, dimensions, and details of the work to be constructed under the contract.

Prevailing Wage: Minimum wage rates that must be paid for certain types of work as established by State Labor Code, Part 7, Chapter 1, Article 2, Sections 1770 and 1773.

Specifications: All written directions, provisions, and requirements governing the methods and procedures to be followed in connection with bidding and award of contract and performance and execution of the work, the quantities and qualities of materials to be used, the method of measurement of the quantities of work, and the nature of the contractual relationships that will exist during the course of the work.

Service: The National Park Service.

PROGRAM PROCEDURES

The procedures below should be followed unless specific exceptions have been granted in advance by the state:

State approval, in writing, of plans and specifications (including bid conditions) is required before starting any work on the project or awarding a contract for the work.

1. For development projects to be constructed under contract, submit one complete set of contract documents (construction drawings, bid documents, contract specifications) and an itemized engineer's estimate of construction costs for each contract. Allow three to four weeks for written approval.

2. For development projects constructed by force account, submit one set of approved plans drawn to scale, a force account schedule, and a breakdown of costs (sample, Appendix A).

There are several items that often cause problems in the engineering review. They are discussed below so you (and your designers) will be aware of them.

1. Items of Special Concern

Handicap Standards

Standards for access to public buildings or facilities by physically handicapped persons have changed frequently. The standards the state enforces are generally more strict and detailed than the federally-adopted requirements published by the American National Standards Institute or those found in the Uniform Building Code. The applicable state standards are set by the Office of the State Architect as required by California law, Chapter 7, commencing with Section 4450, Division 5 of Title 1 of the Government Code and Title 24 (State Building Code).

All new structures, additions, structural repair, and alterations must adhere to the accessibility standards. On all remodeling jobs, the area of the remodel must comply, and there must be an accessible path of travel to the remodeled area; the restrooms, telephones, and drinking fountains that serve the remodeled area must also be made accessible. Minor repairs such as replacing fixtures, rewiring, air conditioning, patching, replumbing, painting, reroofing, or replacing floor coverings do not normally trigger the accessibility laws as long as no remodeling is done in the process. An interpretive manual on California state accessibility standards is available from the Office of the State Architect, 400 P Street, 5th Floor, Sacramento, CA 95814.

Structural Items

Plans must be signed by a registered civil or structural engineer, or a licensed architect, when structural items are involved. This includes the signature and the license number of the person who is legally responsible for design of the proposed structure. A landscape architect cannot legally sign the plans for structural items except for wood frame structures with clear spans of 24 feet or less and retaining walls that

are 4 feet high or less. Structural items include concrete, masonry, brick, and structural steel constructions (other than freestanding fences and walls). Children's play equipment is generally not a structural item.

Prevailing Wage Rates

Contractors must pay the prevailing wage rates as determined by the Labor Statistics and Research Division of the California Department of Industrial Relations. The general bid conditions must reflect the need to pay the prevailing wage rates (which are generally based on union contracts). The prevailing wage rates can be obtained from the California Department of Industrial Relations and are usually mailed to contractors, cities, and counties. For a copy of the wage rates, write to: Labor Statistics and Research, P.O. Box 603, 455 Golden Gate Avenue, San Francisco, CA 94101.

Backflow Preventer

Health departments usually require approved backflow prevention devices on irrigation systems to prevent contamination of domestic water systems by poisons and fertilizer drawn into the pipes through sprinkler heads. For funding purposes, the department requires preventers even when county public health agencies do not require their installation. Backflow preventers are not required where the irrigation system is completely separate from the domestic water systems in the area.

Name Brands

When an item is specified by a brand name rather than by a full technical specification, California Government Code, Section 4380, requires that at least two brand names followed by "or equal" be called out in the specifications or plans. The only exceptions are where the applicant is matching an existing system, or where a unique item has no known equal.

Affirmative Action

On projects involving LWCF funds, affirmative action requirements are mandatory. The appropriate affirmative action forms must be included in the bid package and be approved by the department prior to going to bid.

The department has a handbook on Equal Employment Opportunity and Accessibility for Persons With Disabilities for LWCF grant recipients (Attachment #1) which contains instructions and information on the necessary forms and construction period administration.

Legal Review

Check with your legal counsel to determine the bidding requirements that will be necessary. For "small" projects, simpler agreement forms and informal bid procedures may be allowed. A "small" contract is usually defined as being less than $5,000 to $15,000, depending on whether the applicant is a city or county, or which type of special district it is. However, some types of special districts have limits as low as $500. LWCF require formal bid on all projects over $25,000. Please be aware that the strictest state, local, or federal requirement will apply.

2. Contract Documents

If a project is to be bid, the department will need to review the bid information and forms, general conditions, special conditions, plans and specifications.

The bid information should include the notice to contractors or bidders, the instruction to bidders, bid sheets or forms, information sheets on the bidder and subcontractors, affirmative action requirements, and the contract agreement. It is usually best not to put the engineer's estimate into the bid package, since it may influence the bidding of the project.

Notice must be included in the bid information that no grant or contract may be awarded by a grantee, subgrantee, or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549, in accordance with 43 CFR 12.100-.510. A participant can determine if any individual, contractor, agency, or organization has been debarred or suspended by phoning (916) 322-9589, by obtaining the publication Lists of Parties from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or by calling them at (202) 783-3238.

3. Process to Follow

Generally, the following process should be followed:

A. Pre-Construction

1. Department approval in writing of plans, specifications, and bid conditions is required before distribution to prospective bidders.

2. All plans, cost estimates, and bid packages (see Contract Documents, page 8), including equal employment opportunity provisions (see Equal Employment Opportunity and Accessibility for Persons With Disabilities Handbook), must be submitted for review and approval by the State Department of Parks and Recreation, Federal Grants Section, P.O. Box 942896, Sacramento, CA 94296-0001, before bids are advertised. (Allow three weeks for state review.)

   (a) For development projects constructed under contract, submit one set of construction drawings, one copy of contract specifications, and one copy of an itemized engineer's estimate of construction costs for each contract or phase of construction. Working drawings used for bid purposes are acceptable. Plans and specifications submitted by the participant must be approved by the local agency.

   (b) For development projects constructed by force account (use of the participant's own personnel, volunteers, etc.), submit one set of approved plans, drawn to scale. Force account projects should also be accompanied by a force account schedule and a breakdown of costs. (See Appendix A.)

(c) In some instances, the plans and specifications submitted for state approval will include items over and above those being funded by the Land and Water Conservation Fund grant. Please note that although the state approves the plans and specifications for a larger development, only those items agreed to in the state/participant project agreement will be eligible for reimbursement.

Any increase in the scope of the project will require an amendment which has been approved by the department and the National Park Service.

3. All plans and specifications must comply with the Architectural Barriers Act of 1968, Public Law 90-480, and the standards set by the Office of the State Architect, Chapter 7, Division 5 of Title 1 of the Government Code. For information on state requirements, contact the Handicapped Access Section, OSA, 400 P Street, Sacramento, CA 95814, (916) 445-6285 or 445-7523.

4. Construction by contract shall meet the requirements described in Part III, Assurances, Paragraph D, of the state/participant project agreement. Among other things, the participant must inform all bidders that:

(a) Competitive bidding is required.

(b) Change orders must be filed.

(c) Federal funds are involved.

(d) All applicable federal, state, and local laws, codes, and ordinances must be complied with, including compliance with the Civil Rights Act of 1964 and Executive Order 11246, as amended, and rules, regulations, and relevent orders of the Secretary of Labor.

When it is determined by the participant that a contract will exceed $10,000, the participant must assure that any notices, announcements, requests for proposals, or invitations to bid contain all appropriate bid conditions, and submit, along with the construction plans, one copy of such notices to:

California Parks and Recreation
Local Assistance Section
P.O. Box 942896
Sacramento, CA 94296-0001

At a minimum, such notices will contain the following information in the order shown below:

(1) Project name and NPS project number.

(2) Name of sponsor or participant.

(3) Location, street address, and city.

(4) Brief description of project.

(5) All appropriate bid conditions (see Attachment A, "Affirmative Action Requirements Handbook").

5. Before awarding a contract for $10,000 or more, the participant will review the equal employment opportunity materials that must be submitted by each contractor. When it has been determined that the contractor has complied with all federal and state EEO requirements, the contract can be awarded to the low bidder.

Send a copy(ies) of the successful contractor's EEO documents and the participant's Notice of Award and Notice to Proceed to the State Department of Parks and Recreation, Federal Grants Section, for review.

6. Bonding and Insurance. Except for the situations described below, bonding and insurance requirements (including fidelity bonds) over and above those normally required by the state or local units of government shall not be imposed.

(a) A state or local unit of government receiving a grant under LWCF for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to ten 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, on 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 execution of the work provided in the contract.

7. Other Contract Provisions. The participant shall additionally include the following provisions in all contracts:

(a) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and shall provide for such sanctions and penalties as may be appropriate.

(b) All contracts which are in excess of $10,000 shall contain suitable provisions for termination by the participant, including the manner by which it will be effected, and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) In all contracts for construction or facility improvement awarded in excess of $100,000, the participant shall observe the bonding requirements outlined above.

(d) All contracts in excess of $10,000 shall include provisions for compliance with Executive Order 11246 (Equal Employment Opportunity), as outlined in the Federal Procurement Regulations, Part 1-12.8. The participant shall establish procedures to assure that suspected or reported violations are promptly investigated.

All construction contracts in excess of $10,000 and which are located in hometown or imposed plan areas will contain the applicable bid conditions, and the participant shall establish procedures to fulfill the reporting requirements for plan areas.

(e) All contracts in excess of $100,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR, Part 3). This act provides that each contractor shall be prohibited from inducing, by any means, any person employed in construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The participant shall report all suspected or reported violations to the state.

(f) All negotiated contracts (except those of $10,000 or less) awarded by the participant shall include a provision to the effect that the participant, the state, the service, the comptroller general of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor for the purpose of making audits, examinations, excerpts, and transcriptions.

B. Post-Construction

1. Upon completion of the project, the participant will submit one copy of a Notice of Completion of Contract and Acceptance of Work. Please note that the Notice of Completion and Acceptance must be accompanied by a statement that the participant has made final payment to the contractor.

2. All required affirmative action reports must be submitted to the appropriate office of United States Department of Labor before final payment is made to the contractor (see Appendix E).

3. Any jurisdiction which is a recipient of LWCF federal funds must comply, after project completion, with applicable equal employment opportunity, affirmative action, nondiscrimination, and accessibility provisions of Title VI of the Civil Rights Law; Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended; Department of the Interior Regulations 43 CFR 17, Subpart B; and Land and Water Conservation Fund Project Agreement Part II (Continuing Assurances).

   Under these laws and regulations, (1) no person may, on the basis of race, religion, color, or national origin be denied the benefits of, or be otherwise subjected to discrimination in the use of any property or facility acquired or developed pursuant to the project agreement; (2) the participating jurisdiction must comply with Title VI prohibition of employment discrimination where discriminatory employment practices will result in unequal treatment of persons who are or should be benefitting from the grant-aided activity; and (3) the participating jurisdiction must comply with regulations and guidelines set forth by the Secretary of the Interior and the National Park Service pursuant to the Civil Rights Act of 1964. The three provisions above apply to any part of the recreation system within which the assisted facility or property exists. The participant shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the National Park Service Manual. The project, its programs, services, and activities must be accessible to individuals with disabilities. Each of its programs, activities, and services, when viewed in their entirety, must be accessible. A qualified handicapped person cannot be denied the benefits of, or be kept from participating in, any programs or activities because existing facilities are inaccessible to or unusable by handicapped persons.

C. Land and Water Conservation Fund Acknowledgment

1. Guidelines for Temporary Signing. All development projects of more than $500,000 total cost will be signed from the time construction action is initiated until completion of development.

2. Standards for Temporary Signs. Unless precluded by local sign ordinances, signs shall be no less than 2 feet by 3 feet.

   Attachment C is an example of the minimum standard required for a sign. State and local symbols may be added. In addition to the National Park Service, the administrative acknowledgment can include the state agency responsible for administering the fund programs. The size of the lettering should be based on the amount of information placed on the sign. The selection of colors will be at the discretion of the participant; however, there should be sufficient contrast between the background and the lettering to make the sign readily visible without being intrusive.

3. Permanent Acknowledgment. Prior to final payment, the participant will display a bronze plaque which will be furnished by the State Department of Parks and Recreation. A suggested method of displaying the plaque is attached (see Attachment D).

D. Required Documentation with Payment Requests (please refer to the Procedural Guide for LWCF, Part 2, Fiscal Procedures)

1. Billing Statement - four copies.

2. Summary of Cost - one copy (see Source Documents in Support of Progress and Final Billings, Fiscal Guide, Part II).

3. Description of project accomplishment to date (for Progress Billings) - one copy.

4. Statement that final payment has been made (for Final Billings) - one copy.

5. Notice of Completion and Acceptance of Work for each contract (for Final Billings) - one copy.

6. As-Built Site Plan - one copy.

E. Costs That Will Not Be Reimbursed

1. Ceremonial expenses.

2. Expenses for publicity.

3. Bonus payments of any kind.

4. Charges for contingency reserves or other similar reserves.

5. Charges in excess of the lowest bid, when competitive bidding is required by the state or the participant, unless the state agrees in advance to the higher cost.

6. Charges for deficits or overdrafts.

7. Taxes for which the participant would not have been liable.

8. Interest expenses.

9. Charges incurred contrary to the policies and practices of the participant involved.

10. Damage judgments arising out of acquisition, construction, or equipping of a facility, whether determined by judicial determination, arbitration, negotiation, or otherwise.

11. Court costs of any kind.*

12. Incidental costs relating to acquisition of real property and of interests in real property, such as the cost of surveys, appraisals, title searches, and legal fees.*

13. Operation and maintenance costs for outdoor recreation areas and facilities.

14. The value of, or expenditures for, lands acquired from the United States at less than fair value.

15. Services, materials, or equipment obtained under any other federal program.

16. Cost of discounts not taken.

17. Travel claimed where no work time was claimed for the same period.

*Except for certain expenditures allowable under PL 91-646, the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

PROJECT COSTS INCURRED AFTER THE END OF THE PROJECT PERIOD WILL NOT BE REIMBURSED.

APPENDIX A

FORCE ACCOUNT SCHEDULE

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FORCE ACCOUNT SCHEDULE

INTRODUCTION

Remember that the engineer from the state who reviews your plans and instructions has not seen the project site and is not familiar with the project. Your plans, instructions, and facility/materials cost estimate are known collectively as a Force Account Schedule. The schedule should be written in a way that the project could be built from those instructions. You need to include information about what, how many, where, and how the work is to be done. We need to understand how the project will be built and the steps you intend to take to accomplish the work.

OBTAIN LEGAL ADVICE

Preparation of the Force Account Schedule should be initiated only after you have consulted your attorney and obtained legal advice to determine how much money your agency can legally spend using the force account approach. Though state law has identified certain exceptions from the legal force account definition and spending limits, a force account schedule will always be required for grant purposes when you do not intend to develop a project using formal bid contract procedures.

CRITERIA FOR REVIEW OF THE FORCE ACCOUNT SCHEDULE

The main criteria that will be used in evaluating the schedule are: 1) the steps for project development have been well thought out, 2) that visitor safety has been considered throughout, and 3) that the work is being done legally. Specific attention will be given to handicap access to restrooms, structures, walkways, and other facilities. A construction plan or schematic must be submitted along with a step-by-step description of the work process.

WHAT TO SUBMIT (See Sample Force Account Schedule)

A) Transmittal Letter - Include the following information:

1. Project name and number
2. Priority list - list of construction items in priority order
3. Brief description and statement of need for each priority
4. Time frame for completion
5. Who will supervise the project (agency)
6. Authorizing body (City Council, Board of Supervisors, Director)

B) Construction Information - Step-by-step narrative on how each element of the project will be developed. Elements should correspond to the priority list.

C) Scope - Indicate which construction elements will be included in the project to be funded by this grant.

D) Cost Estimate.

E) Project Plan or Schematic - Drawn to scale, including signature block and date.

SAMPLE FORCE ACCOUNT SCHEDULE FOR MYTHICAL PARK DEVELOPMENT

A) TRANSMITTAL LETTER

Project Officer (Name)
Local Assistance Section
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

Dear

Mythical County Park Development
State Grant Number 84-590001

Enclosed for your review are plans and construction information and cost estimates for the work we propose to do at this park under this grant.

The order of priority for the construction of the items under this grant is:

1. Rip rap the creek
2. Sidewalk on Main Street
3. Pave off-street parking
4. Erect the old miner's cabin (labor and incidental material only)
5. Complete fence along Main Street
6. New sand for the playground

If the grant does not cover the work, we will postpone lower priority items until we can raise the money from other sources.

Heavy winter storms of two years ago caused a lot of erosion on the creek bank and left steep banks which are a hazard to the children who play in the area. We plan to slope the bank back to a 1:1 slope and put in heavy boulder rip rap to make the area safer and stop future erosion.

Installation of concrete sidewalks will eliminate the serious problem arising from tracking of mud and sand from the present gravel walks into the museum. In addition, concrete walks will present a much neater appearance, and will substantially reduce the hardwood floor maintenance in the museum.

Paving of the parking lot will eliminate maintenance of the graveled area -- now compounded by youngers on motorcycles and in cars.

The old miner's cabin is a good example of broad axe and dovetail construction. It was taken down and put in storage some years ago. Rebuilding it will greatly enhance the museum's importance.

The existing split rail fenced only goes halfway across the front of the property. Finishing the fence will give the park a better appearance and enhance security.

The sand cushion in the playground is getting thin as the children just naturally scatter it around. More sand keeps them from getting hurt when they fall off the equipment and they like playing in the sand.

We expect that the bulk of the improvements planned will be accomplished by force accout during 198__ under the supervision of the _____ County Parks Department, as agent of the _____ County Board of Supervisors.

Please advise me if any additional information is needed.

Sincerely,

Director
_____ County Parks Department

B) CONSTRUCTION INFORMATION

MYTHICAL PARK
PROJECT NO. 84-59001
SPECIFICATIONS

RIP RAP OF CREEK

1. The creek will be graded back to a 1:1 slope from the end of Ten Cent Gulch to the park boundary (about 120'). Excess soil will be used to straighten the bank a little and fill in a couple of holes in the bank. Existing bushes and vines will not be disturbed if possible.

2. A base course of 24" diameter boulders will be placed in a trench by the side of the stream bed and a layer of 12" diameter boulders will be placed up the bank. (Most places, this will be 4' to 6'.)

3. We will try to interlock the boulders and will fill in the chinks and voids with rocks, sand, and/or gravel. Hopefully, we will get enough soil in the voids that the vines and brambles will grow back.

SIDEWALKS

1. The existing gravel walk shall be excavated and graded to a finished depth of 4" below the top of the existing concrete curb.

2. Trees in the existing walkway shall be formed around as directed by the inspector.

3. Walk shall be constructed to County's sidewalk standard.

4. New walk will be about 4-1/2" wide, except that where it has to go around a tree, it will be at least 36" wide on one side of the tree and not less than 24" wide on the other side.

PAVED PARKING

1. The existing graveled parking area shall be graded, watered, and rolled to a uniformly level surface.

2. Two inches of asphaltic concrete shall be placed by machine and rolled to a finished depth of 1-1/2".

3. The finished surface shall be sealed with an emulsified liquid asphalt seal coat.

4. All work will be done to County standards by the company that has the County road contract for this year.

MINER'S CABIN

1. If sufficient funds are available, the old miner's log cabin (currently in storage) shall be erected according to the markings and sketches made during its disassmbling. Original material shall be used as far as practical.

2. Replacement material shall be as nearly the same as the original pieces as can be obtained, and will be furnished by the County Parks Department.

3. The cabin shall be erected on a gravel base consisting of three inches of 3/4" x 1/4" crushed rock for drainage.

4. Cabin base logs shall be placed on rough heart redwood 2" x 12" laid level on the base gravel. Porch sills shall be laid on rough heart redwood 2" x 6" as above. All base logs, sills, and joists shall be treated with clear wood preservation -- Penta 5, Kenite 9, or equal.

5. The shake roof shall be laid shingle fashion. The first course to be doubled and subsequent courses laid 12" to the weather. Shakes to be furnished by the County Parks Department.

6. No electrical or plumbing work will be done at the cabin.

FENCE

1. About 135' of split rail fence shall be constructed along the west half of the south side of the park.

2. Posts shall be placed 10' apart. Rails shall be selected for their stacking ability, and shall be stacked six rails high -- forming a fence approximately 3-1/2' high.

3. Posts shall be prefabricated in pairs by placing a 4" by 4" x 24" redwood block between two posts 6' long and wiring them together with No. 9 galvanized wire.

4. A 4' wide gate built out of rail and hung off of heavy galvanized hinges will be located as shown on plan. (It will be just like the gate by the playground.)

SAND FOR PLAYGROUND

1. It will take about 15 yards of clean river sand to put 4" of sand over the existing playground.

C) SCOPE

The $13,000 from the state grant is the only source of funds for this project. We plan to complete Items 1 through 5 below. We may be able to complete Items 6 and 7 if we receive partial donation of materials.

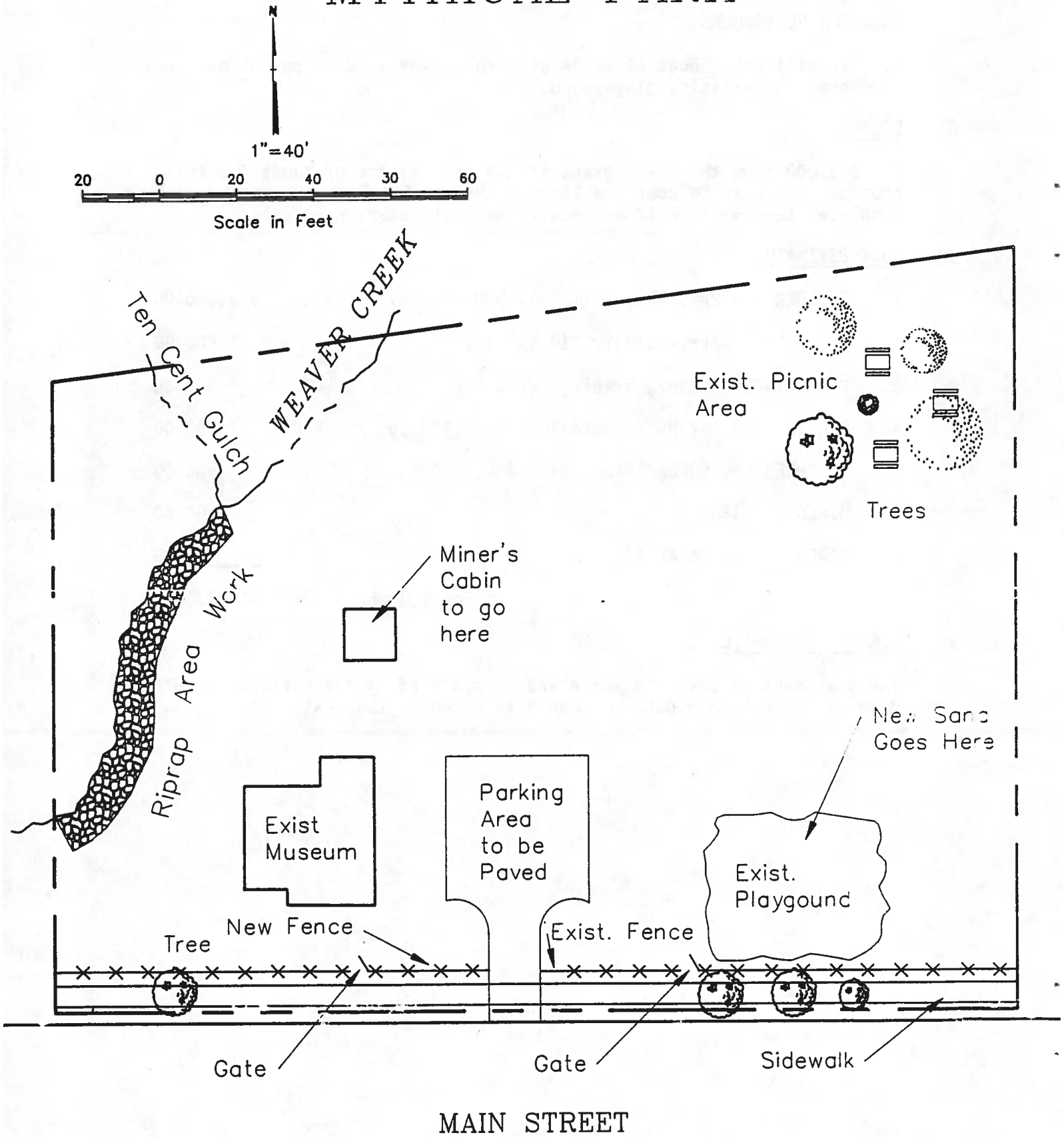
D) COST ESTIMATES

1.	BOULDER RIP RAP. Approximately 600 sq. ft.	$ 3,200.00
2.	SIDEWALK. Approximately 610 sq. ft.	1,600.00
3.	RAIL FENCE. Labor, grading, gravel.	530.00
4.	PARKING LOT PAVING. Approximately 3,500 sq. ft. A.C.	7,100.00
5.	ENGINEERING, SUPERVISION, AND MISC. LABOR.	500.00
6.	MINER'S CABIN	700.00
7.	SAND. 15 yards at $4/yd.	100.00
	Total Grant Funds	$13,730.00

E) PLAN OR SCHEMATIC

The plan must be drawn to scale and be approved by the participant with a date and signature block. A sample is shown on the next page.

MYTHICAL PARK



Project Name: _____ Signature: _____

Applicant: _____ Date: _____

APPENDIX B

STATE HANDICAPPED ACCESS LAW

APPENDIX B

STATE HANDICAPPED ACCESS LAW

The attached drawings and sketches are excerpts from, or clarifications of, the currently applicable State Handicapped Access Regulations. These regulations apply to all public buildings and supersede all local building codes.

Copies of the complete Handicapped Access Regulations are available from:

Office of the State Architect
Access Compliance Unit
400 P Street, Fifth Floor
Sacramento, CA 95814
(916) 445-6285 or 445 7523

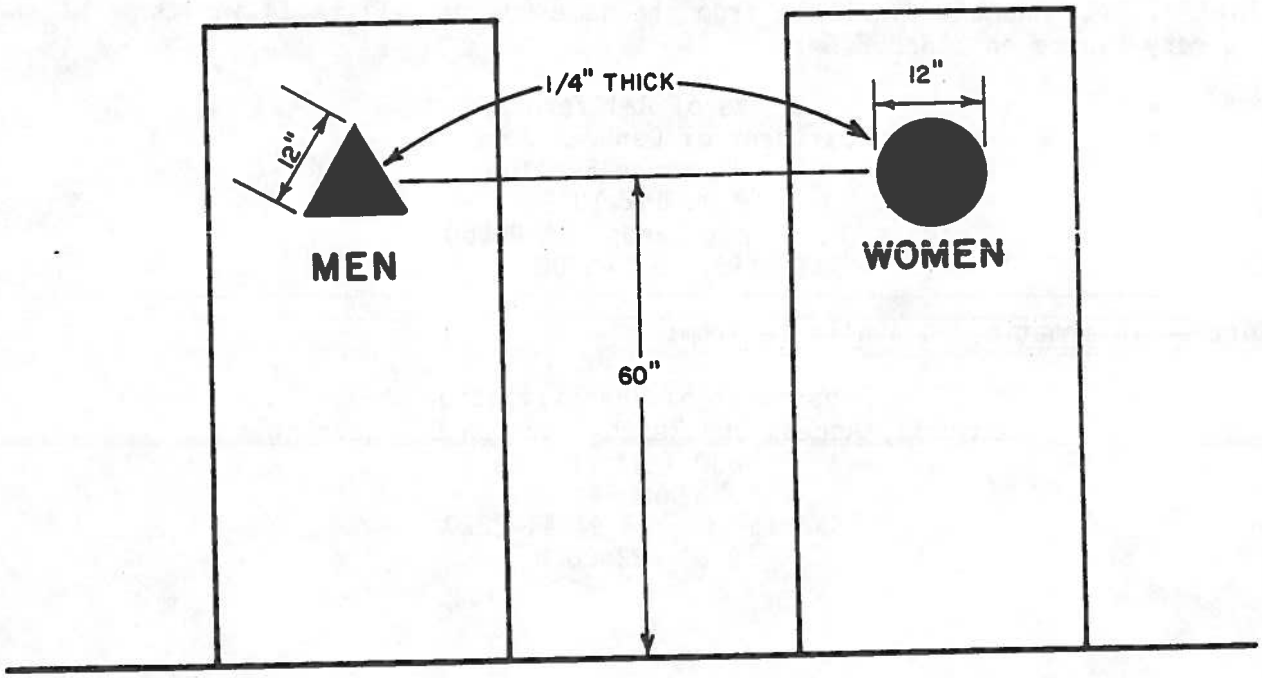
The Handicapped Access Code is entitled "Regulations for the Accommodation of the Disabled in Public Accommodations, From the State Building Code, Title 24, Parts 2, 3 and 5". Also of interest is "Title 24, Disabled Access Regulations, INTERPRETIVE MANUAL", available from the same source. Title 24 in its entirety can be obtained from:

State of California
Department of General Services
Publications Section
P.O. Box 1015
North Highlands, CA 95660
(916) 732-3700

Further information is available from:

Department of Rehabilitation
Community Access and Rehabilitation Engineering
830 K Street
P.O. Box 944222
Sacramento, CA 94244-2220
(916) 322-3078

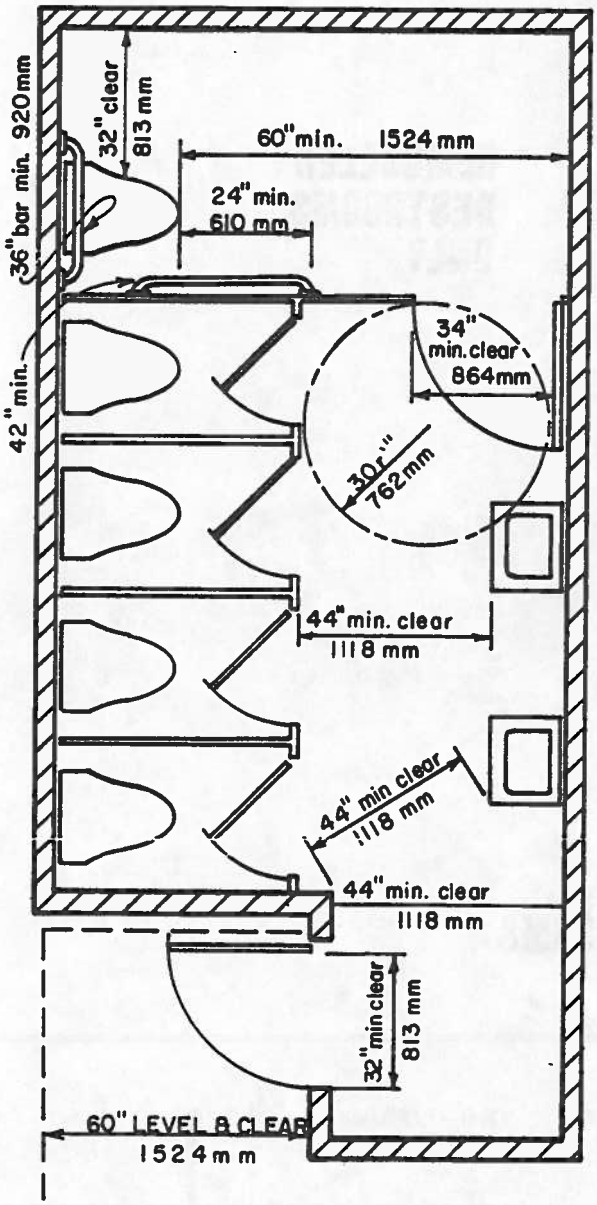
RESTROOM DOORS

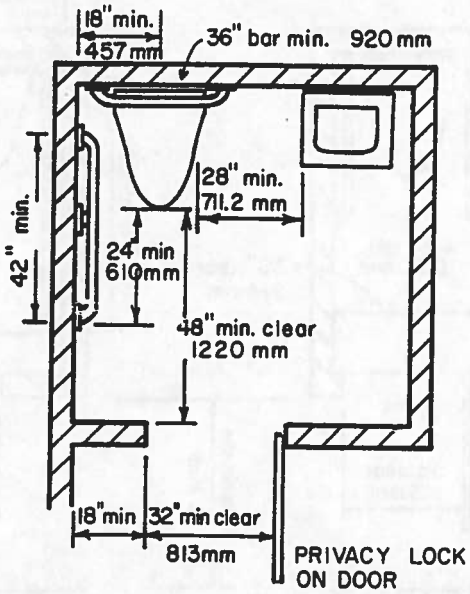


Part 2, Title 24, C.A.C. Section 2-1711, (e).3.

"On doorways leading to men's sanitary facilities, an equilateral triangle 1/4 inch (6.35mm) thick with edges 12 inches (304.8mm) and a vertex pointing upward and on women's sanitary facilities a circle 1/4 inch (6.35mm) thick and 12 inches (304.8mm) in diameter. These geometric symbols shall be centered on the door at a height of 60 inches (1524mm) and their color and contrast shall be distinctly different from the color and contrast of the door."

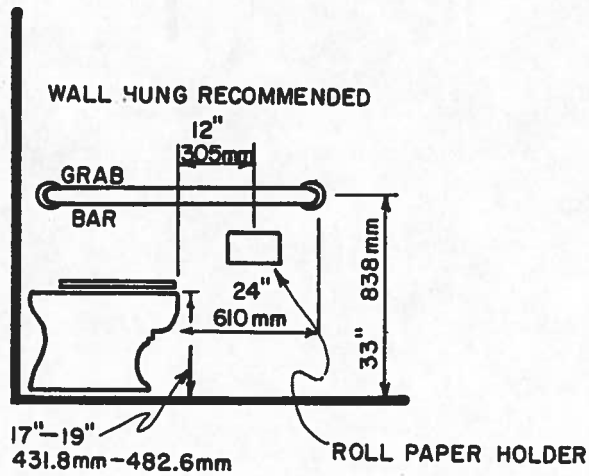
NEW RESTROOMS

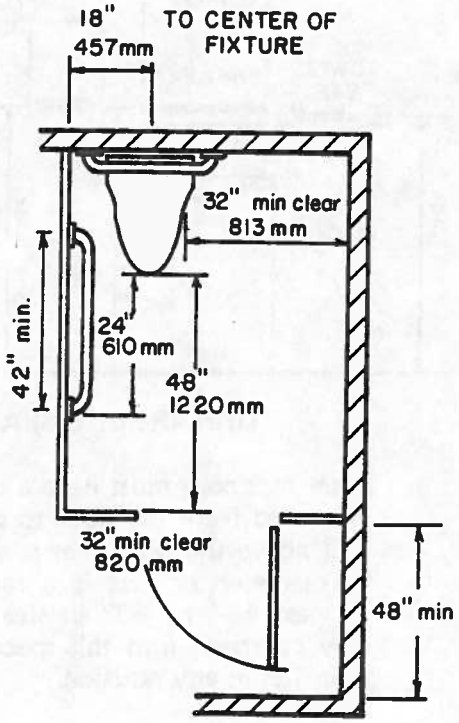


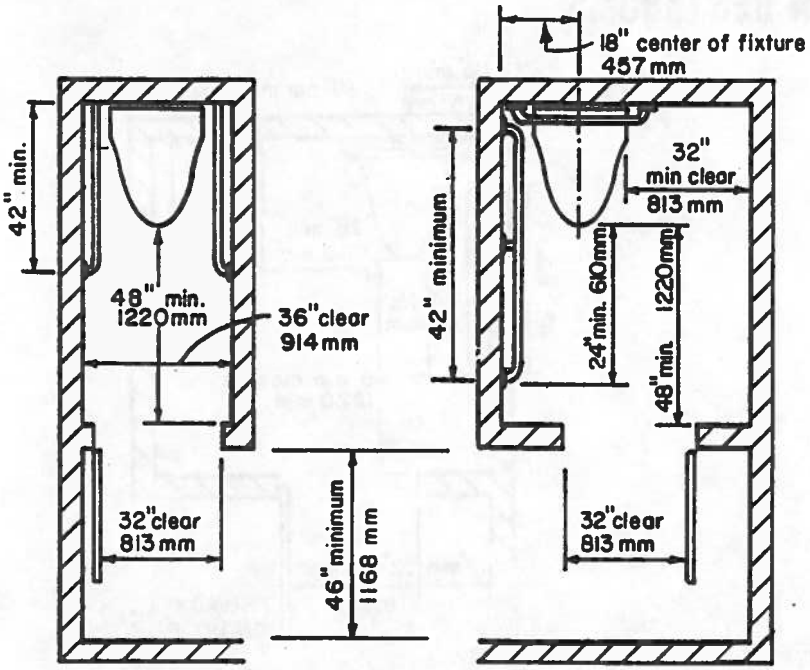


Privacy Toilet

Where the door is located in a corridor sidewall and swings into the corridor the minimum width of the corridor shall be 60" (1524mm) unless other state or local building codes allow a lesser corridor width.

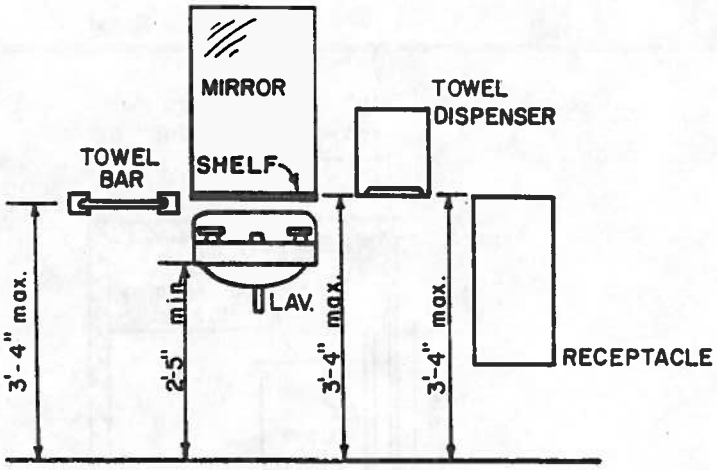


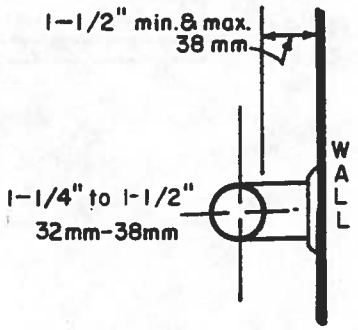




REMODELED RESTROOMS ONLY

DETAILS: ALL RESTROOMS

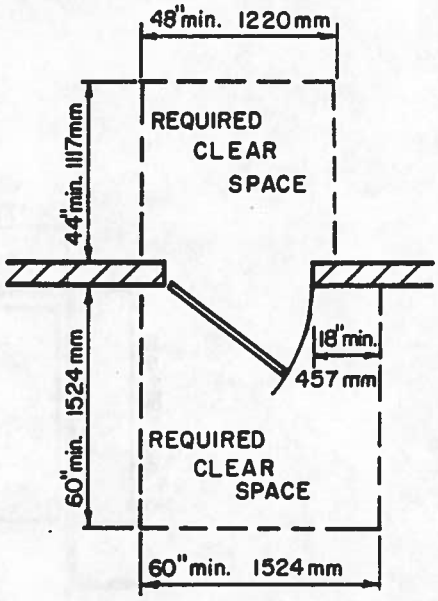




TURNAROUND SPACE

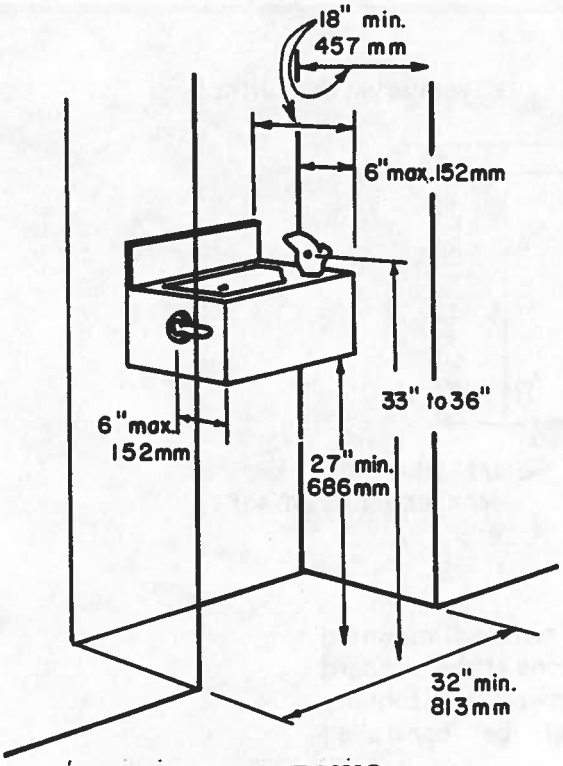
Each restroom must have a clear space measured from the floor to a height of 27" above the floor that is either 5'0" in diameter or else is a rectangle of at least 56" by 63" in size. No door may encroach into this space by more than 12" in any position.

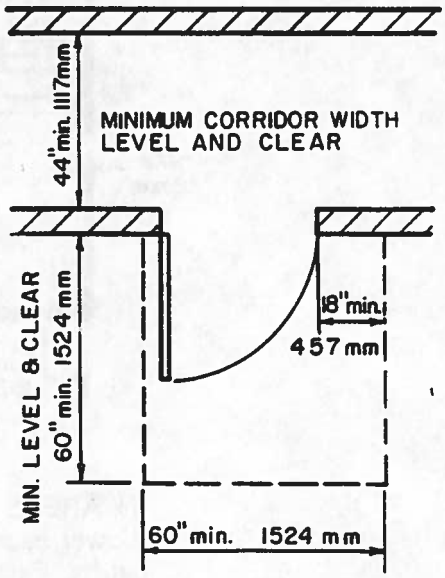
RAMPS 1:12 OR FLATTER
LANDINGS 30' MAX.
WALKS 48" MIN. WIDTH
HALLS 44" MIN. WIDTH



Note: Clear spaces must be level to prevent wheelchairs from rolling when occupant releases the wheel grips to reach for door, 1/4" slope per foot is allowed for drainage.

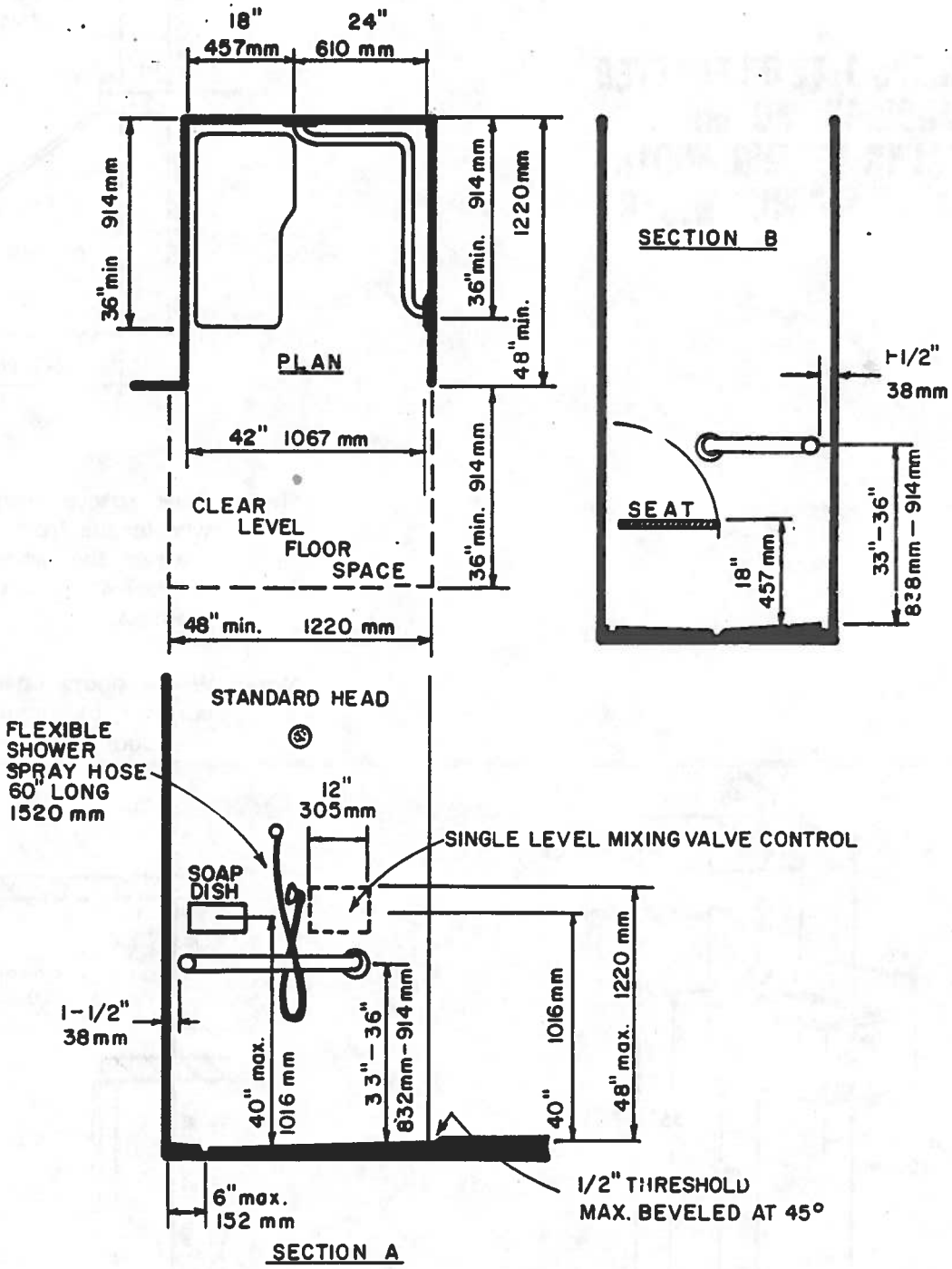
Note: Where doors open onto, but not into corridor, the required level floor beyond the door may be the minimum 44" corridor width.





WATER FOUNTAINS

SHOWERS



IN AREAS OF VANDALISM, use two wall mounted shower heads, one at 40 inches and one at the standard height. Each head must be able to swivel horizontally and vertically. Each one shall be controlled independently.

APPENDIX C

SIGN LWCF ACKNOWLEDGMENT

THE CITY OF _____

Public Outdoor Recreation Site Development

Aided by

THE LAND AND WATER CONSERVATION FUND

Administered by the

National Park Service

U.S. Department of the Interior

FUNDING

L & WCF	50%	$50,000
City of____	50%	$50,000
Total Project		$100,000

L&WCF Revenue from Outer Continental Shelf Receipts, Motorboat Fuel Tax and Sale of Surplus Federal Properties

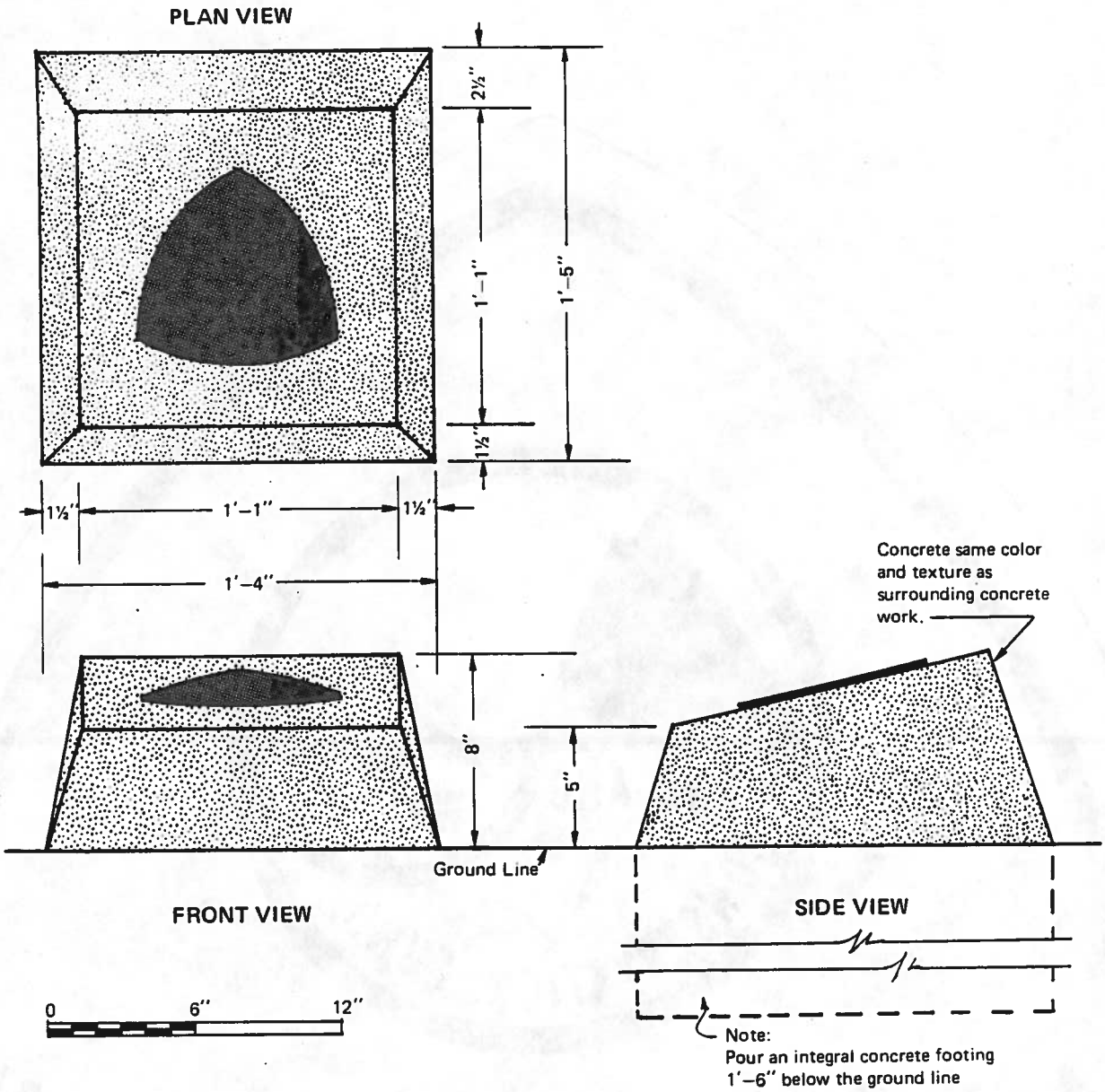
APPENDIX D

FACSIMILE OF BRONZE PLAQUE

APPENDIX D

FACSIMILE OF BRONZE PLAQUE

(Actual Size)



SUGGESTED METHOD OF DISPLAYING BRONZE PLAQUE

APPENDIX E

GOALS AND TIMETABLE FOR WOMEN AND MINORITIES

APPENDIX E

GOALS AND TIMETABLE FOR WOMEN AND MINORITIES

(Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the attached "Equal Opportunity Clause" (Appendix L) and to the "Standard Federal Equal Employment Opportunity Contract Specifications" (Appendix F).

2. The goals and timetables for female and minority participation, expressed in percentage work force in each trade on all construction work, are as follows:

   a. Goal and Timetable for Women

   On all federal or federally assisted construction contracts in excess of $10,000, the goal for participation by women in each trade, until further notice, is 6.9%.

   b. Goals and Timetables for Minorities for the Covered Area

   Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all federal or federally assisted construction contracts and subcontracts in excess of $10,000 to be performed in the respective geopgrahical areas.

Covered Areas	Goals (in %)	Covered Areas	Goals (in %)
Alameda	25.6	Orange	11.9
Alpine	19.8	Placer	16.1
Amador	19.8	Plumas	6.8
Butte	14.3	Riverside	19.0
Calaveras	19.8	Sacramento	16.1
Colusa	14.3	San Benito	23.2
Contra Costa	25.6	San Bernardino	19.0
Del Norte	6.6	San Diego	16.9
El Dorado	14.3	San Francisco	25.6
Fresno	26.1	San Joaquin	24.3
Glenn	14.3	San Luis Obispo	24.6
Humboldt	6.6	San Mateo	25.6
Imperial	18.2	Santa Barbara	19.7
Inyo	24.6	Santa Clara	19.6
Kern	19.1	Santa Cruz	14.9
Kings	23.6	Shasta	6.8
Lake	23.2	Sierra	14.3
Lassen	6.8	Siskiyou	6.8
Los Angeles	28.3	Solano	17.1
Madera	23.6	Sonoma	9.1
Marin	25.6	Stanislaus	12.3

Covered Areas	Goals (in %)	Covered Areas	Goals (in %)
Mariposa	19.8	Sutter	14.3
Mendocino	23.2	Tehama	6.8
Merced	19.8	Trinity	6.6
Modoc	6.8	Tulare	23.6
Mono	24.6	Tuolumne	19.8
Monterey	28.9	Ventura	21.5
Napa	17.1	Yolo	16.1
Nevada	14.3	Yuba	14.3

c. These goals are applicable to all the contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The contractor's compliance with the executive order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause (attached Appendix L), specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the executive order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (see addresses below) within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; and the geographical area in which the subcontract is to be performed.

Addresses of the Director of the Office of Federal Contract Compliance:

SAN FRANCISCO DISTRICT OFFICE
OFCCP, U.S. DOL
211 Main Street, Suite 328
San Francisco, CA 94105
(415) 974-8750/8757

OAKLAND DISTRICT OFFICE
OFCCP, U.S. DOL
1401 Lakeside Drive, Suite 702
Oakland, CA 94612
(415) 273-4055/4060

VAN NUYS DISTRICT OFFICE
OFCCP, U.S. DOL
14546 Hamlin Street, Suite 220
Van Nuys, CA 91411
(818) 904-6285/6286/6296/6397

SAN JOSE DISTRICT OFFICE
OFCCP, U.S. DOL
280 South First Street, Suite 390
San Jose, CA 95113-3087
(408) 291-7384/7385

LOS ANGELES DISTRICT OFFICE
OFCCP, U.S. DOL
3660 Wilshire Boulevard, Suite 602
Los Angeles, CA 90010
(213) 252-7542

SANTA ANA DISTRICT OFFICE
OFCCP, U.S. DOL
34 Civic Center Plaza, Suite 704
Santa Ana, CA 92712-2800
(714) 836-2784

SAN DIEGO AREA OFFICE
OFCCP, U.S. DOL
5675 Ruffin Road, Suite 320
San Diego, CA 92123-5378
(619) 557-6489/6567/5240, 277-4131

4. Definition of Minorities

See Appendix F (Standard EEO Construction Contract Specifications, Executive Order 11246, 41 CFR 60-4-4.3(a), #1.d).

APPENDIX F

CONSTRUCTION CONTRACT SPECIFICATIONS

APPENDIX F

CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)
41 CFR 60-4.3(a)

1. As used in these specifications:
   a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
   b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
   c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
   d) "Minorities" includes:
      1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
      2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
      3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
      4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in

each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
   a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
   b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
   c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, expecially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening, procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner. (For example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.)

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may

be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hire of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

APPENDIX G

MINORITY BUSINESS ENTERPRISE DEVELOPMENT

APPENDIX G

MINORITY BUSINESS ENTERPRISE DEVELOPMENT

On July 14, 1983, Executive Order 12432, on Minority Business Enterprise (MBE) Development was issued. The executive order requires all federal agencies to encourage greater economic opportunity for minority entrepreneurs.

A MBE concern is a business which is: (1) certified as socially or economically disadvantaged by the Small Business Administration (SBA); (2) certified as a minority business enterprise by a state or federal agency; and (3) an independent business concern which is at least 51 percent owned and controlled by minority group members. A minority group member is a citizen of the United States and one of the following: (1) Black American; (2) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America); (3) Native American (American Indian, Eskimo, Aleut, or native Hawaiian); or (4) 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). A women's business enterprise concern is a business which is certified as such by a state or federal agency and is an independent business concern which is at least 51 percent owned by a woman (or women) who also control and operate it.

In order to comply with the executive order, the National Park Service requires the following two conditions be met:

1. Before any Land and Water Conservation Fund Grant is approved for funding, the project agreement between the state and the grant recipient will include the following statement:

   "The grant recipient shall comply with Executive Order 12432, Minority Business Enterprise Development as follows:

   A. Place minority business and women's business enterprise firms on bidder's mailing lists.

   B. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.

   C. Where feasible, divide total requirements into smaller tasks or quantities, and set delivery schedules that will encourage participation by these firms.

   D. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Small Business Administration, the Office of Small and Disadvantaged Business Utilization, Department of the Interior (DOI), the Business Utilization and Development Specialists who reside in each DOI bureau and office, and similar state and local offices, where they exist."

2. All development projects involving a Land and Water Conservation Fund Grant (federal share) of $500,000 or more, require the grant recipient to file a Minority Business Enterprise Utilization Report, OMB Form #334 (copy attached with instructions).

The purpose of the report is to document the efforts by the grant recipient to hire minority business firms.

Completed forms are to be mailed to:

George McGuffick
Planning, Grants and Environmental Quality
Western Region Office
National Park Service
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 556-8360

at the following three intervals:

1. Prior to commencement of project construction activities.

2. Within five days following the end of each quarter.

   April 5 - for January, February, March
   July 5 - for April, May, June
   October 5 - for July, August, September
   January 5 - for October, November, December

3. At the time of final billing.

At the same time, copies are to be sent to:

Office of Grants Administration
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001
(916) 445-4441

Additional copies of the form may be obtained by contacting the Office of Grants Administration at the above address and telephone number.

APPENDIX H

MINORITY BUSINESS ENTERPRISE UTILIZATION REPORT

APPENDIX H

MINORITY BUSINESS ENTERPRISE UTILIZATION REPORT

OMB NOS. 9999-0001 AND 0640-0017
EXPIRES: APRIL 30, 1990

MBE/WBE* UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FEDERAL FINANCIAL ASSISTANCE

PART 1. (NEGATIVE REPORTS MAY BE REQUIRED)

1A. FEDERAL FISCAL YEAR 19_____	1B. REPORTING QUARTER (Check appropriate box) ☐ 1st (Oct.-Dec.), ☐ 2nd (Jan.-Mar.), ☐ 3rd (Apr.-Jun.), ☐ 4th (Jul-Sep.)
2. FEDERAL FINANCIAL ASSISTANCE AGENCY (Department/Agency, Bureau/Administering Office, Address)	3. REPORTING RECIPIENT (Name and Address)
2A. REPORTING CONTACT / PHONE:	3A. REPORTING CONTACT / PHONE:
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER	4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM
4C. TYPE OF FEDERAL ASSISTANCE AGREEMENT ☐ GRANT ☐ COOPERATIVE AGREEMENT ☐ OTHER FEDERAL FINANCIAL ASSISTANCE	
5A. PERIOD WHEN PROCUREMENT UNDER THIS AWARD WILL OCCUR START DATE:	END DATE:
5B. AMOUNT OF TOTAL PROJECT DOLLARS PLANNED FOR PROCUREMENT THIS FISCAL YEAR $	5C. RECIPIENT'S MBE/WBE GOALS (Percent of total procurement dollars (5b) for each) MBE % / WBE %
5D. MBE/WBE PROCUREMENT ACCOMPLISHED THIS QUARTER MBE $ / WBE $	5E. NEGATIVE REPORT (Check) ☐ SEE INSTRUCTIONS

6. COMMENTS:

7. NAME OF AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE

* WBE reporting is optional at the direction of Federal financial assistance agency.

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 334
Prescribed by DEPARTMENT OF COMMERCE

MBE/WBE PROCUREMENTS OVER $10,000 MADE DURING REPORTING QUARTER

PART II.

Procurement Made By		Business Enterprise		$ Value of Procurement	Date of Award (MM/DD/YY)	Type of Product or Service [1] (Enter Code)	Name/Address of MBE/WBE Contractor or Vendor
Recipient	Other	Minority	Women				

[1] Type of product or service codes:

1 = Agriculture
2 = Mining
3 = Construction
4 = Manufacturing
5 = Transportation
6 = Wholesale Trade
7 = Retail Trade
8 = Finance, Insurance, Real Estate
9 = Services
a = Business Services
b = Professional Services
c = Repair Services
d = Personal Services
10 = Other

INSTRUCTIONS

MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FEDERAL FINANCIAL ASSISTANCE
Standard Form 334

A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138 and 12432 and OMB Circular A-102. Standard Form 334 must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance valued at $500,000[1] or more *and* which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to agency award officials within one month following the end of each Federal fiscal year quarter (i.e. January 31, April 30, July 31 and October 31) during which *any* procurement in excess of $10,000 is actually executed under this assistance agreement.

B. Definitions:

Procurement is the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A *minority business enterprise* (MBE) is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; *and* (2) whose daily business operations are managed and directed by one or more of the minority owners.

There is no standard definition of *minority individuals* used by all Federal financial assistance agencies. However, recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive Order 11625. The reporting contact at your Federal financial assistance agency can provide additional information.

A *woman business enterprise* (WBE) is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; *and*, (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are suggested:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable reporting quarter. (Federal fiscal year runs from October 1 through September 30.)
2. Identify the Federal financial assistance department or agency including the bureau, office or other subactivity which administers your financial assistance agreement.

[1] There is no reporting threshold for the Environmental Protection Agency (EPA). Recipients of EPA financial assistance must report under all assistance agreements regardless of the size of the award.

3. Identify the agency, state, authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.

4a. Assistance agreement number assigned by Federal financial assistance agency.

4b. If appropriate, identify specific department or agency Federal financial assistance program under which this project is awarded.

4c. Check type of Federal assistance.

5a. Period during which contracts and other purchases under this award will actually be executed.

5b. Includes procurement using Federal funds plus recipient matching funds and funds from other sources.

5c. Portion of total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of the Federal financial assistance agency, a fair share goal shall be determined by each recipient.

5d. Dollar amount of all MBE/WBE contracts awarded under this assistance agreement this quarter.

5e. Check only if one or more procurements in excess of $10,000 were executed this reporting quarter but *no* MBE/WBE procurements occurred. Sign and date form and return it to Federal financial assistance agency.

6. Additional comments or explanations. Please refer to specific item number(s) if appropriate.

7. Name and title of official administrator or designated reporting official.

8. Signature and month, day, year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement over $10,000 made under this assistance agreement during the reporting quarter, provide the following information. (Recipients may also report on individual MBE/WBE procurements of less than $10,000 if they want those credited toward their MBE/WBE goals, however, reporting on smaller procurements is not required.)

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.

2. Check MBE or WBE.

3. Dollar value of procurement.

4. Date of award, shown as month, day, year.

5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (eg., enter 1 if agriculture, 2 if mining, etc.).

6. Name and address of MBE/WBE firm.

APPENDIX I

FEDERAL REGULATIONS ON REHABILITATION ACT OF 1973

Sec.
17.207 Notification.
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17.251 Drug and alcohol addicts.
17.252 Education of institutionalized persons.
17.253–17.259 [Reserved]
17.260 Historic preservation programs.
17.270 Recreation programs.
17.271–17.279 [Reserved]
17.280 Enforcement procedures.
17.281–299 [Reserved]

Authority: Section 504, Rehabilitation Act of 1973, Pub. L. 93–112, as amended by Pub. L. 95–602 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, as amended by Pub. L. 95–602 (29 U.S.C. 706); Executive Order 12250, 45 FR 72995. Department of Justice, Implementation of Executive Order 12250, 28 CFR Part 41 (Redesignated and amended at 48 FR 40688); Sec. 508, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94–142, sec. 321. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. 4581), as amended; sec. 407, Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1174), as amended; National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*; Executive Order 11593, "Protection and Enhancement of the Cultural Environment," 36 FR 8921 (1971); and regulations for the "Protection of Historic and Cultural Properties," 36 FR Part 800.

§ 17.200 Purpose.

The purpose of this subpart is to implement Section 504 of the Rehabilitation Act of 1973 and its subsequent amendments, which are designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 17.201 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of the Interior and to each program or activity that receives or benefits from such assistance.

§ 17.202 Definitions.

As used in this subpart, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, and the Rehabilitation, Comprehensive Service, and Developmental Disabilities Act of 1978, Pub. L. 95–602, 29 U.S.C. 700 *et seq.*

(b) "Section 504" means Section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for All Handicapped Children Act of 1975, Pub. L. 94–142, 20 U.S.C. 1401 *et seq.*

(d) "Department" means the Department of the Interior.

(e) "Director" means the Director of the Office for Equal Opportunity of the Department.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Easements, transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, outdoor recreation and program spaces, park sites, developed sites, or other real or personal property or interest in such property.

(j) *"Handicapped person."* (1) Handicapped person means any person who (i) has a physical, mental or sensory impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1)(i) of this section, the phrase:

(i) "Physical, mental or sensory impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical, mental or sensory impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having a mental, physical or sensory impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical, mental or sensory impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical, mental or sensory impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question. Insofar as this Part relates to employment of handicapped persons, the term "handicapped person" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current

alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) With respect to public preschool, elementary, secondary, or adult education services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act.

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.

(4) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j)(2)(i) of this section.

(m) "Integrated Setting" means that whenever possible, programs should be available to the handicapped in the same setting and under similar circumstances as are available to the nonhandicapped.

(n) "Ultimate Beneficiary" means one among a class of persons who are entitled to benefit from, or otherwise participate in, programs receiving Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(o) "Advisory Council" means the Advisory Council on Historic Preservation.

(p) "ATBCB" means the Architectural and Transportation Barriers Compliance Board, an agency empowered by the Architectural Barriers Act of 1968 (Pub. L. 90–480) to establish accessibility standards under section 502.

§ 17.203 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aids, benefits or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result of level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities, a recipient may not deny a qualified handicapped person the opportunity to participate in all programs or activities covered by this subpart that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose of effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or services provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance for the period during which the facility is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(7) Nothing in this section is to be construed as affecting the acquisition of historic sites or wilderness areas.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall take appropriate steps to insure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 17.204 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this subpart applies shall provide assurances, in accordance with OMB Circular A–102, that the program will be operated in compliance with this subpart. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or

to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall unless prohibited by the conveyance authority, also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(4) Every application by a State or any agency or political subdivision of a State to carry out a program involving continuing Federal financial assistance shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (i) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this subpart, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (ii) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary or his designee to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under subsection (i) of this subparagraph will be corrected.

§ 17.205 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this subpart, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this subpart and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 504 or this subpart, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this subpart, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this subpart:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this subpart;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this subpart; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) a list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

(3) A recipient, whose application is approved after the effective date of this regulation, shall within one year of receipt of the Federal financial assistance, be required to comply with the provisions of this section.

§ 17.206 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more people shall designate at least one person to coordinate efforts to comply with this subpart.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more people shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this subpart. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 17.207 Notification.

(a) A recipient that employs fifteen or more people shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with

impaired vision or hearing, the mentally retarded, the learning disabled, and any other disability that impairs the communication process, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of section 504 and this subpart. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 17.206(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this subpart. Methods of initial and continuing notification may include the posting of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 17.208 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 17.208 and 17.207, in whole or in part, when the Director finds a violation of this subpart or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 17.209 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this subpart is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§ 17.210 Employment practices.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this subpart applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under the Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this subpart applies in a manner which insures that discrimination on the basis of handicap does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progressions, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreation programs; and

(9) Any other term, condition, or privilege of employment, such as granting awards, recognition and/or monetary recompense for money-saving suggestions or superior performance.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 17.211 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include but is not limited to: (1) making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all inclusive nor meant to suggest that employers must follow all the actions listed.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 17.212 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless it can be demonstrated to the Director that (1) the test score or other selection criterion, as used by the recipient, is

shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) All job qualifications must be shown to be directly related to the job in question.

§ 17.213 Pre-employment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make a pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 17.205(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 17.205(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this subpart.

(3) The recipient must communicate with the applicant in a manner that will ensure that the applicant understands clearly the reasons for the recipient's questions.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

§§ 17.214–17.215 [Reserved]

§ 17.216 Program accessibility.

No handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this subpart applies.

§ 17.217 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesigning of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alterations of existing facilities and construction of new facilities in conformance with the requirements of § 17.218, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small recipients.* If a recipient with fewer than fifteen employees that provides services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to to other providers of those services whose facilities are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this subpart except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, but in no event later than three years after the effective date of this subpart. New recipients receiving Federal financial assistance shall comply with the requirement of paragraph (a) of this section, except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, but in no event later than three years after the date of approval of the application.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section a recipient shall develop, within one year of the effective date of this subpart, a transition plan setting forth the steps necessary to complete such changes. New recipients, receiving financial assistance after the effective date of this regulation, shall develop a transition plan within one year of receipt of the financial assistance. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the

accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible and usable;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to insure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 17.218 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily assessible to and usable by handicapped persons, if the construction was commenced after the effective date of this subpart.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this subpart, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Accessibility standards.* Each facility or part of a facility designed or constructed after the effective date of this subpart shall be designed and constructed in accordance with 38 CFR 1190.31, *Accessible buildings and facilities: New Construction,* of the "Minimum Guidelines and Requirements for Accessible Design," issued by the ATBCB. Each addition to an existing facility after the effective date of this subpart shall be designed and constructed in accordance with 38 CFR 1190.32, *Accessible buildings and facilities: Additions.* Any alterations to a facility after the effective date of this subpart shall be designed and constructed in accordance with 38 CFR 1190.33, *Accessible buildings and facilities: Alterations.* Departures from the requirements of 38 CFR 1190.31–33 by use of other methods will be permitted when it is evident that the method will provide access to and use of the facility which is equivalent to or better than that which would be provided by following the "Minimum Guidelines and Requirements for Accessible Design."

§ 17.219 [Reserved]

§ 17.220 Preschool, elementary and secondary education.

This section applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance, and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities. For the purposes of this section, recipients shall comply with the Section 504 requirements promulgated by the Department of Education at 34 CFR 104, Subpart D.

§§ 17.221–17.231 [Reserved]

§ 17.232 Postsecondary education.

This section applies to postsecondary education and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities. For the purposes of this section, all recipients shall comply with the Section 504 requirements promulgated by the Department of Education at 34 CFR 104, subpart E.

§§ 17.233–17.249 [Reserved]

§ 17.250 Health, welfare, and social services.

This subpart applies to health, welfare, and other social service programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective, as defined in § 17.203(b), as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning beneficiaries or services, or written material concerning waivers of rights or consent to treatment, shall take such steps as are necessary to insure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, visual aids, and other aids for persons with impaired hearing or vision.

§ 17.251 Drug and alcohol addicts.

A recipient that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or addict who is suffering from a medical condition, because of the person's drug or alcohol abuse or addiction.

§ 17.252 Education of institutionalized persons.

A recipient that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 17.202(d)(2), in its program or activity is provided an appropriate education, as defined in the regulation set forth by the Department of Education at 34 CFR 104.33(b). Nothing in this

section shall be interpreted as altering in any way the obligations of recipients under § 17.216.

§§ 17.253–17.259 [Reserved]

§ 17.260 Historic preservation programs.

(a) *Definitions.* For the purposes of this section, the term "Historic preservation programs" means programs receiving Federal financial assistance that has preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the *National Register of Historic Places.* "Substantial impairment" means a permanent alteration that results in a significant loss of the integrity of finished materials, design quality or special character.

(b) *Obligations.* (1) In the case of historic preservation programs, program accessibility means that, when viewed in its entirety, a program is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by qualified handicapped persons. Methods of achieving program accessibility include:

(i) Making physical alterations which enable qualified handicapped persons to have access to otherwise inaccessible areas or features of historic properties;

(ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;

(iii) Assigning persons to guide qualified handicapped persons into or through otherwise inaccessible portions of historic properties;

(iv) Adopting other innovative methods to achieve program accessibility.

Because the primary benefit of an historic preservation program is the experience of the historic property itself, in taking steps to achieve program accessibility, recipients shall give priority to those means which make the historic property, or portions thereof, physically accessible to handicapped individuals.

(2) Where program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the program accessibility requirement. In determining whether program accessibility can be achieved without causing a substantial impairment, the Secretary shall consider the following factors:

(i) Scale of property, reflecting its ability to absorb alterations;

(ii) Use of the property, whether primarily for public or private purpose;

(iii) Importance of the historic features of the property to the conduct of the program; and,

(iv) Cost of alterations in comparison to the increase in accessibility.

The Secretary shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

(c) *Advisory Council Comments.* Where the property is federally owned or where Federal funds may be used for alterations, the comments of the Advisory Council on Historic Preservation shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and 36 CFR Part 800, prior to effectuation of structural alterations.

§ 17.270 Recreation programs.

This section applies to recreation programs that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

(a) *Accessibility in existing recreation facilities.*

In the case of existing recreation facilities, accessibility of programs or activities shall mean accessibility of programs or activities when viewed in their entirety as provided at § 17.217. When it is not reasonable to alter natural and physical features, the following other methods of achieving accessibility may include, but are not limited to:

(1) Reassigning programs to accessible locations.

(2) Delivering programs or activities at alternate accessible sites operated by or available for such use by the recipient.

(3) Assignments of aides to beneficiaries.

(4) Construction of new facilities in conformance with the requirements of 17.218.

(5) Other methods that result in making the program or activity accessible to handicapped persons.

§§ 17.271–17.279 [Reserved]

§ 17.280 Enforcement procedures.

The compliance and enforcement provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this subpart. These procedures are found in 43 CFR Part 17, Subpart A, 17.5–17.11 and 43 CFR Part 4, Subpart L.

§§ 17.281–17.299 [Reserved]

FOR FURTHER INFORMATION

Mr. Melvin C. Fowler, Office for Equal Opportunity, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–4331.

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APPENDIX J

FEDERAL REGULATIONS ON CONTRACTS

governments under grants to be used, managed and disposed of in accordance with tribal laws and procedures. This recommendation cannot be adopted since local governments and Indian tribal governments will administer direct grants according to the requirements of the common rule (i.e., paragraphs (c) through (e) of § 12.45 (§ __.32)). "Pass-through" funds subgranted by a State to an Indian tribal government are administered according to State laws and procedures.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program, Indians.

Title 43, Part 12, of the Code of Federal Regulations is amended as set forth below.

Rick Ventura,

Assistant Secretary-Policy, Budget and Administration.

Date: February 1, 1988.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Colonel C. Armstrong, Deputy Director, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240, Phone: 202-343-6431.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Rescissions

Provisions of Department of the Interior regulations listed at 43 CFR 12.2(b) which are inconsistent with the common rule are hereby rescinded. 43 CFR 12.3(b) has been revised accordingly.

Comments on the Proposed Rule

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

One commentor suggested that all statutes applicable to Indian tribal governments be listed as exceptions to the common rule because of the unique status of tribal governments. Since § 12.44 (§ ___.4) provides a preference for Federal statutes which are inconsistent with the provisions of the common rule, no change has been made.

Another comment recommended that § 12.72(b) (§ ___.32(b)) be changed to allow equipment acquired by tribal

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-102; OMB Circular A-110; OMB Circular A-128.

Subpart A—Administrative Requirements and Cost Principles

2. Subpart A is amended as set forth below.

a. Section 12.2 (b)(1) is amended by adding an additional sentence to the end of the paragraph to read as follows:

§ 12.2 Policy.

* * * * *

(b)(1) * * * Departmental regulations implementing Circular A-102 are contained in Subpart C, 43 CFR Part 12.

* * * * *

b. Section 12.3 (b) is amended by revising "All" to read "all" and inserting the following words at the beginning of the sentence to read as follows:

§ 12.3 Effect on prior issuances.

* * * * *

(b) Except to the extent inconsistent with the regulations in 43 CFR Part 12, Subpart C, * * *

3. Subpart C is added to read as set forth at the end of this document.

Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.

12.41 (___.1) Purpose and scope of this part.
12.42 (___.2) Scope of subpart.
12.43 (___.3) Definitions.
12.44 (___.4) Applicability.
12.45 (___.5) Effect on other issuances.
12.46 (___.6) Additions and exceptions

Pre-Award Requirements

12.50 (___.10) Forms for applying for grants.
12.51 (___.11) State plans.
12.52 (___.12) Special grant or subgrant conditions for "high-risk" grantees

Post-Award Requirements

Financial Administration

12.60 (___.20) Standards for financial management systems.
12.61 (___.21) Payment.
12.62 (___.22) Allowable costs.
12.63 (___.23) Period of availability of funds.
12.64 (___.24) Matching or cost sharing.
12.65 (___.25) Program income.
12.66 (___.26) Non-Federal audit.

Changes, Property, and Subawards

12.70 (___.30) Changes.
12.71 (___.31) Real Property
12.72 (___.32) Equipment
12.73 (___.33) Supplies.
12.74 (___.34) Copyrights
12.75 (___.35) Subawards to debarred and suspended parties.
12.76 (___.36) Procurement.
12.77 (___.37) Subgrants.

Reports, Records Retention, and Enforcement

12.80 (___.40) Monitoring and reporting program performance.
12.81 (___.41) Financial reporting.
12.82 (___.42) Retention and access requirements for records.
12.83 (___.43) Enforcement.
12.84 (___.44) Termination for convenience

After the Grant Requirements

12.90 (___.50) Closeout.
12.91 (___.51) Later disallowances and adjustments.
12.92 (___.52) Collection of amounts due.

Entitlements (Reserved)

BILLING CODE 4310-RF-M

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART _____—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

____.1 Purpose and scope of this part.
____.2 Scope of subpart.
____.3 Definitions.
____.4 Applicability.
____.5 Effect on other issuances.
____.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

____.10 Forms for applying for grants.
____.11 State plans.
____.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

____.20 Standards for financial management systems.
____.21 Payment.
____.22 Allowable costs.
____.23 Period of availability of funds.
____.24 Matching or cost sharing.
____.25 Program income.
____.26 Non-Federal audit.

Changes, Property, and Subawards

____.30 Changes.
____.31 Real property.
____.32 Equipment.
____.33 Supplies.
____.34 Copyrights.
____.35 Subawards to debarred and suspended parties.
____.36 Procurement.
____.37 Subgrants.

Reports, Records, Retention, and Enforcement

____.40 Monitoring and reporting program performance.
____.41 Financial reporting.
____.42 Retention and access requirements for records.
____.43 Enforcement.
____.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

____.50 Closeout.
____.51 Later disallowances and adjustments.
____.52 Collection of amounts due.

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Subpart E—Entitlements (Reserved)

Subpart A—General

§ ___.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.

§ ___.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ ___.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 United States 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. "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.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean 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.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has 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.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ ____4 Applicability.

(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §____6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation 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 § ____.4(a) (3)–(8) are subject to Subpart E.

§ ____.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 § ____.6.

§ ____.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.

Subpart B—Pre-Award Requirements

§ ____.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.

§ ____.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.

§ ____.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.

Subpart C—Post-Award Requirements

Financial Administration

§ ____.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.

§ __.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 reimbursement 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 § __.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.

§ ____.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.

§ ____.23 Period to 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.

§ ____.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 § ____.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 § ____.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.

§ ___.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 § ___.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ ___.31 and ___.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, or 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.

§ ___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, § ___36 shall be followed.

Changes, Property, and Subawards

§ ___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 § ___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 § ___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 § ___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 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.

§ ____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 § ____.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 ____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.

§ ___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.

§ ___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.

§ ___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."

§ ___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 whenever 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 §__.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. Nothing 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.

(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 § ____.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 § ____.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 contractors 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 Part 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).

§ ___.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 Section ___.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 ___.10;

(2) Section ___.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § ___.21; and

(4) Section ___.50.

Reports, Records, Retention, and Enforcement

§ ___.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.

§ ___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 paragraph § ___41(e)(2)(iii) of this section.

(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 § ____.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 § ____.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § ____.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 be governed by § ____.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § ____.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § ____.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § ____.41(b)(2).

§ ____.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § ____.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody 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.

§ _____.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.

(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 § _____.35).

§ _____.44 Termination for convenience.

Except as provided in § _____.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 § _____.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ _____.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative 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 § _____.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.

§ _____.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 § _____.42;

(d) Property management requirements in §§ _____.31 and § _____.32; and

(e) Audit requirements in § _____.26.

§ _____.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]

[FR Doc. 88-5251 Filed 3-10-88; 8:45 am]

BILLING CODES 3410-KS-M, 6450-0-M, 6025-01-M, 3510-FE-M, 4710-2Y-M, 4210-32-M, 4410-18-M, 4510-23-M, 6732-01-M, 3810-01-M, 4000-01-M, 7515-01-M, 8320-01-M, 6560-50-M, 4310-RF-M, 6718-21-M, 4150-04-M, 7555-01-M, 7537-01-M, 7536-01-M, 7036-01-M, 6050-28-M, 6340-01-M, 4910-62-M

APPENDIX K

FEDERAL REGULATIONS ON DEBARMENT AND SUSPENSION

federal register

Thursday
May 26, 1988

Part VII

Nonprocurement Debarment and Suspension; Notice and Final Rule and Interim Final Rule

Office of Management and Budget
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Department of State
International Development Cooperation Agency
Agency for International Development
United States Information Agency
Department of Housing and Urban Development
Department of the Treasury
Internal Revenue Service
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
General Services Administration
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum Services
ACTION
Department of Transportation

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OFFICE OF MANAGEMENT AND BUDGET

Memorandum to the Heads of Executive Departments and Agencies: Governmentwide Nonprocurement Suspension and Debarment

May 26, 1988.

In February 1986, the President signed an executive order directing that persons suspended or barred from doing nonprocurement business with ONE agency of the Executive Branch should be suspended or barred from ALL agencies. For example, if you debar an organization from fraudulent or criminal conduct in its dealings with you, that organization will not be able to shop for work from other Federal agencies. This is one more step in our war against fraud, waste, and abuse.

Twenty-eight agencies are today publishing a final common rule on "governmentwide nonprocurement suspension and debarment," and OMB is amending its guidelines to conform to the common rule.

Further information regarding the OMB guidelines may be obtained from Barbara Kahlow in the Financial Management Division on 395-3053.

Joseph J. Wright, Jr.,

Deputy Director.

[FR Doc. 88-11560 Filed 5-25-88; 8:45 am]

BILLING CODE 3110-01-M

governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (3)(a) of this certification; and

(c) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default. Where the prospective lower-tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-50

[FPMR Amdt. H-167]

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Duda, Director, Property Management Division, (703) 557-1240.

List of Subjects in 41 CFR Part 101-50

Administrative practice and procedures, Federal surplus property.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Dated: May 13, 1988.

John Alderson,

Acting Administrator of General Services.

1. Part 101-50 is added as set forth at the end of this document.

PART 101-50—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart 101-50.1—General

Sec.
101-50.100 Purpose.
101-50.105 Definitions.
101-50.110 Coverage.
101-50.115 Policy.

Subpart 101-50.2—Effect of Action

101-50.200 Debarment or suspension.
101-50.205 Ineligible persons.
101-50.210 Voluntary exclusion.
101-50.215 Exception provision.
101-50.220 Continuation of covered transactions.
101-50.225 Failure to adhere to restrictions.

Subpart 101-50.3—Debarment

101-50.300 General.
101-50.305 Causes for debarment.
101-50.310 Procedures.
101-50.311 Investigation and referral.
101-50.312 Notice of proposed debarment.
101-50.313 Opportunity to contest proposed debarment.
101-50.314 Debarring official's decision.
101-50.315 Settlement and voluntary exclusion.
101-50.320 Period of debarment.
101-50.325 Scope of debarment.

Subpart 101-50.4—Suspension

101-50.400 General.
101-50.405 Causes of suspension.
101-50.410 Procedures.
101-50.411 Notice of suspension.
101-50.412 Opportunity to contest suspension.
101-50.413 Suspending official's decision.
101-50.415 Period of suspension.
101-50.420 Scope of suspension.

Subpart 101-50.5—Responsibilities of GSA, Agency and Participants

101-50.500 GSA responsibilities (information dissemination).
101-50.505 GSA responsibilities.
101-50.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549; and Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Part 101-50 is further amended as follows:

a. "[Agency]" is removed and "GSA" is added wherever "[Agency]" occurs.

b. Section 101-50.105 is amended by adding paragraph (w) to read as follows:

§ 101-50.105 Definitions.

* * * * *

(w) *GSA.* General Services Administration.

§ 101-50.500 GSA responsibilities (information dissemination).

c. Section 101-50.500 is amended by revising the section head to read as set forth above.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, (202) 343-3433.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking on October 20, 1987 (52 FR 39042), separate from the common proposed rule issued by 20 other agencies. As a result of revisions made in the common rule to accommodate agency implementing procedures, the Department is participating in this joint publication. The Department is adding to the list of exceptions under § 12.110(a)(2) transactions entered into pursuant to Pub. L. 93-638, "Indian Self-Determination and Education Assistance Act," since application of the common rule to such transactions is prohibited by this statute. A corresponding change is made in § 12.200(c) to add a reference to these excluded transactions.

Due to the expanded scope of transactions covered under the final common rule, the Department is adopting only the coverage included in § 12.110(a)(1) of its proposed rule as its coverage in § 12.110(a)(3) of the final rule. The Department will review its other nonprocurement program activities to determine whether such activities will be included in the coverage. Based on this review, the Department will issue a notice of proposed rulemaking to obtain public comment on its coverage on or before October 1, 1988, the effective date of the common rule.

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration Grant program. Title 43 of the Code of Federal Regulations is amended as set forth below.

Date: May 17, 1988.

William L. Kendig,

Acting Principal Deputy Assistant Secretary-Policy, Budget and Administration.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: Executive Order 12549 of February 18, 1986; 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-128; OMB Circular A-102.

2. A new Subpart D is added as set forth at the end of this document.

Subpart D—Governmentwide Debarment and Suspension (Nonprocurement)

General

Sec.
12.100 Purpose.
12.105 Definitions.
12.110 Coverage.
12.115 Policy.

Effect of Action

12.200 Debarment or suspension.
12.205 Ineligible persons.
12.210 Voluntary exclusion.
12.215 Exception provision.
12.220 Continuation of covered transactions.
12.225 Failure to adhere to restrictions.

Debarment

12.300 General.
12.305 Causes for debarment.
12.310 Procedures.
12.311 Investigation and referral.
12.312 Notice of proposed debarment.
12.313 Opportunity to contest proposed debarment.
12.314 Debarring official's decision.
12.315 Settlement and voluntary exclusion.
12.320 Period of debarment.
12.325 Scope of debarment.

Suspension

12.400 General.
12.405 Causes for suspension.
12.410 Procedures.
12.411 Notice of suspension.
12.412 Opportunity to contest suspension.
12.413 Suspending official's decision.
12.415 Period of suspension.
12.420 Scope of suspension.

Responsibilities of GSA, Agency and Participants

12.500 GSA responsibilities.
12.505 Department of the Interior responsibilities.
12.510 Participants' responsibilities.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549 of February 18, 1986; 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-128; OMB Circular A-102.

3. Subpart D is further amended as follows:

a. "[Agency]" is removed and "Department of the Interior" is added wherever "[Agency]" occurs.

b. Section 12.105 is amended by adding paragraphs (g)(3), (t)(3), (w) and (x) to read as follows:

§ 12.105 Definitions.

* * * * *

(g) * * *

(3) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

* * * * *

(t) * * *

(3) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

* * * * *

(w) *Exception official.* The official authorized to grant exceptions under § 12.215 for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(x) *Findings of fact official.* The official authorized to conduct and prepare findings of fact, if required under § 12.314(b)(2) or § 12.413(b)(2), is the Director, Office of Hearings and Appeals, or designee.

c. Section 12.110 is amended by adding paragraphs (a)(2)(viii) and (3) to read as follows:

§ 12.110 Coverage.

(a) * * *

(2) * * *

(viii) Transactions entered into pursuant to Pub. L. 93-638.

(3) *Department of the Interior covered transaction.* These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type of (including subtier awards under awards which are statutory entitlement or mandatory awards).

* * * * *

d. Section 12.200 is amended by adding paragraph (c)(8) to read as follows:

§ 12.200 Debarment or suspension.

* * * * *

(c) * * *

(8) Transactions entered into pursuant to Pub. L. 93-638.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 17

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the Comptroller, Policy Division (202) 646-4235.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency incorporates the final rule as Part 17 of Title 44 of the Code of Federal Regulations.

As a general comment, the Federal Emergency Management Agency prohibits by regulations and by written agreement with the State, the use of suspended or debarred contractors for disaster assistance funded under Pub. L. 93-288. We consider our prohibition to be proper and prudent management of Federal funds. We do note that § 17.215 of this common rule authorizes agencies to grant exceptions permitting debarred and suspended parties to participate in otherwise covered transactions upon a determination that there is a need to participate. This would allow us the discretion to permit such participation on a case-by-case basis.

List of Subjects in 44 CFR Part 17

Accounting, Administrative practice and procedures, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements. Title 44 of the Code of Federal Regulations is amended as set forth below.

Arthur E. Curry,
Chief, Policy Division.

1. Part 17 is added as set forth at the end of this document.

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
17.100 Purpose.
17.105 Definitions.
17.110 Coverage.
17.115 Policy.

Subpart B—Effect of Action

17.200 Debarment or suspension.
17.205 Ineligible persons.
17.210 Voluntary exclusion.
17.215 Exception provision.
17.220 Continuation of covered transactions.
17.225 Failure to adhere to restrictions.

Subpart C—Debarment

17.300 General.
17.305 Causes for debarment.
17.310 Procedures.
17.311 Investigation and referral.
17.312 Notice of proposed debarment.
17.313 Opportunity to contest proposed debarment.
17.314 Debarring official's decision.
17.315 Settlement and voluntary exclusion.
17.320 Period of debarment.
17.325 Scope of debarment.

Subpart D—Suspension

17.400 General.

undesignated paragraph to read as follows:

§ 29.215 Exception provision.

* * * * *

(a) A debarring or suspending official may grant exceptions and make written determinations under this section.

e. Section 29.315 is amended by adding paragraph (a)(1) to read as follows:

§ 29.315 Settlement and voluntary exclusion.

* * * * *

(a) * * *

(1) An operating administration may settle a debarment or suspension action under this section.

* * * * *

f. Section 29.510 is amended by adding paragraph (b)(1)(i) to read as follows:

§ 29.510. Participants' responsibilities.

* * * * *

(b) * * *

(1) * * *

(i) However, an operating administration may require that a person who enters into a primary covered transaction require the next lower tier participant to include, with conforming modifications, the certification in Appendix A.

* * * * *

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART __—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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Subpart E—Responsibilities of GSA, Agency and Participants

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Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Authority: Executive Order 12549, [citation to Agency rulemaking authority]

Subpart A—General

§ __.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § __.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ __.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement

programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the 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 of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ ___.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign

government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § ____200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § ____110(a). Sections ____325, "Scope of debarment," and ____420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ ____115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ ____200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § ____215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § ____110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ ____205 Ineligible persons.

Persons who are ineligible, as defined in § ____105(l), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ ____210 Voluntary exclusion.

Persons who accept voluntary exclusions under § ____315 are excluded in accordance with the terms of their settlements. [Agency] shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ ____215 Exception provision.

[Agency] may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § ____200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § ____505(a).

§ ____220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § ____215.

§ ____225 Failure to adhere to restrictions.

Except as permitted under § ____215 or § ____220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is

ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ ____.300 General.

The debarring official may debar a person for any of the causes in § ____.305, using procedures established in §§ ____.310 through ____.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ ____.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ ____.300 through ____.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § ____.215 or § ____.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § ____.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ ____.310 Procedures.

[Agency] shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ ____.311 through ____.314.

§ ____.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ ____.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § ____.305 for proposing debarment;

(d) Of the provisions of § ____.311 through § ____.314, and any other [Agency] procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ ____.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be

arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § ____.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ ____.135 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, [Agency] may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ ____.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ ____.311 through ____.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ ____.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ ____.311 through ____.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew o or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ ____.400 General.

(a) The suspending official may suspend a person for any of the causes in § ____.405 using procedures established in §§ ____.410 through ____.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § ____.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ ____.405. Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ ____.400 through ____.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § ____.305(a); or

(2) That a cause for debarment under § ____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ ____.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source

shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* [Agency] shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § ____411 through § ____413.

§ ____411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § ____405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § ____411 through § ____413 and any other [Agency] procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ ____412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ ____413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § ____320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ ____415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ ____420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § ____325), except that the procedures of §§ ____410 through ____413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ ____500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ ____505 [Agency] responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations

of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which [Agency] has granted exceptions under § _____215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § _____500(b) and of the exceptions granted under § _____215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ _____510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to [Agency] if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State

of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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APPENDIX L

EQUAL OPPORTUNITY CLAUSE

APPENDIX L

EQUAL OPPORTUNITY CLAUSE

§ 60-1.4 Equal opportunity clause.

(a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contrator will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

§ 60-1.5 Exemptions.

(a) *General*—(1) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No agency, contractor, or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: *Provided,* that where a contractor has contracts or subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding $10,000, the $10,000 or under exemption does not apply, and the contracts are subject to the order and the regulations issued pursuant thereto regardless of whether any single contract exceeds $10,000

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, any agency, instrumentality or subdivision of such government, except for educational institutions and medical facilities, are exempt from the requirements of filing the annual compliance report provided for by § 60-1.7(a)(1) and maintaining a written affirmative action compliance program prescribed by § 60-1.40 and Part 60-2 of this chapter.

ATTACHMENT #1

CONSTRUCTION CONTRACT COMPLIANCE FORMS AND INSTRUCTIONS

CONSTRUCTION CONTRACT COMPLIANCE

FORMS AND INSTRUCTIONS

Equal Employment Opportunity
Affirmative Action
Nondiscrimination
Nonsegregation
Accessibility for Persons With Disabilities

FOR FEDERALLY ASSISTED PROJECTS

Under authority of:

Title VI of the Civil Rights Law of 1964: Nondiscrimination in Federally-Assisted Programs

Executive Order 11246: Ensures equal employment opportunity with contractors performing under federally-assisted construction projects

Section 504 of the Rehabilitation Act of 1973

Architectural Barriers Act of 1975

Department of the Interior Regulations 43 CFR 17, Subpart B: Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs

Land and Water Fund Project Agreement, Part II

Vietnam Era Veterans Readjustment Assistance Act of 1974

Executive Order 11758: Ensures affirmative action in employment of disabled and Vietnam-era veterans

Age Discrimination Act of 1975, as amended by Civil Rights Restoration Act of 1988

Executive Order 11141: Nondiscrimination on the basis of age

Department of the Interior Regulations 43 CFR 17, Subpart C: Nondiscrimination on the Basis of Age in Federally-Assisted Programs

Executive Order 12432: Minority Business Enterprise Development

July 1989

Department of Parks and Recreation
P.O. Box 942896
Sacramento, California 94296-0001

Human Rights Office
(916) 445-1050

Local Assistance Section
(916) 445-4441

INTRODUCTION

This handbook is intended to assist local agencies and contractors in complying with equal employment opportunity, nondiscrimination, and affirmative action requirements which apply to Department of Parks and Recreation projects financed in whole or in part with federal funds.

This handbook presents the basic requirements for compliance, cites source documents for detailed information, and contains instructions for submission of required report materials.

The United States Department of Labor district and area offices will provide assistance to local agencies and contractors as necessary.

Appendices 4 and 5 provide information on location of appropriate offices. Local agencies and contractors are responsible for compliance with all applicable equal opportunity provisions and must take the initiative in seeking assistance when it is needed.

REQUIREMENTS

A. Civil Rights Act of 1964, Title VI

> No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

B. Certification of Compliance with Executive Order 11246, as amended

Each administering agency must require the following language to be included as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction:

> Each bidder/offerer, contractor, or subcontractor hereby certifies that it will fully comply with Executive Order 11246, as amended by Executive Order 11375, and the Equal Opportunity Clause and rules and regulations issued thereunder, which are hereby incorporated by reference as appropriate. The contractor commits itself to such compliance by submitting a properly signed bid or offer or by signing or otherwise accepting a contract or subcontract.

C. Section 504 of the Rehabilitation Act of 1973

Section 504 prohibits discrimination in employment on the basis of handicap or disability. All recipients and subrecipients (grantees, contractors, and subcontractors) have Section 504 responsibilities. Section 504 applies to each recipient of financial assistance from the Department of the Interior who funds or administers a park or recreation

program. Public and private organizations to whom subrecipients provide assistance are also covered by Section 504; such arrangements are interpreted by the department as being extensions of federal financial assistance. Recipients should study Department of the Interior Regulation 43 CFR 17.203 in its entirety for guidance on specific prohibitions related to services and benefits based on the standard:

> No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

D. <u>The Age Discrimination Act of 1975</u>

Employment discrimination on the basis of age is prohibited on any project or activity which is a recipient of federal funds.

E. <u>Executive Order 12432: Minority Business Enterprise Development</u>

For any project involving $500,000 or more in grant assistance (except for projects involving acquisition only), the state or recipient must submit, prior to the commencement of construction and every fiscal quarter thereafter until project completion, reports (DI-334) documenting the effects to hire minority business firms. These reports will be submitted to the National Park Service Regional Office.

F. Information and Reports

The contractor and local government participant must provide all information and reports required by the regulations or directives issued pursuant to the Civil Rights Act of 1964, Executive Order 11246, Section 504 of the Rehabilitation Act of 1973, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Age Discrimination Act of 1975, the Architectural Barriers Act of 1968, the Land and Water Conservation Fund Project Agreement, and the U.S. Department of Labor Office of Federal Contract Compliance Programs' Equal Employment Opportunity Section.

The local government participant and contractor must provide all information and reports required by the regulations or directives issued pursuant thereto, and must permit access to such facilities, books, records, accounts, and other sources of information as may be determined by the State Department of Parks and Recreation or the U.S. Department of Labor to be pertinent and necessary to ascertain compliance with applicable regulations and directives.

G. Sanctions for Noncompliance

The administering agency will, with the consent of the U.S. Department of Labor, impose such contract sanctions as it may determine to be appropriate in the event of the contractor's failure to comply with the nondiscrimination provisions of the contract.

REPORTING REQUIREMENTS

A. General

1. Unless otherwise indicated, the participant (local administering agency) must submit one copy of the bid package to the State Department of Parks and Recreation for approval prior to submission of the project for bids. Submit all the information to:

   Local Assistance Section
   California Department of Parks and Recreation
   P.O. Box 942896
   Sacramento, CA 94296-0001

2. Unless otherwise indicated, contractors must submit one copy of all materials required from them and subcontractors to the local agency administering the contract (also referred to herein as "the participant").

3. The participant is responsible for:

   a. Timely submission to the California Department of Parks and Recreation, Local Assistance Section, of all reports and other materials required, and

   b. Obtaining and submitting any other information requested pursuant to Executive Order 11246, as amended, Executive

Order 11141, as amended, or the Civil Rights Law of 1964, as amended.

4. The total cost of the contract, rather than the amount of federal assistance, is the governing factor in determining whether or not federally-assisted contracts and subcontracts exceed $10,000.

B. Materials Required Prior to Announcement of Bidding (Bid Package)

1. If a contract will exceed $10,000 (see A-4 above), the applicant must ensure that all notices, announcements, requests for proposals, or invitations to bid contain all appropriate bid conditions.

Approval in writing by the California Department of Parks and Recreation is required before distribution of bid package to prospective bidders.

At a minimum, each bid package must contain the following information:

a. Project name and its Land and Water Conservation Fund, Historical Preservation, or other project number.

b. Name of sponsor or applicant.

c. Location of project, including street address and city.

d. Brief description of project.

e. All appropriate bid conditions, including:

(1) Certification of compliance with Executive Order 11246, as amended, and Executive Order 11141.

(2) A copy of the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity."

(3) A copy of the "Standard Equal Employment Opportunity Construction Contract Specification" (41 CFR 60-4.3(a)).

(4) One copy each of the following forms (copies of the forms are in Appendix C):

CC 257	Monthly Employment Utilization Report
DPR 542	Certification of Non-Segregated Facilities
DPR 544	Contractor's Notification of Subcontracts Awarded
DPR 547	Contractor's List of Federal and Non-Federal Work in Bid Condition Area

(5) Notice to the contractors of conditions under which EEO-1 (Standard Form 100) is required (see E-1 below).

C. Materials Required Prior to Formal Bid Award

1. Certification of Non-Segregated Facilities (Form DPR 542)

DPR 542 must be signed by the contractor and submitted with the bid to the grant recipient prior to the award of a federal aid construction contract or subcontract which exceeds $10,000 and is not exempt from the provisions of the Equal Opportunity Clause (41 CFR 60-1.4(b), see Appendix D).

D. Materials Required After Bid Award But Prior to Commencement of Work

1. Certification of Non-Segregated Facilities (Form DPR 542)

After awarding the contract, the participant (grant recipient) must submit the selected contractor's "Certification of Non-Segregated Facilities" (Form DPR 542) with the information required in Item D-2 (below) to the U.S. Department of Labor's Area Office (see Appendices B and C).

2. Within 10 days of awarding the contract, the participant (grant recipient) must submit the following information to the U.S. Department of Labor's Area Office (see Appendix B) and to the California Department of Parks and Recreation, Local Assistance Section:

a. Name of contractor.

b. Address of contractor.

c. Telephone number of contractor.

d. Employer identification number (social security number).

e. Dollar amount of contract.

f. Estimated starting and completion dates of contract.

g. Contract number.

h. Geographic area in which the work is to be performed.

3. Contractor's Notification of Subcontracts Awarded (Form DPR 544)

The contractor must provide written notification to the U.S. Department of Labor's Area Office (see Appendices B and C) within 10 working days of award of any construction subcontract in excess of $10,000.

The notification must list the name, address, and telephone number of the subcontractor; employer identification number, contract amount, estimated starting and completion dates, and geographical area in which work is to be performed.

DPR Form 544 is available for the convenience of the contractor and participant in reporting the required information regarding subcontractors with contracts greater than $10,000; use of this form is optional.

4. Standard Form 334 - Minority Business Enterprise Utilization

Form 334 (MBE/WBE Utilization) must be filed with the National Park Service Western Region Office prior to the commencement of construction and every fiscal quarter thereafter by recipients with projects valued at $500,000 or more (see E-1 below for more details; see also Appendix C).

E. <u>During Construction</u>

1. Standard Form 334: Minority Business Enterprise (MBE/WBE) Utilization Under Federal Grants, Cooperative Agreements, and other Federal Financial Assistance

Recipients of federal grants valued at $500,000 or more must report to the National Park Service Region Office within one month following the end of each federal fiscal year quarter (i.e., January 31, April 30, July 31, and October 31) during which <u>any</u> procurement in excess of $10,000 is actually executed under this assistance contract. Reporting Form 334 is available from National Park Service, Western Region Office, Box 36063, San Francisco, CA 94102. The form contains information on Women-Owned Business

Enterprise (WBE), but Land and Water Conservation Fund recipients are not required to submit any data on WBEs.

2. Equal Employment Opportunity Employer Information Report EEO-1 (Standard Form 100)

EEO-1 must be filed by contractors or subcontractors who meet <u>any one</u> of the following conditions:

a. The entire company has at least 100 employees in the payroll period for which the report is made;

b. The company is affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more;

or

c. The company or any of its establishments has 50 or more employees, is a prime government contractor or first tier subcontractor with a contract or subcontract amounting to $50,000 or more, AND is not exempt as provided in 42 CFR 60-1.5.

EEO-1 must be submitted to the Joint Reporting Committee (of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs (Labor)) annually on or before the last day of March.

A copy of EEO-1 must be submitted to National Park Service, Regional Office, within 30 days after award of contract unless contractor has submitted such a report within 12 months preceding the date of the award.

This form and complete filing instructions may be obtained only from the Joint Reporting Committee, P.O. Box 2596, Norfolk, VA 23501.

3. Project Site Equal Employment Opportunity Notice

The participant must post in conspicuous places at the project site the EEO notice, "Equal Employment is the Law". Additional EEO notice posters may be obtained from the U.S. Department of Labor's Area Office (see Appendices A and B).

4. Monthly Employment Utilization Report (Form CC 257)

The Form CC 257, "Monthly Employment Utilization Report", must be submitted by all construction contractors and subcontractors working on federal and/or federally-assisted projects with contracts greater than $10,000 by the fifth day of each month, showing the total number of hours worked by each minority group in each trade or classification.

Minority women must be reported both in the report for women and in the appropriate minority group.

The Form CC 257 may cover all full pay periods of the month; the report need not conform to the actual work days of the calendar month.

The report must cover all the time worked by the contractor's or subcontractor's workforce in the plan area or county, whether on a federal project or not, as long as <u>any</u> worker is on a federal project.

Only one contractor/subcontractor may report on a single Form CC 257.

5. Contractor's List of Federal and Non-Federal Work in Bid Condition Areas (Form DPR 547)

With the initial Form CC 257, each contractor must submit the following:

a. A list of all federal or federally-assisted contracts. The list must show funding or contracting agency or agencies, the contract number(s), the project location(s), the dollar value of the contract(s), the percentage of completion of each project, and the projected completion date(s).

b. A list of all covered non-federal projects. This list must show the same items as 5a above.

6. Approval of Subcontractors

The contractor must receive approval of the grant recipient before any subcontractor may begin work.

7. Form DPR 542 ("Certification of Non-Segregated Facilities") must be submitted to the U.S. Department of Labor's Area Office (see Appendices B and C) by any subcontractor with a contract greater than $10,000.

8. As additional contractors are identified, all required equal employment opportunity information concerning identified subcontractors must be obtained and submitted.

9. If changes occur while the project is underway which require modification of previously submitted reports, supplementary reports must be submitted by the responsible agency, contractor, or subcontractor on a flow basis.

SUMMARY:

REPORTING REQUIREMENTS, FORMS,

AND OTHER INFORMATION REQUIRED

Item	Who Must File	With Whom	Notes
Prior to Submission of the Project for Bids			
One copy of bid package (for approval)	Participating local agencies (subgrantees)	Local Assistance Section CA Department of Parks and Recreation P.O. Box 942896 Sacramento, CA 94296-0001	(916) 322-9589
Prior to Announcement of Bidding (Bid Package)			
Any notices, invitations for proposals, announcements (for approval)	Participating local agencies for contracts exceeding $10,000	Local Assistance Section CA Department of Parks and Recreation P.O. Box 942896 Sacramento, CA 94296-0001	(916) 322-9589
(See page 7 for requirements for notice contents)			
Prior to Formal Bid Award			
Form DPR 542: Elimination of Segregated Facilities	Construction contractor or contracts or subcontracts exceeding $10,000	Participating local agency	
After Bid Award But Prior to Commencement of Work			
Contractor's Certification of Non-Segregated Facilities (Form DPR 542)	Participating local agency	U.S. Dept. of Labor's district or area office	(See Appendix B)

Item	Who Must File	With Whom	Notes
After Bid Award But Prior to Commencement of Work (Continued)			
Information: Contractor's name, address, telephone #, identification number (federal social security number); dollar amount of contract; estimated starting and completion dates of contract; contract #; geographic area in which work is to be performed	Participating local agency	U.S. Dept. of Labor's district or area office and National Park Service Western Region Office 450 Golden Gate Avenue San Francisco, CA 94201	Within 10 days of awarding contract (415) 556-8360
Form DPR 544 Contractor's Notification of Subcontracts Awarded	Contractors	U.S. Dept. of Labor District or Area Office Office of Federal Contract Compliance	Within 10 working days of award of any construction contract in excess of $10,000 (see Appendices B & C)
Std. Form 334 Minority Business Enterprise (MBE)/WBE Utilization	Recipients of federal grants or other financial assistance valued at $500,000 or more (state or local agency)	National Park Service Western Region Office	See Appendix C

Item	Who Must File	With Whom	Notes
During Construction			
Std. Form 334 Minority Business Enterprise (MBE)/WBE Utilization	Recipients of federal grants or other financial assistance valued at $500,000 or more (state or local agency)	National Park Service Western Region Office	
Std. Form 100 (EEO-1)	Contractors who have 100 or more employees or 50 or more employees and contract for $50,000 or more	Joint Reporting Committee	See p. 11 & Appendix C. Reports due annually on or before July 15. Obtain Std. Form 100 (EEO-1) from Joint Reporting Committee, P.O. Box 2596, Norfolk, VA 23501
Std. Form 100 (EEO-1)	Same as above	National Park Service	Within 30 days after award of contract unless contractor has submitted such report within 12 months preceding date of the award.
Form CC 257 Monthly Employment Utilization Report	Prime contractors and subcontractors	U.S. Dept. of Labor District or Area Office	File by 5th day of month; DOL addresses and phone numbers in Appendix B; Form CC 257, p. 12.

Item	Who Must File	With Whom	Notes
During Construction (Continued)			
Form DPR 547 (Contractor's list of federal and non-federal work in bid condition areas)	Contractors	Department of Labor's District or Area Office	Submit with initial Form CC 257. Update if work completed or new contract received. Information required; use of DPR 547 optional.
DPR Form 542 Certification of Non-Segregated Facilities	Subcontractors with contracts greater than $10,000	U.S. Dept. of Labor District or Area Office	See p. 13 and Appendices B and C.
All equal employment opportunity information	Additional contractors and subcontractors	Appropriate agencies, as above	
Supplementary reports	Agencies, contractors, and subcontractors	Appropriate agencies, as above	Whenever changes require modification of previously submitted reports
EEO Notice: "Equal Employment Is The Law"	Local participant agency	Post at project site in conspicuous place	Obtain notices from Dept. of Labor offices

D-1065P

APPENDIX A

OFFICE OF FEDERAL CONTRACT COMPLIANCE AREA OFFICE JURISDICTION BY COUNTIES IN CALIFORNIA

APPENDIX A

OFFICE OF FEDERAL CONTRACT COMPLIANCE
AREA OFFICE JURISDICTION BY COUNTIES IN CALIFORNIA

Counties	Area Office	Counties	Area Office
Alameda	Oakland	Orange	Santa Ana
Alpine	San Jose	Placer	Oakland
Amador	Oakland	Plumas	Oakland
Butte	Oakland	Riverside	San Diego
Calaveras	San Jose	Sacramento*	Oakland
Colusa	Oakland	San Benito	San Jose
Contra Costa	Oakland	San Bernardino	Santa Ana
Del Norte	Oakland	San Diego	San Diego
El Dorado	Oakland	San Francisco	San Francisco
Fresno	San Jose	San Joaquin	Oakland
Glenn	Oakland	San Luis Obispo	Van Nuys
Humboldt	Oakland	San Mateo	San Francisco
Imperial	San Diego	Santa Barbara	Van Nuys
Inyo	Van Nuys	Santa Clara	San Jose
Kern	Van Nuys	Santa Cruz	San Jose
Kings	San Jose	Shasta	Oakland
Lake	Oakland	Sierra	Oakland
Lassen	Oakland	Siskiyou	Oakland
Los Angeles	Los Angeles	Solano	Oakland
Madera	San Jose	Sonoma	Oakland
Marin	Oakland	Stanislaus	San Jose
Mariposa	San Jose	Sutter	Oakland
Mendocino	Oakland	Tehama	Oakland
Merced	San Jose	Trinity	Oakland
Modoc	Oakland	Tulare	Van Nuys
Mono	San Jose	Tuolumne	San Jose
Monterey	San Jose	Ventura	Van Nuys
Napa	Oakland	Yolo	Oakland
Nevada	Oakland	Yuba	Oakland

*All CC 257s for construction projects located in Sacramento County should be forwarded to the Greater Sacramento Area Plan at 2220 Watt Avenue, Suite B-5, Sacramento, California 95825, (916) 489-3685.

APPENDIX B

ADDRESSES OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

APPENDIX B

ADDRESSES OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE UNITED STATES DEPARTMENT OF LABOR

SAN FRANCISCO DISTRICT OFFICE OFCCP
211 Main Street, Suite 328
San Francisco, CA 94105
(415) 974-8750/8757

OAKLAND DISTRICT OFFICE OFCCP
1401 Lakeside Drive, Suite 702
Oakland, CA 94612
(415) 273-4055/4060

VAN NUYS DISTRICT OFFICE OFCCP
14546 Hamlin Street, Suite 220
Van Nuys, CA 91411
(818) 904-6285/6286/6296/6397

SAN JOSE DISTRICT OFFICE OFCCP
280 South First Street, Suite 390
San Jose, CA 95113-3087
(408) 291-7384/7385

LOS ANGELES DISTRICT OFFICE OFCCP
3660 Wilshire Boulevard, Suite 602
Los Angeles, CA 90010
(213) 252-7542

SANTA ANA DISTRICT OFFICE OFCCP
34 Civic Center Plaza, Suite 704
Santa Ana, CA 92712-2800
(714) 836-2784

SAN DIEGO AREA OFFICE OFCCP
5675 Ruffin Road, Suite 320
San Diego, CA 92123-5378
(619) 557-6489/6567/5240, 277-4131

APPENDIX C

FORMS

APPENDIX C

FORMS

CC 257	--	Monthly Employment Utilization Report (obtain from Area Office of Fedceral Contract Compliance: see Appendices A and B)
DPR 541	--	Certification of Non-Segregated Facilities (obtain from California Department of Parks and Recreation, Local Assistance Section)
DPR 544	--	Contractor's Notification of Subcontracts Awarded (obtain from California Department of Parks and Recreation, Local Assistance Section)
DPR 547	--	Contractor's List of Federal and Non-Federal Work in Bid Condition Areas (obtain from California Department of Parks and Recreation, Local Assistance Section)
EEO-1	--	Equal Employment Opportunity - Employer Information Report, Std. Form 100 (obtain from Joint Reporting Committee, P.O. Box 2596, Norfolk, VA 23501)
VETS-100	--	Disabled Veterans and Veterans of Vietnam Era (obtain from Office of State Director, U.S. Department of Labor, 800 Capitol Mall, W-2052, Sacramento, CA 94280-0001, or call (916) 551-1422
Std. 334	--	MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance (obtain from National Park Service, Western Region Office, P.O. Box 36063, San Francisco, CA 94102

APPENDIX D

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

APPENDIX D
EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

1. As used in these specifications:
   a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
   b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
   c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
   d) "Minorities" includes:
      1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
      2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
      3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
      4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in

each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
   a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
   b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
   c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, expecially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening, procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner. (For example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.)

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may

be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hire of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

APPENDIX E

NON-DISCRIMINATION ON THE BASIS OF AGE IN FEDERALLY-ASSISTED PROGRAMS

3596 Federal Register / Vol. 54, No. 15 / Wednesday, January 25, 1989 / Rules and Regulations

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination on the Basis of Age in Federally-Assisted Programs

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: These final regulations implement the provisions of the Age Discrimination Act of 1975, and the government-wide regulations published in the **Federal Register** on June 12, 1979 (44 FR 33768, June 12, 1979). The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

The Age Discrimination Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Job Partnership Training Act. The Act applies to persons of all ages.

These final regulations are designed to guide the actions of recipients of financial assistance from the Department of the Interior (DOI). They discuss the responsibilities of DOI recipients and the investigation, conciliation and enforcement procedures DOI will use to ensure compliance with the Act.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Charlene D. Hutchinson, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, or phone (202) 343-3443 (voice) or (202) 343-3434 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Age Discrimination Act was amended by the Civil Rights Restoration Act of 1988 (Pub. L. 100-259).

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. The Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the National Parks System) in which Federal assistance flows directly and unconditionally from the Federal government to the individual beneficiary. In accordance with the Act, the Secretary of the Department of Health, Education and Welfare (now the Department of Health and Human Services (HHS)) issued government-wide regulations to guide the development of agency specific regulations by each Federal agency that administers programs of Federal financial assistance. (44 FR 33768, June 12, 1979, codified at 45 CFR Part 90). These final regulations are intended to be consistent with HHS' government-wide regulations. These final regulations were approved by HHS on August 10, 1988.

The Civil Rights Restoration Act of 1987, Pub. L. 100-259 (CRRA), was enacted on March 22, 1988, subsequent to the publication of these rules as proposed regulations. The CRRA, among other matters, amends the Age Discrimination Act of 1975, and other civil rights statutes, to define the term "program and activity" to mean all of the operations of specified entities. For State and local governments, only the department or the agency that receives the aid is covered. For private corporations, if the federal aid is extended to the corporation as a whole, or if the corporation is prinicipally engaged in providing education, health care, housing, social services or parks and recreation, the entire corporation is covered. If the federal aid is extended to only one plant or geographically separate facility of other private businesses, only that plant is covered. For other entities, established by two or more of the entities listed in the statute, the entire entity is covered if it receives any federal aid. The CRRA leaves in effect the enforcement structure and adds no new language to the fund termination provision of the Age Discrimination Act. The CRRA contains a provision which leaves intact the current exemption from coverage by the civil rights laws for "ultimate beneficiaries" of federal financial assistance such as farmers who receive assistance under commodity programs or other comparable programs.

DOI published proposed regulations in the **Federal Register** on October 21, 1987, (52 FR 39243, October 21, 1987). Publication of the proposed rule was followed by a 30 day comment period. Comments, suggestions, and recommendations were requested by November 20, 1987. No comments were received.

In order to be consistent with HHS' government-wide rule (45 CFR Part 90), several sections of the proposed rule have been revised. The last sentence of § 17.335(a)(1), "Compliance Procedures" has been deleted to ensure consistency with 45 CFR Part 90. Section 17.335(b) has been revised to more precisely reflect the degree of "pinpointing" required by the Age Discrimination Act and to make this section consistent with the government-wide rule.

Section 17.303(b) "Definition", has been corrected to include "or the use of any policy, rule, standard, or method of administration." This portion of the definition was inadvertently omitted from the proposed rule.

In addition to publishing specific regulations consistent with the government-wide regulations, the

following actions will be taken by DOI to implement the Act:

1. DOI will report annually to the Congress through HHS on its compliance and enforcement activities.

2. DOI will provide written notices to its recipients concerning their obligations under the Act. Technical assistance will be provided to recipients where necessary and educational materials will be made available explaining the rights and obligations of beneficiaries and recipients.

3. DOI will establish a procedure for processing complaints of alleged age discrimination. The complaints process will entail an initial screening by DOI after consultation with the recipient, if necessary, to determine whether the complaint meets the criteria in §§ 17.310, 17.311, and 17.331 before referral to mediation. DOI will send appropriate notices to complainants and recipients of their rights and obligations under the Act. All complaints covered by the Act will be referred to the Federal Mediation and Conciliation Service (FMCS) for mediation.

4. DOI will evaluate the effectiveness of its regulations 30 months after their effective date. The results of this evaluation will be published in the **Federal Register** for public comment.

Section 90.31(f) of HHS' government-wide regulations (44 FR 33768, June 12, 1979), requires each Federal agency to publish an appendix to its final age regulations containing a list of each age distinction in a Federal statute or in regulations affecting financial assistance administered by the agency. DOI has determined that statutes and regulations which govern DOI's programs of financial assistance do not contain age distinctions. Therefore, an appendix listing are distinctions in statutes and regulations governing DOI financial assistancee programs is not published with these final regulations.

This final rule is divided into the following major categories: General; Standards for Determining Age Discrimination; Responsibilities of Recipients; and Investigation, Conciliation, and Enforcement Procedures.

The "general" section of these regulations explains the purpose of DOI's age discrimination regulations and defines terms used throughout the rule.

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations.

The general and specific prohibitions against discrimination on the basis of age are covered in § 17.310 of this rule. The exceptions to those prohibitions are set forth in § 17.311.

The rule contains several exceptions which limit prohibitions against age discrimination. Section 17.311 of the regulations permits the use of age distinctions which are based on reasonable factors other than age. Section 17.311(a) of the regulations defines two terms which are essential to an understanding of those exceptions: "Normal operation" and "statutory objective." "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected legislative body.

Recipients of DOI funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." The action may be taken even though it has a disproportionate effect on persons of different ages. According to the regulations, however, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

This rule sets forth the duties of DOI recipients. DOI recipients are responsible for ensuring that their programs and activities are in compliance with the Act and DOI regulations.

Where a primary recipient extends financial assistance to subrecipients, the primary recipient must notify subrecipients of their obligations under the regulations. DOI recipients must also inform beneficiaries of the protections provided by the Act and these regulations.

This final rule establishes the procedures DOI will use in its investigation, conciliation, and enforcement activities. These procedures reflect the procedural requirements included in HHS' government-wide regulations.

Section 17.332 introduces mediation into the complaints process for age discrimination. DOI will refer all complaints covered by the Act to the FMCS, which was designated by the Secretary of HHS to manage the mediation process.

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date DOI first receives the complaint. No further action will be taken by DOI in connection with a successfully mediated complaint.

DOI will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit DOI to disburse withheld funds to an alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to achieve the goals of the program for which the funds were originally extended.

II. Regulatory Procedures

Impact Analysis Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The administrative and procedural regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. The impact of these regulations on small entities is minimal because an economic impact such as termination of funding will occur only in those very limited instances where the small entity fails to comply with the statutory and regulatory prohibition concerning age discrimination.

Paperwork Reduction Act (Recordkeeping and Reporting Requirements)

The information collection requirements contained in § 17.323 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0027.

National Environmental Policy Act

Because these regulations are administrative, legal, and procedural in

nature, they will not have a significant effect on the quality of the human environment and are categorically excluded from the NEPA Process. *See* 516 DM 2, Appendix 1.

Authorship Statement

The principal author of this final rulemaking document is Charlene D. Hutchinson of the Office for Equal Opportunity, U.S. Department of the Interior.

Date: November 16, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

List of Subjects in 43 CFR Part 17

Civil rights, Handicapped.

The Department of the Interior adds a new Subpart C to 43 CFR Part 17 as set forth below:

PART 17—[AMENDED]

Subpart C—Nondiscrimination on the Basis of Age

General

Sec.
17.300 What is the purpose of the Age Discrimination Act of 1975?
17.301 What is the purpose of DOI's age discrimination regulations?
17.302 To what programs do these regulations apply?
17.303 Definitions.

Standards for Determining Age Discrimination

17.310 Rules against age discrimination.
17.311 Exceptions to the rules against age discrimination.
17.312 Burden of proof.
17.313 Special benefits for children and the elderly.
17.314 Age distinctions contained in DOI regulations.
17.315 Affirmative action by recipients.

Duties of DOI Recipients

17.320 General responsibilities.
17.321 Notice to subrecipients and beneficiaries.
17.322 Assurance of compliance and recipient assessment of age distinctions.
17.323 Information collection requirements.

Investigation, Conciliation, and Enforcement Procedures

17.330 Compliance reviews.
17.331 Complaints.
17.332 Mediation.
17.333 Investigation.
17.334 Prohibition against intimidation or retaliation.
17.335 Compliance procedure.
17.336 Hearings, decisions, post-termination proceedings.
17.337 Remedial action by recipients.
17.338 Alternate funds disbursal procedure.
17.339 Exhaustion of administrative remedies.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR Part 90.

Subpart C—Nondiscrimination on the Basis of Age

General

§ 17.300 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 17.301 What is the purpose of DOI's age discrimination regulations?

The purpose of these regulations is to set out DOI's policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 17.302 To what programs do these regulations apply?

(a) The Act and these regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or,

(ii) Establishes criteria for participation in age-related terms; or,

(iii) Describes intended beneficiaries or target groups in age-related terms; or

(2) Any employment practice of any employer, employment agency, or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Partnership Training Act (29 U.S.C. 1501 *et seq.*).

§ 17.303 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "DOI" means the United States Department of the Interior.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, transferee, or subrecipient, but excludes the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of the Department of the Interior or his or her designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a

recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

Standards for Determining Age Discrimination

§ 17.310 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 17.311.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to, discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 17.311 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

(b) Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 17.310 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Exceptions to the rules against age discrimination: Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 17.310 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 17.312 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 17.311(b) and 17.311(c), is on the recipient of Federal financial assistance.

§ 17.313 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 17.311.

§ 17.314 Age distinctions contained in DOI regulations.

Any age distinctions contained in a rule or regulation issued by DOI shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 17.311.

§ 17.315 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

Duties of DOI Recipients

§ 17.320 General responsibilities.

Each DOI recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford DOI access to its records to the extent DOI finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 17.321 Notice to subrecipients and beneficiaries.

(a) Where a recipient extends Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them of the protections against discrimination provided by the Act and these regulations.

§ 17.322 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from DOI shall sign a written assurance as specified by DOI that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 17.330 or complaint investigation under § 17.331, DOI may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOI to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the DOI regulations, the recipient shall take corrective action.

§ 17.323 Information collection requirements.

Each recipient shall:

(a) Keep records in a form and containing information which DOI determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to DOI, upon request, information and reports which DOI

determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent DOI determines necessary to ascertain whether the recipient is complying with the Act and these regulations.

(d) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0027. The information will be collected and used to assess recipients' compliance with the Act. Response is required to obtain a benefit.

(e) Public reporting burden for this information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Departmental Clearance Officer, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Mail Stop 2242; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Investigation, Conciliation, and Enforcement Procedures

§ 17.330 Compliance reviews.

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.335.

§ 17.331 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant had knowledge of the alleged act of discrimination. For good cause shown, however, DOI may extend this time limit.

(b) DOI will consider the date a complaint is filed to be the date upon which the complaint sufficiently meets the criteria for acceptance as described in paragraphs (a) and (c)(1) of this section.

(c) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint, as described in paragraphs (a) and (c)(1) of this section.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

(d) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 17.332 Mediation.

(a) *Referral of complaints for mediation.* DOI will promptly refer to the FMCS all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, FMCS shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The FMCS shall send the agreement to DOI. DOI, however, retains the right to monitor the recipient's compliance with the agreement.

(d) The FMCS shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the FMCS determines that an agreement cannot be reached.

(f) The FMCS shall return unresolved complaints to DOI.

§ 17.333 Investigation.

(a) *Informal Investigation.* (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If DOI cannot resolve the complaint through informal means, it will develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.335.

§ 17.334 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

§ 17.335 Compliance procedure.

(a) DOI may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of, or referral to, any Federal, State or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under § 17.335(a)(1) to the particular recipient and particular program or activity or part of such program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) of this section until:

(1) The Secretary or his/her designee has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary or his/her designee has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary or his/her designee will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.335(a)(1) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.335(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.335(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 17.336 Hearings, decisions, post-termination proceedings.

Certain DOI procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to DOI's enforcement of these regulations. The procedural provisions of DOI's Title VI regulations can be found at 43 CFR 17.8 through 17.10 and 43 CFR Part 4, Subpart I.

§ 17.337 Remedial action by recipients.

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

§ 17.338 Alternate funds disbursal procedure.

(a) When DOI withholds funds from a recipient under these regulations, where permissible the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternative recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 17.339 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or

(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That he or she may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the Secretary of the Interior, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

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APPENDIX F

TITLE VI (CIVIL RIGHTS ACT OF 1964)

APPENDIX F

TITLE VI (CIVIL RIGHTS ACT OF 1964)

TITLE VI
NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS
PUBLIC LAW 88-352

Sec. 601. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Sec. 602. Each federal department and agency which is impowered to extend federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of Section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited by the particular political entity, or part thereof, or other recipient as to whom such a finding has been so found, or (2) by any other means authorized by law; provided, however, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Sec. 603. Any department or agency action taken pursuant to Section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to Section 602, any person aggrieved (including any state or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with Section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Sec. 604 Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which federal financial assistance is extended by way of a contract of insurance of guaranty.

D-1065P