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32 CFR Parts 21, 22, 23, 28, 32, and 34
DoD Grant and Agreement Regulations; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 23, 28, 32, and 34

RIN 0790–AG28

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is completing the establishment of most of the DoD Grant and Agreement Regulations (DoDGARs). The DoDGARs provide uniform policies and procedures for DoD Components' award and administration of grants and cooperative agreements.

DATES: These final rules are effective on April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Herbst; ODDR&E(R); 3080 Defense Pentagon; Washington, DC 20301–3080.

SUPPLEMENTARY INFORMATION: The specific regulatory actions that are being taken are to: (1) adopt four new parts of the DoDGARs (32 CFR parts 21, 22, 32, and 34); (2) make minor amendments to update one of the four existing parts of the DoDGARs (32 CFR part 28); and (3) eliminate another of the existing parts (32 CFR part 23), by incorporating its contents into one of the four new parts (32 CFR part 22).

The four new parts: address DoD Components' overall management of grant and agreement functions; set forth DoD Components' and grants officers' responsibilities related to the award and administration of grants and agreements; implement administrative requirements in OMB Circular A–110 for grants and agreements awarded to institutions of higher education and other nonprofit organizations; and establish administrative requirements for awards to for-profit organizations.

The minor amendments to the existing part provide DoD-specific procedures related to Governmentwide restrictions on lobbying.

The part that is being removed, with its contents incorporated into another part, is the rule implementing a law that prohibits the Department of Defense from providing funds by grant to institutions of higher education that have policies of denying, or that effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes: entry to campuses; access to students on campuses; or access to directory information pertaining to students.

A. Background

DoD published a notice in the **Federal Register** on August 26, 1996 (61 FR 43867) requesting comments on four new DoDGARs parts and updates to two other parts. DoD received comments from: three universities; an association of academic institutions; an industry association; an attorneys' association; the Office of Management and Budget (OMB) and one other non-DoD Federal agency; and several DoD Components. All comments were considered in developing the final rule.

Some comments concerned a future DoDGARs part that was mentioned in the **Federal Register** preamble to the proposed rules. That future part, which is not included in this rulemaking, is being developed for a class of research agreements with for-profit firms that is meant to help integrate the defense and non-defense portions of the U.S. technology and industrial bases. The future part therefore will provide more flexible administrative requirements than those contained in part 34 of this rulemaking. Comments pertaining to that future part are addressed herein only to the extent that they also relate to parts that are included in this rulemaking.

The following sections present a summary of the major comments grouped by subject, and the responses to the comments. Changes in the rules are discussed in the responses to the comments. Other changes were made to increase readability.

B. Comments and Responses

Comments on General Matters

Comment: The DoDGARs should be included as a supplement to the rules for award and administration of procurement contracts, in the Defense Federal Acquisition Regulation Supplement. That would give DoD contracting officers a single source for rules on contracts, grants, and cooperative agreements.

Response: No change. It would be inappropriate to merge regulations for assistance instruments with the regulations for contracts, which are used for the very different purpose of acquisition.

Comment: The DoDGARs should include a structured format for grants and cooperative agreements, which could be similar to the uniform contract format that is currently in 48 CFR part 15, in the Federal Acquisition Regulations. The format could be an outline of major topical headings and specific clauses and provisions that are either mandatory or optional.

Response: No change. There are efforts currently among DoD activities, some in coordination with other Federal agencies, to maintain uniform formats for assistance instruments that are used for similar purposes (e.g., research). Codifying a single standard format in the DoDGARs at this time likely would hinder these efforts and also could impede ongoing initiatives to streamline agency business practices and eliminate unnecessary burdens on recipients.

Comments on Instrument Types, Authorities, and Applicability

Comment: The definition of the term ''contract'' in § 21.130 should be expanded to include cooperative agreements, which also are contracts. In some cases, even a grant is a contract.

Response: No change. Federal cooperative agreements and grants often are viewed as ''contractual instruments'' because they are binding agreements between two parties. However, under the Federal Grant and Cooperative Agreement Act (31 U.S.C., Chapter 63), Federal grants and cooperative agreements are assistance instruments that are quite distinct from Federal procurement contracts, and the term ''contract'' is used widely to mean procurement contracts in Federal statutes and rules for procurement instruments. If the DoD Grant and Agreement Regulations were to define the term ''contract'' inconsistently with the predominant Federal usage, it would create confusion for DoD Components, other Federal agencies, and Government contractors.

Comment: The term ''assistance'' should be defined in § 21.130 to exclude ''other transactions.'' ''Other transactions'' can be written to be in the nature of assistance, but such legal instruments should not be considered to be ''assistance'' for purposes of applicable laws and regulations and should not be covered by the DoDGARs.

Response: No change. ''Other transactions,'' as authorized by 10 U.S.C. 2371, are any transactions other than contracts, grants, and cooperative agreements. DoD recognizes that there could be different types of ''other transactions,'' including some for providing assistance. Therefore, the rule can not state categorically that no ''other transactions'' are subject to the laws and regulations that apply when a Federal agency provides assistance.

Comment: Paragraph (b) of § 21.110 states that the DoDGARs in certain situations may include rules that apply to other nonprocurement instruments, in addition to grants and cooperative agreements. It should expressly state

that the DoDGARs do not apply to ''other transactions.''

Response: No change. Depending on the type of instrument it is, a particular ''other transaction'' may be subject to some DoDGARs rules—such as the rule at 32 CFR part 25 on nonprocurement debarment and suspension—that apply to more types of instruments than just cooperative agreements and grants.

Comment: The title of subpart C, part 21, currently is ''Grants Information,'' but it should be changed to recognize the applicability of the subpart to cooperative agreements and other nonprocurement instruments, as well as grants.

Response: Agree. Changed the title to ''Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments.''

Comment: The use of the term ''transaction'' in § 22.220, ''Exemptions,'' a section that otherwise addresses only grants and cooperative agreements, may lead to confusion with the term ''other transaction.''

Response: Revised the first sentence of § 22.220 to make it clear that the use of the term ''transaction'' in this case directly follows from the section of the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6307) that authorizes the Director of the Office of Management and Budget to exempt an agency *transaction*.

Comment: The wording of paragraph (b) of § 21.205, on the need for specific statutory authority to use a grant or cooperative agreement, may cause confusion. It may cause a grants officer to believe that an authorizing statute must specifically state that a grant or cooperative agreement may be used. What is required is that the intent of the authorizing statute must support the use of an assistance instrument.

Response: Agree. Revised the paragraph to say that the intent of the authorizing statute must support the use of an assistance instrument.

Comment: The last sentence in paragraph (b)(2) of § 21.205 should provide a more general statement about authorizing statutes that do not require delegation by the Secretary of Defense, consistent with the paragraph's heading, ''Authorities that rise indirectly as a result of statute.'' The last sentence merely provides one example.

Response: Added a general statement to the paragraph.

Comment: Paragraph (a)(2) of § 22.205 should be revised to reflect the intent of 10 U.S.C. 2358, which allows the use of cooperative agreements for some development projects.

Response: No change. Paragraph (a)(2) of § 22.205 does permit the use of a cooperative agreement for a development project, in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C., Chapter 63), if the principal purpose of that development project is assistance. The paragraph correctly notes that the principal purpose of almost all DoD development projects is acquisition, and that it therefore is not appropriate to use assistance instruments for carrying out those projects.

Comment: The last sentence of paragraph (a)(2) of § 22.205 should be revised to recognize that there is statutory authority to use ''other transactions,'' as well as contracts, to carry out prototype projects relevant to weapons or weapons systems.

Response: Agree. Revised the sentence to recognize the use of acquisition transactions other than contracts.

Comment: Paragraph (b) of § 22.210 broadens the applicability of 10 U.S.C. 2358. It requires that any research project carried out through a grant or cooperative agreement must be relevant to defense missions or interests, even if the grant or cooperative agreement is awarded under a statutory authority other than 10 U.S.C. 2358. The paragraph should be modified, to limit this requirement to grants and cooperative agreements used to carry out research projects under the authority of 10 U.S.C. 2358.

Response: The requirement for defense relevance in 10 U.S.C. 2358 applies to research projects carried out under other authorities. Specifically, under paragraph (c) of 10 U.S.C. 2358, any research project carried out with funds appropriated to a DoD Component must comply with that requirement. Revised paragraph (b) of § 22.210 to clarify the broader applicability of the statute.

Comment: The DoD should clarify the relationship of part 32, which implements OMB Circular A–110, to parts 21 and 22. Doing so will let university and nonprofit recipients know the extent to which they must be familiar with those parts.

Response: Agree. Added a new paragraph (b) to § 32.1 to clarify that parts 21 and 22 provide guidance to DoD Components and grants officers and do not directly impose any requirements on recipients. Because that guidance indirectly affects recipients, the information in those parts concerning internal policies and procedures should be helpful to recipients of DoD awards.

Comment: Part 34 imposes administrative requirements for awards to commercial organizations that are burdensome, costly, and different from normal commercial practice. Commercial firms that cannot meet the requirements of part 34 should be made subject to the future DoDGARs part on agreements with more flexible administrative requirements.

Response: Replaced the term ''commercial organization'' throughout the rule with ''for-profit organization.'' A number of comments revealed that the rule's use of the term ''commercial organizations'' to include all for-profit organizations confused the many people who use the term ''commercial firms'' to mean the subset of for-profit firms that have not traditionally performed under cost-type contracts or assistance instruments from the Federal Government.

The future DoDGARs part, as described earlier in this preamble, concerns a class of agreements for use in carrying out research programs to help integrate the defense and non-defense portions of the U.S. technology and industrial bases. A prime consideration in preparing that part is removing obstructions to participation in defense research by commercial firms that have not traditionally been Government contractors, where consistent with proper stewardship of Federal funds. That distinguishes the future DoDGARs part from part 34, which is intended to apply to the more general case of awards for any type of program performed by a for-profit firm.

Comments on Payments and Interest

Comment: Paragraph (b)(2) of § 22.810, paragraph (e)(1) of § 32.22, and paragraph (e) of § 34.12 address the responsibilities of DoD disbursing officers, as well as grants officers. The DoD Financial Management Regulation (the FMR, which is DoD 7000.14–R) addresses DoD disbursing officers' responsibilities. Therefore, these paragraphs of the DoDGARs should be revised to refer to the pertinent portions of the FMR, rather than create a duplicative set of rules.

Response: Agree. Reorganized and revised section 22.810 to specify requirements only in areas that are grants officers' responsibilities and refer to DoD 7000.14–R for requirements that are disbursing officers' responsibilities. Similarly, revised paragraph (e)(1) of § 32.22 and paragraph (e) of § 34.12 to refer to § 22.810, and thereby to DoD 7000.14–R.

Comment: Sections 32.21(b)(5) and 32.22(l) should be revised to include references to the Cash Management Improvement Act (CMIA) that are contained in the corresponding paragraphs of OMB Circular A–110.

Response: Agree in part. The final rule restores the Circular A–110 language in § 32.21(b)(5), because some provisions of the CMIA may apply in rare instances to universities or nonprofit organizations. The reference to the CMIA in § 32.22(l), however, is not restored; the Circular should be amended to delete that reference, to conform to updated Department of the Treasury regulations implementing the CMIA.

Comment: Paragraph (l) of § 32.22 should be revised to provide details about the data and format requirements for electronically remitting interest earned on advance payments, to facilitate direct deposit in the Department of the Treasury account for the Division of Payment Management of the Department of Health and Human Services' (DHHS/DPM).

Response: Revised this section to advise recipients that current information on the format for electronic submissions of interest payments should be obtained from the administrative grants officer. This will help to ensure that recipients have up-to-date information. If the information were codified in the DoDGARs, recipients would experience delays due to the regulatory process each time that changes were made in formats or data elements for electronic remittances.

Note: University and nonprofit recipients that are subject to the DoDGARs part 32 are advised of the following details about the current format for electronic submissions, to help ensure direct deposit of electronic remittances to the account of the DHHS/DPM: the preferred funds transfer format is CCD+; the American Banking Association routing number 05103670 should appear in the third field; the check digit in the fourth field is a six (6); and the account number for the DHHS/DPM, which is 303000, should appear in the fifth field.

Comment: The rules need to be revised to implement requirements in the Debt Collection Improvement Act of 1996 (Title 31, Pub. L. 104–134) to: obtain each recipient's Taxpayer Identification Number (TIN); include the TIN with each payment authorization forwarded to the disbursing office; and pay recipients by electronic funds transfer (EFT).

Response: Paragraph (d) of § 22.420, which contains the requirement to obtain each recipient's TIN, is revised to conform to the new law and refer to it. Revisions to § 22.810 implement the requirements for forwarding TINs with payment authorizations and for payment by EFT. Section 22.605 and Appendix C to part 22 also are revised, to ensure that award documents alert recipients and disbursing officers to the requirement for payment by EFT.

Comment: Section 34.12, ''Payment,'' states that reimbursement is the preferred method of payment and makes no provision for payments of fixed amounts for accomplishment of technical milestones. Perhaps the technical-milestone method of payment is intended to be covered in the new DoDGARs part, still in draft, on flexible research agreements. Many commercial companies are unable or unwilling to contract with DoD when payments will be made on a cost reimbursement basis.

Response: No change. The milestone payment method is associated with the new type of research agreement that will be covered by a future DoDGARs part.

Comment: Under § 34.12, for-profit recipients must remit any interest earned to the DoD Component that made the award. It would be better to have the recipient remit the interest to the Defense Contracting Management Command (DCMC) office that has the responsibility for administering the agreement, by delegation from the DoD Component that awarded the agreement.

Response: Revised § 34.12 to provide for remittance of interest to the administrative grants officer that is responsible for post-award administration of the agreement.

Comments on Debt Collection

Comment: Paragraph (c)(2)(iv) of section 22.820 does not state how the interest rate will be determined, when a recipient owes the Government interest on a debt. The paragraph should provide for simple interest at the rate fixed by the Secretary of the Treasury under Pub. L. 92–41.

Response: Added a reference in this section to the DoD Financial Management Regulations (FMR) for rules covering interest costs. The FMR explains how the interest rate is determined.

Comment: Section 22.820, ''Debt Collection,'' says that the recipient still may elect to appeal after the grants officer turns over a debt to the Defense Finance and Accounting Service (DFAS) for collection. Once a debt is turned over to DFAS, the debt collection rules in the Financial Management Regulation will apply, and DFAS may not decide to defer the debt to allow an appeal.

Response: Revised this section to clarify that further action to collect the debt is deferred, to allow time for an appeal, only when the recipient notifies the grants officer within the 30-day prescribed time period of its intent to appeal. If the recipient does not so notify the grants officer within that period, the debt is transferred to DFAS for collection.

Comments on Claims, Disputes, and Appeals

Comment: Section 22.815, ''Claims, disputes, and appeals,'' says that a recipient's appeal of a grants officer's final decision is to be based solely on the basis of the written record, unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal. It would be desirable to give the recipient the right to a hearing before the Grant Appeal Authority, if requested.

Response: No change. The rules permit the Grant Appeal Authority to conduct an oral hearing, and a reasonable request from a recipient would be a basis for doing so. However, creating the right to a hearing is a step toward instituting a more formal appeals process, and there is no current problem that justifies the increased Government administration, with attendant burdens and costs, that is associated with a more formal process. Instituting a more formal process also runs counter to the direction taken in the rule, to strongly encourage Alternative Dispute Resolution and other less cumbersome means of resolving disputes.

Comment: Under § 22.820, ''Debt collection,'' a debt owed by a recipient, based on a DoD Component's claim, bears interest and may include penalties and other administrative costs. Recommend adding a provision that recipient claims also bear interest.

Response: No change. A Federal agency may pay interest on claims only when it has statutory authority to do so.

Comment: Paragraph (d)(2) of § 22.815, ''Claims, disputes, and appeals,'' states that a grants officer's decision is final, but then goes on to say that it can be appealed. A decision that can be appealed isn't final.

Response: Revised the paragraph to clarify that the decision is final, unless the recipient decides to appeal.

Comments on Cost Sharing, Budget Revisions, and Other Cost-Related Matters

Comment: Paragraph (b) of section 32.23, ''Cost sharing and matching,'' requires the grants officer's prior approval for a university's or nonprofit organization's use of unrecovered indirect costs as cost sharing or matching. Recipients should be authorized, as a matter of DoD policy, to so use unrecovered indirect costs.

Response: Revised this paragraph to remove the prior approval requirement.

Comment: Paragraph (c)(2) of § 32.23, ''Cost sharing and matching,'' specifies ''current fair market value'' as one metric for valuing buildings or land donated by a recipient as cost sharing or matching. The paragraph should include a statement that the DoD Component may use any reasonable basis for determining the fair market value.

Response: Revised the paragraph to add the suggested statement.

Comment: Paragraph (d)(1) of § 32.25, ''Revision of budget and program plans,'' gives DoD Components the option to waive certain cost-related and administrative prior approvals required by OMB Circulars A–110, A–21, and A–122. It would be preferable for these waivers to be made the standard practice, rather than optional.

Response: No change. DoD awards grants and agreements to university and nonprofit recipients for various types of programs. Some recipients and programs need more oversight than others. DoD Components therefore need the flexibility provided by the OMB circulars to judge on a case-by-case basis whether they can waive these prior approvals. Furthermore, some of the prior approvals in the cost principles (OMB Circulars A–21 and A–122) relate to system-wide methods for handling indirect costs that should not be waived without first consulting with the cognizant agency responsible for negotiating the recipient's indirect cost rate.

Comment: Paragraph (d) of § 32.25, ''Revision of budget and program plans,'' does not include the language from the corresponding section of OMB Circular A–110 that permits a university or nonprofit recipient to initiate a one-time extension of the expiration date of an award, without the Federal agency's prior approval, if the extension requires no additional Federal funds (i.e., it is a ''no-cost extension''). Recommend that DoD include language authorizing recipients to initiate no-cost extensions, with the requirement that the recipients notify DoD of the actions. Regardless of the final resolution of the matter, § 32.25 should clearly state whether DoD requires prior approvals for no-cost extensions, rather than remaining silent and leaving university and nonprofit recipients in doubt about the policy.

Response: Revised the section to state that DoD Components may waive the prior approval requirement on a case-by-case basis, when the Components judge that doing so would not cause them to fail to comply with DoD incremental programming and budgeting policies. Those policies specify the period during which a given fiscal year's appropriations are to be used (e.g., that one fiscal year's research funds usually are to support effort only through the first three months of the next fiscal year).

Comment: It is unnecessary to give DoD Components the option to require university or nonprofit recipients to obtain the agency's prior approval for rebudgeting between direct cost categories on awards in excess of $100,000, as provided in paragraph (e) of § 32.25, ''Revision of budget and program plans.'' Paragraph (e) even appears to contradict paragraphs (c) (1) through (5) of § 32.25, which specify prior approval requirements for other budget revisions related to nonconstruction awards.

Response: DoD Components need the flexibility provided by OMB Circular A–110 to require prior approvals for such budget changes, because some types of programs for which DoD Components use grants and agreements require more oversight than others. Nonetheless, this prior approval requirement generally is not appropriate for grants to support research, the likely object of the comment. Paragraph (e) of § 32.25 is revised to include a statement to that effect. While there are no apparent contradictions between paragraphs (c) and (e) of § 32.25, also revised paragraph (c) to refer to paragraph (e), to help prevent confusion about prior approval requirements for rebudgeting actions related to nonconstruction awards.

Comment: The DoD should restore to paragraph (c) of § 32.25 the requirement in the corresponding paragraph of OMB Circular A–110 for recipients to obtain prior approval before revising the budget in a way that transfers amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if the awarding office wishes to approve such transfers.

Response: Agree in part. The language is restored in that paragraph of the final rule, but with a caveat that requiring prior approval for such budget revisions should be required only in exceptional circumstances. That change addresses the rare cases in which an assistance program may require more Government oversight.

Comment: Section 34.13, ''Cost sharing or matching,'' should be revised to address for-profit recipients' use of Independent Research and Development (IR&D) costs to meet cost sharing or matching requirements. The section should conform with Federal Acquisition Regulation (FAR) coverage for procurement contracts, at 48 CFR 31.205–18(e), which says that contributions of IR&D costs under certain types of cooperative arrangements may be treated as allowable indirect costs, if the work performed would have been allowed as IR&D had there been no cooperative arrangement.

Response: Revised this section to provide coverage for assistance instruments that conforms with the FAR coverage for procurement contracts.

Comment: Section 34.16, ''Audits,'' should state that a for-profit recipient's audit costs are allowable as direct charges to the agreement. Also, the section should state whether audit costs are subject to cost sharing requirements.

Response: Added language to clarify that audit costs are allowable as direct or indirect costs, as appropriate. Cost sharing requirements apply to total project costs, of which audit costs are an element; there is no need to include language in the rule to specifically address the applicability of cost sharing requirements to audit costs or the many other specific types of direct or indirect cost that comprise the total project costs.

Comment: Section 34.11, ''Standards for financial management systems,'' seems to not require for-profit recipients to do employee time reporting more frequently than monthly and permits reports to coincide with one or more pay periods. Many firms keep daily records for their DoD contract business—is the difference intended?

Response: The intent of the standards is to have records that accurately reflect the distribution of the actual activity of each employee that has salary or wages charged to DoD awards, and to keep paperwork burdens to the minimum that is necessary for that purpose. The rule provides flexibility for the recipient because the reporting frequency needed to ensure accurate records may vary, depending upon the circumstances. For example, if an employee works on just one project, there probably is no need to record time spent on various tasks more frequently than monthly. However, if an employee works on many projects, it is likely that more frequent recording of time spent on specific tasks is necessary.

Comment: Section 34.17, ''Allowable costs,'' provides that for-profit recipients of prime awards, as well as for-profit subrecipients under prime awards, determine the allowability of costs in accordance with the Federal Acquisition Regulation (FAR). Section 32.27 similarly requires university and nonprofit recipients to flow down the FAR cost principles to for-profit subrecipients under their prime awards. Most commercial firms are unable to comply with these requirements—

Generally Accepted Accounting Principles (GAAP) should be applied, instead.

Response: DoD recognizes that alternatives to the FAR cost principles may be appropriate for use with certain types of research investment agreements that involve for-profit firms, due to cost matching and other characteristics of the agreements—such agreements will be covered by a future part of the DoDGARs. One change is made at this time in § 32.27 of the final rule. The provisions of part 34 will be revised, as needed, when that future part is adopted. At this time, those provisions are appropriate because part 34 applies to any type of program, not just research, that is performed by for-profit firms, not just commercial firms that have not traditionally done business with the Government.

Comment: Requirements for the allowability of costs for for-profit firms appear in paragraph (f) of § 32.27 in part 32, but part 32 applies to awards to universities and other nonprofit organizations, rather than to awards to for-profit firms. This is confusing.

Response: For-profit firms are mentioned in part 32 because they may be subawardees under prime awards to universities and nonprofit organizations, and the prime awardees need to know which requirements apply to those subawards.

Comment: The definition of ''third-party in-kind contributions'' in § 34.2, ''Definitions,'' is confusing to commercial firms. The rule should clarify how third parties would contribute to the project and what their rights and responsibilities are.

Response: No change. The definition relates to § 34.13, ''Cost sharing or matching,'' which specifies how one values third-party contributions, which include services of others' employees, volunteer services, and property donated by third parties. The definition and rules in part 34 on valuing third-party in-kind contributions parallel the Governmentwide guidance in OMB Circular A–110, as implemented in part 32 of the DoDGARs, for university and nonprofit recipients. While third-party contributions are not expected to be encountered as often by for-profit recipients as they are by university and nonprofit recipients, they can occur and it therefore is useful to include rules on how to value the contributions. It would be inappropriate for DoD rules to specify rights or responsibilities of third parties making such contributions—those properly would be worked out by the recipients and third parties.

Comments on Program Income and Revisions of Program Plans

Comment: The definition of ''program income'' in section 34.2 is too broad because it includes gross income that is ''earned as a result of the award,'' and not just income earned by a for-profit recipient that is ''directly generated by a supported activity.'' This is especially problematic when coupled with the requirement in paragraph (b)(2) of § 34.14 for the grants officer to consider whether the recipient has any obligation for program income generated after the project period is over. The purpose of many agreements is to stimulate development of technology that will generate income into the U.S. economy long after the project's end, thereby benefiting the Government.

Response: No change. This section applies mainly to program income earned during the project period. Any Federal interest in program income earned after that period must be provided for in the award, based on an understanding between the recipient and the Government at the time the award is negotiated. These rules apply to various programs, not just research; even for research, one can not rule out in all cases the appropriateness of a recipient's obligation to the Government with respect to program income that is generated after the project period. In cases where it is appropriate, the grants officer must have the same flexibility as a firm's representatives to negotiate agreement terms that are fair and equitable to both the firm and the Government.

Comment: The requirement in paragraph (c) of § 34.15 to immediately request and gain prior approval when making decisions regarding key personnel exceeds the provisions of most procurement contracts. The recipient should only have a requirement to promptly notify the Government when a change in key personnel is made.

Response: No change. The prior approval requirement applies only to key personnel specified in the application or award document. Usually, the experience and qualifications of such key personnel are prime considerations in making an assistance award, and the Government should be consulted before the recipient makes changes in those personnel. This is a standard requirement in Federal agency rules governing assistance awards, providing one illustration of the ways in which assistance relationships differ from acquisition relationships that are consummated through procurement contracts.

Comments on Property

Comment: It is not clear why some of the terms related to property in part 32, which implements OMB Circular A–110, are used or defined differently than in the Circular.

Response: Part 32 of the proposed rule included some nonsubstantive technical improvements to the language of the Circular. For example, the proposed rule replaced the term ''supplies and other expendable property'' with the term ''supplies'' in two places (in § 32.35 and in the definition in § 32.2 of ''third party in-kind contributions'') because the term ''supplies'' includes all expendable property. Similarly, the proposed rule deleted the term ''expendable equipment'' in § 32.23(f) because the term is self-contradictory (given that ''equipment,'' as defined, is nonexpendable property).

Comment: Paragraph (b) of § 32.35, ''Supplies,'' states that university and nonprofit recipients shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services. Suggest adding another provision to address recipients providing commercially acquired services.

Response: No change. DoD is not aware of any instance in which a university or nonprofit recipient has provided to outside organizations commercially acquired services that were obtained under a Federal award. If a problem arises in this area, it should be addressed through a revision to the Governmentwide guidance in OMB Circular A–110, so that it will be implemented by all Federal agencies.

Comment: Paragraph (b) of § 34.21 provides that for-profit recipients receive only a conditional title to equipment purchased in whole or in part with Federal funds. Among the conditions, which are specified in §§ 34.21 and 34.23, are that the recipient: Keep track of real property or equipment for a project; make the property available for use on other projects on a non-interfering basis and in a certain order of priority; assess charges for the property's use to Federal contracts or projects not supported by any Federal agency, treating those use charges as program income; and handle the disposition of the property at project's end, compensating the Government for its share of the current fair market value. These are burdensome requirements; the provisions of § 34.23, for example, will require commercial firms to establish costly property management systems. Recommend

instead that recipients be given unconditional title to any equipment purchased in part with recipient funds and in part with Federal funds.

Response: No change. A Federal agency needs specific authority to vest title to equipment unconditionally. Therefore, the section correctly states that the title shall be a conditional title unless a statute specifically authorizes a DoD Component to vest title in the recipient without further obligation to the Government, and the DoD Component elects to do so. The conditions of the title are reasonable, because they apply specifically to property in which the Federal Government has a continuing financial interest. The provisions of § 34.23, for example, which are based on OMB Circular A–110's Governmentwide guidance for assistance awards, maintain accountability for Federally owned property and for equipment that is acquired with Federal funds under an award.

Comment: Under paragraph (c) of § 34.21, a for-profit recipient may offer real property or equipment that is purchased with recipient funds or donated by a third party to meet a portion of any required cost share or match. However, the Government then has a financial interest in the property, a share of the value attributable to the Federal participation in the project. The property then is subject to provisions of the rule concerning the property's encumbrance, disposal, tracking, and use for projects other than the one for which it is being used to meet cost sharing requirements. This policy is inequitable, unnecessary, and will discourage commercial firms from entering into cooperative arrangements with the Department of Defense. We are not aware of any Federal agency taking this position for real property or equipment purchased by recipients or donated by third parties.

Response: Revised the section to clarify that these provisions apply to property acquired with recipient funds or donated by a third party only when the full value of the property is accepted as the value of the contribution toward cost sharing or matching. With that clarification, the provisions of this section are based on Governmentwide policies established by OMB Circulars A–110 and A–102 for assistance awards to universities and nonprofit organizations and certain awards to State and local governments—Circular A–110 also states that its provisions may be used for awards to for-profit organizations, and DoD understands that other Federal agencies do so.

It is important to note that accepting the full value of property as the value to be counted for purposes of cost sharing or matching is the exception rather than the rule. Usually, one only would count the depreciation of the property during the project period or the cost of using the property, either of which normally is a fraction of the full value. There is no issue with title in those cases, because the recipient owns unconditionally any property purchased with its own funds or donated to it by a third party.

In the exceptional cases where the full value is used for cost sharing or matching purposes, the recipient is effectively donating the property to a project that it and the Government are jointly supporting. It would defeat the purpose of cost sharing in such cases if the recipient kept the asset, free and clear, after contributing the asset's full value toward its share of the support for the project. The provisions of the rule to which the property is subject in those exceptional cases (e.g., that the recipient keep track of the property and not encumber it without the grants officer's approval) are reasonable.

Comment: Upon completion of a project, if there is an inventory of leftover unused supplies that are not needed for other Federal projects and the inventory's value exceeds $5,000, § 34.24 states that a for-profit recipient is to reimburse the Federal Government for its share of the value. This means that supplies will be subject to controls that are very costly and administratively burdensome, such as the requirements in § 34.23 for the recipient's property management system.

Response: No change. Normally, recipients should be buying supplies as needed for the project and expensing them when used. Therefore, large inventories of *unused* supplies should not be left over at the end of the project. If the value of unused supplies equals that of an item of equipment, it should reimburse the Government for its share of the cost of those supplies. With respect to the applicability of the specific requirements in § 34.23 for the recipient's property management system, that section applies to equipment acquired under the award, but not supplies; the rule only states the requirement concerning large inventories of unused supplies charged to the project, and the recipient determines what system it will use to comply with the requirement.

Comment: Section 34.25 states that the Government has the right, unless it is waived by the DoD Component, to obtain, reproduce, publish or otherwise use the data first produced under an award. This section should be revised to state that the data may be used only for Federal Government purposes.

Response: Revised this section to clarify that the data may be used only for Federal Government purposes.

Comment: The intellectual property rights accorded the Government under assistance awards to for-profit firms, in § 34.25, are a disincentive to industry to participate in cooperative agreements. The regulations should not set a rigid minimum set of rights which the Government must obtain in every case. Instead, the regulation should state that the grants officer may negotiate an allocation of rights that is fair and equitable depending upon the circumstances of the particular agreement.

Response: No change other than the clarification on data rights described in the response to the preceding comment. For patents, the rule provides the grants officer with all of the flexibility in current statute and executive order applicable to grants and cooperative agreements. For copyrights, data, and software, the rule's provisions are appropriate for intellectual property generated with Federal support under most assistance awards, and grants officers can handle the exceptional cases through the usual deviation procedure. One class of instruments that DoD plans to handle differently is the class of research investment agreements, with cost matching and other distinguishing features, that will be the subject of a future DoDGARs part.

Comment: Section 34.25 states that awards are to include the patent clause specified by Department of Commerce (DoC) regulations at 37 CFR 401.14. The section should be modified to allow for-profit firms to obtain rights in subject inventions of subawardees that are small businesses or nonprofit organizations. Otherwise, the patent clause in the DoC regulations will preclude a firm from doing so, even if the for-profit awardee has paid in part for the subawardees' effort as part of its cost share.

Response: No change. The comment relates primarily to the new class of research investment agreements that will be the subject of a future DoDGARs part. For cooperative agreements covered by part 34, grants officers already can handle any individual cases where alternative provisions are justified, by making determinations of exceptional circumstances under 37 CFR 401.3(a)(2) in the DoC regulations.

Comment: Section 34.25 should be revised to provide an ''authorization and consent'' clause to be included in cooperative agreements with for-profit

recipients. The clause would say that the Government authorizes and consents to all use and manufacture by the recipient, in the performance of the cooperative agreement or any subaward, of any invention described in and covered by a United States patent.

Response: No change. It would not be appropriate to include a clause in cooperative agreements authorizing a recipient's or subrecipient's infringement of U.S. patents held by other parties.

Comments on Procurement

Comment: Section 34.31, which specifies requirements for procurements made by for-profit recipients of DoD assistance awards, contains requirements that often differ significantly from standard commercial practices. For example, the section provides that preaward documents may be subject to preaward review by the grants officer. Also, this section requires certain Government flowdown and audit provisions. The requirements will require commercial firms to draft Government terms and conditions for subcontracts, and to establish Government-unique purchasing requirements. Recommend these requirements be eliminated.

Response: In response to the general comment, the few requirements in this section were carefully selected from the much larger set of requirements specified by OMB Circular A–110 for university and other nonprofit recipients of Federal assistance. They are judged to be the minimal set of requirements that are needed to ensure proper stewardship of Federal assistance.

In response to the first specific comment on preaward review of a recipient's procurement documents, the word ''exceptional'' was added to the sentence that advises the grants officer that preaward review is the exception rather than the rule. The sentence now states that recipients will only be required to provide such documents for the grants officer's pre-award review in exceptional cases where the grants officer judges that there is a compelling need to do so. For those projects where there is substantial involvement by the Government and a procurement is central to the success of the project (e.g., the purchase of a large computer to be used jointly by a recipient and Government researchers), DoD believes that the Government's right to a preaward review of the procurement documents can be essential.

With respect to the second specific comment on flowdown of Government-unique requirements to contracts under assistance awards, many of the requirements are required by law, regulation, or executive order—DoD therefore cannot waive them and they must be included when they are applicable, as the rule states. The few other requirements are those carefully selected as the minimal set for proper stewardship for most financial assistance, such as the standard access to records by DoD, the Comptroller General, and their duly authorized representatives. As it prepares the future DoDGARs part for a specific class of research investment agreements, DoD will consider which requirements might be waived in light of the substantial cost sharing and other special features of that class of instruments.

Comment: The Office of Management and Budget expressed concern that § 32.44 included a $10 million threshold, below which a recipient would not have to maintain its procurement procedures in writing. The concern is that the threshold would create substantive differences between requirements of the DoD and those in other Federal agencies' implementation of OMB Circular A–110.

Response: The provision was revised, as requested. The Office of Management and Budget has agreed to explore the possibility of amending OMB Circular A–110 to establish for all Federal agencies' awards a dollar threshold below which recipients would be relieved of the requirement to maintain procurement procedures in writing.

Comment: The definition of ''contract'' in § 21.130 refers to it as an instrument reflecting a certain type of relationship between the Federal Government and a State, a local government, or other person. Suggest adding the words ''or entity'' after the word ''person.''

Response: Replaced the word ''person'' with ''recipient,'' which is the term used at 31 U.S.C. 6303 in the Federal Grant and Cooperative Agreement Act, the defining statute that specifies when it is appropriate for Federal agencies to use contracts. The term ''recipient'' covers persons and other entities.

Comment: Change the wording of the definition of ''contract'' in § 34.2 to clarify that there can be subcontracts under a grant or cooperative agreement.

Response: Revised the wording to clarify that the term ''contract'' includes: Recipients' procurement contracts under DoD assistance awards; subrecipients' procurement contracts under assistance subawards; and procurement subcontracts under contracts awarded by recipients or subrecipients.

Comments on Records Retention

Comment: The first and second sentences in paragraph (e) of § 34.42 provide that: (1) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to certain records of for-profit recipients that are pertinent to awards; and (2) this right includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. In the first sentence, recommend replacing the words ''duly authorized representatives'' and the words ''unrestricted access'' with ''duly authorized Government representatives'' and ''access during normal working hours,'' respectively. Recommend deleting the second sentence, which goes beyond what is authorized in existing law.

Response: No change. The wording of this section mirrors that of the Governmentwide guidance in OMB Circular A–110 for assistance awards to nonprofit organizations, guidance issued after legal review by all major Federal agencies and with the benefit of public review and comment. It is not necessary to add the words ''during normal working hours'' to clarify what is meant by ''reasonable access to a recipient's personnel,'' because it rarely would be reasonable to insist upon access at other times. Adding the word ''Government'' to ''duly authorized representatives'' could be contrary to the increased reliance upon non-Federal auditors that accompanies the Governmentwide emphasis on the single-audit concept, which is broadened to for-profit recipients by the rule's § 34.16. Finally, there is no intent to have the word ''interview'' interpreted in an extreme way that would appear to give the Government access that exceeds its statutory authority.

Comment: In light of the increasing transfer of records from hard copy to electronic media, recommend including language similar to that in the Federal Acquisition Regulation at 48 CFR 4.703(d), which implemented Pub. L. 103–335's requirements concerning such transfers for procurement contracts.

Response: Added new paragraphs to both § 32.53, for awards to university and other nonprofit recipients, and § 34.42, for awards to for-profit firms.

Comments on Termination and Enforcement

Comment: Paragraph (a)(1) of § 34.51 provides that the grants officer may terminate awards to a for-profit firm if the recipient ''fails to comply with the terms and conditions of an award.'' It should be amended to say ''fails to comply with the *material* terms and conditions.''

Response: No change. The provision already says ''*materially* fails to comply with the terms and conditions.''

Comment: Section 34.51 should be revised to provide the Government the same flexibility it has with procurement contracts to unilaterally terminate awards to for-profit firms for reasons other than non-performance or non-compliance.

Response: No change. This is an example of a basic difference between procurement and assistance relationships. Other than terminations for cause, the Government should be able to terminate assistance awards only by mutual agreement with the recipient, as the rule provides.

Comment: It should be expressly specified in paragraph (a) of § 34.52 that a for-profit recipient is to be paid all of the allowable costs that it incurred prior to termination if the award is terminated for failure to comply with a material provision of the award.

Response: Revised paragraph (a)(3) of § 34.52 to state that, in the case of termination, the recipient will be reimbursed for allowable costs it incurred prior to termination, with the possible exception of costs for activities or actions not in compliance.

Comments on National Policy Requirements

Comment: Appendix B to part 22 contains a requirement for the grants officer to include an award clause implementing the ''officials not to benefit'' statute. That statute (41 U.S.C. 22) was amended by section 6004 of the Federal Acquisition Streamlining Act (FASA), to eliminate the requirement to include a clause. This is an unnecessary clause and should be deleted.

Response: No change. Due to FASA's amendment of 41 U.S.C. 22, the statute itself no longer requires an ''officials not to benefit'' clause in Federal awards. However, recipients of Federal awards still must comply with the ''officials not to benefit'' requirement in 41 U.S.C. 22, just as they must comply with all other applicable U.S. statutes and Federal regulations. Compliance with those requirements is inherently a condition of the award; while a general award clause could require compliance with all applicable Federal statutes and regulations, without identifying any of them, fairness dictates that recipients be informed about specific requirements whenever possible. For that reason, Appendix B to part 22 offers clauses that the grants officer may use to communicate the requirements to recipients.

Comment: Appendix B to part 22 flows down to subrecipients a number of requirements for which that flowdown apparently is not required by law. They include nondiscrimination items a., b., d., and e., as well as the Cargo Preference and Clean Air and Water Acts.

Response: No change. Each of these requirements does flow down to subrecipients, as stated in the appendix, due to the implementation of the statute in Federal regulation. By helping to clarify the applicability to awards and subawards of the most common national policy requirements, the appendix should be useful to both grants officers and recipients.

Comment: Appendix B to part 22 states that the Architectural Barriers Act applies to awards for the construction or alteration of buildings or facilities which will require public accessibility. There is no basis in law or regulation for limiting the applicability of the Act to buildings that require public accessibility (employees, for example, may be disabled and usually are not considered members of the public). The only statutory exemption is for certain types of facilities that are restricted to use only by able-bodied military personnel.

Response: Corrected the statement in the appendix on the applicability of the Act.

Comment: Section 22.510(a)(2)(ii) states that grants officers may allow recipients to incorporate certifications into a provision that cites them by reference, rather than providing the full text of the certification with each proposal or award document. In accordance with statute or codified regulations, certain certifications cannot be incorporated by reference.

Response: No substantive change. For the three certifications (debarment and suspension, drug-free workplace, and lobbying) that currently are required, the Department has concluded that the pertinent statutes, Executive order, and DoD regulations (32 CFR parts 25 and 28) do not presently preclude incorporation of the certifications by reference. For clarity, the final rule includes additional statements that certifications may be incorporated by reference to the extent consistent with statute and codified regulation.

Comment: Section 22.510 states that Appendix A to part 22 includes ''suggested'' language for incorporating certifications by reference. However, this is not permitted because the certification language is required, not suggested.

Response: The language in Appendix A incorporates by reference the exact certification language that is required to comply with statute and codified regulation. To alleviate the confusion, the term ''suggested'' is removed from § 22.510 and Appendix A. Section 22.510 now states that Appendix A ''includes language that may be used for incorporating certifications by reference.''

Comment: Section 22.510(a)(2)(ii)(C) states that grants officers may obtain the certification concerning debarment and suspension at the time of award, notwithstanding the regulatory requirement at 32 CFR 25.510(a) to obtain that certification at the time of proposal submission. The Office of Management and Budget is concerned that adoption of this provision would grant the DoD a deviation from the Governmentwide common rule on debarment and suspension, creating a nonuniformity with other Federal agencies.

Response: The provision is revised, as suggested.

C. Other Changes

Changes for Audit Requirements and Conditional Exemptions

On August 29, 1997 (62 FR 45934 ff.), subsequent to the DoD's proposal of these rules for comment, the Office of Management and Budget made two changes to OMB Circular A–110. The first change was to delete references to OMB Circular A–128, ''Audits of State and Local Governments,'' which recently was rescinded, and to refer instead to the revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' Part 32 in these final rules, which is the DoD's implementation of OMB Circular A–110, includes this change. Conforming changes also were made in part 22 of these final rules.

The second change made by the Office of Management and Budget to OMB Circular A–110 was to add a new section that addresses conditional exemptions. The applicability of that new section to the DoD is under review and will be addressed in a future rulemaking action.

Deferral of Final Action on Proposed Changes to 32 CFR Part 33

As requested by the Office of Management and Budget, the DoD agreed to defer final action on the two proposed amendments to part 33, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' which is the DoD's implementation of a Governmentwide rule. Those two proposed changes were to implement: (1) The Resource Conservation and Recovery Act (42 U.S.C. 6962); and (2) changes made by the Federal Acquisition Streamlining Act of 1994 to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330, as amended). The deferral enables the Office of Management and Budget to coordinate these amendments with other Federal agencies and request that the agencies amend the Governmentwide rule.

Changes for Military Recruiting

As stated in the DoD's preamble when these rules were proposed, the rule previously codified at 32 CFR part 23, ''Grants and Agreements—Military Recruiting on Campus,'' is moved by this final rulemaking to section 22.520 in part 22. A few, nonsubstantive technical corrections are made to the language that previously appeared in part 23, to allow its incorporation into part 22.

Executive Order 12866

Part 32 was determined to be a ''significant regulatory action,'' as defined by Executive Order 12866, by the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs. The Department of Defense believes that none of the rules will: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

These regulatory actions do not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

These regulatory actions will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1995 (44 U.S.C. 3500 et seq.)

These regulatory actions will not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Reporting and recordkeeping requirements in parts 32 and 34 are those promulgated by the updated OMB Circular A–110, which the Office of Management and Budget proposed in August 1992 (57 FR 39018), asking for public comments, and finalized in November 1993 (58 FR 62992).

List of Subjects

32 CFR Part 21

Grant programs, Grants administration.

32 CFR Part 22

Accounting, Grant programs, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 23

Colleges and universities, Grant programs, Grants administration, Penalties.

32 CFR Part 28

Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Business and industry, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter B, is revised as follows.

1. The heading of subchapter B is revised to read as follows:

SUBCHAPTER B—DoD GRANT AND AGREEMENT REGULATIONS

2. Part 21 is added to read as follows:

PART 21—DoD GRANTS AND AGREEMENTS—GENERAL MATTERS

Subpart A—Defense Grant and Agreement Regulatory System

Sec.
21.100 Scope.
21.105 Authority, purpose, and issuance.
21.110 Applicability and relationship to acquisition regulations.
21.115 Compliance and implementation.
21.120 Publication and maintenance.
21.125 Deviations.
21.130 Definitions.

Subpart B—Authorities and Responsibilities

21.200 Purpose.
21.205 DoD Components' authorities.
21.210 Vesting and delegation of authority.
21.215 Contracting activities.
21.220 Grants officers.

Subpart C—Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments

21.300 Purpose.
21.305 Defense Assistance Awards Data System.
21.310 Catalog of Federal Domestic Assistance.
21.315 Uniform grants and agreements numbering system.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—Defense Grant and Agreement Regulatory System

§ 21.100 Scope.

The purposes of this part, which is one portion of the DoD Grant and Agreement Regulations (DoDGARs), are to:

(a) Provide general information about the DoDGARs.

(b) Set forth general policies and procedures related to DoD Components' overall management of functions related to grants and cooperative agreements.

§ 21.105 Authority, purpose, and issuance.

(a) DoD Directive 3210.6[1] established the Defense Grant and Agreement Regulatory System (DGARS). The directive authorized publication of policies and procedures comprising the DGARS in the DoD Grant and Agreement Regulations (DoDGARs), in DoD instructions, and in other DoD publications, as appropriate. Thus, the

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218.

DoDGARs are one element of the DGARS.

(b) The purposes of the DoDGARs, in conjunction with other elements of the DGARS, are to provide uniform policies and procedures for grants and cooperative agreements awarded by DoD Components, in order to meet DoD needs for:

(1) Efficient program execution, effective program oversight, and proper stewardship of Federal funds.

(2) Compliance with relevant statutes; Executive orders; and applicable guidance, such as Office of Management and Budget (OMB) circulars.

(3) Collection from DoD Components, retention, and dissemination of management and fiscal data related to grants and agreements.

(c) The Director of Defense Research and Engineering, or his or her designee:

(1) Develops and implements DGARS policies and procedures.

(2) Issues and maintains the DoD Grant and Agreement Regulations and other DoD publications that comprise the DGARS.

§ 21.110 Applicability and relationship to acquisition regulations.

(a) *Applicability to grants and cooperative agreements.* The DoD Grant and Agreement Regulations (DoDGARs) apply to all DoD grants and cooperative agreements.

(b) *Applicability to other nonprocurement instruments.* (1) In accordance with DoD Directive 3210.6, the DoDGARs may include rules that apply to other nonprocurement instruments, when specifically required in order to implement a statute, Executive order, or Governmentwide rule that applies to other nonprocurement instruments, as well as to grants and cooperative agreements. For example, the rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E, applies to all nonprocurement transactions, including grants, cooperative agreements, contracts of assistance, loans and loan guarantees (see definition of ''primary covered transaction'' at 32 CFR 25.110(a)(1)(i)).

(2) The following is a list of DoDGARs rules that apply not only to grants and cooperative agreements, but also to other types of nonprocurement instruments:

(i) Requirements for reporting to the Defense Assistance Award Data System, in subpart C of this part.

(ii) The rule on nonprocurement debarment and suspension in 32 CFR part 25, subparts A through E.

(iii) Drug-free workplace requirements in 32 CFR part 25, subpart F.

(iv) Restrictions on lobbying in 32 CFR part 28.

(v) Administrative requirements for grants, cooperative agreements, and other financial assistance to:

(A) Universities and other nonprofit organizations, in 32 CFR part 32.

(B) State and local governments, in 32 CFR part 33.

(3) Grants officers should be aware that each rule that applies to other types of nonprocurement instruments (i.e., other than grants and cooperative agreements) states its applicability to such instruments. However, grants officers must exercise caution when determining the applicability of some Governmentwide rules that are included in the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. For example, the Governmentwide implementation of the Drug-Free Workplace Act of 1988 (32 CFR part 25, subpart F) states that it applies to grants, but defines ''grants'' to include cooperative agreements and other forms of financial assistance.

(c) *Relationship to acquisition regulations.* The Federal Acquisition Regulation (FAR) (48 CFR parts 1–53), the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 201–270), and DoD Component supplements to the FAR and DFARS apply to DoD Components' procurement contracts used to acquire goods and services for the direct benefit or use of the Federal Government. Policies and procedures in the FAR and DFARS do not apply to grants, cooperative agreements, or other nonprocurement transactions unless the DoDGARs specify that they apply.

§ 21.115 Compliance and implementation.

The Head of each DoD Component that awards or administers grants and cooperative agreements, or his or her designee:

(a) Is responsible for ensuring compliance with the DoDGARs within that DoD Component.

(b) May authorize the issuance of regulations, procedures, or instructions that are necessary to implement DGARS policies and procedures within the DoD Component, or to supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as such regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients. Heads of DoD Components or their designees shall establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(1) Requesting class deviations from the DoDGARs (see § 21.125) or exemptions from the provisions of 31 U.S.C. 6301 *et seq.*, that govern the appropriate use of contracts, grants, and cooperative agreements (see 32 CFR 22.220).

(2) Designating one or more Grant Appeal Authorities to resolve claims, disputes, and appeals (see 32 CFR 22.815).

(3) Reporting data on assistance awards and programs, as required by 31 U.S.C. chapter 61 (see subpart C of this part).

(4) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in part with Federal funds (see 32 CFR 32.32).

§ 21.120 Publication and maintenance.

(a) The DoDGARs are published as chapter I, subchapter B, title 32 of the Code of Federal Regulations (CFR) and in a separate loose-leaf edition. The loose-leaf edition is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (e.g., a reference to § 21.115 in part 21 would be to 32 CFR 21.115).

(b) Updates to the DoDGARs are published in the **Federal Register**. When finalized, updates also are published as Defense Grant and Agreement Circulars, with revised pages for the separate, loose-leaf edition.

(c) Revisions to the DoDGARs are recommended to the Director of Defense Research and Engineering (DDR&E) by a standing working group. The DDR&E, Director of Defense Procurement, and each Military Department shall be represented on the working group. Other DoD Components that use grants or cooperative agreements may also nominate representatives. The working group meets when necessary.

§ 21.125 Deviations.

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one grant or cooperative agreement, if such deviations are not prohibited by statute, executive order or regulation.

(b) Class deviations that affect more than one grant or cooperative agreement must be approved in advance by the Director, Defense Research and

Engineering (DDR&E) or his or her designee. Note that OMB concurrence also is required for deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

(c) Copies of justifications and agency approvals for individual deviations and written requests for class deviations shall be submitted to: Deputy Director, Defense Research and Engineering, ATTN: Research, 3080 Defense Pentagon, Washington DC 20301–3080.

(d) Copies of requests and approvals for individual and class deviations shall be maintained in award files.

§ 21.130 Definitions.

Acquisition. The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed definition at 48 CFR 2.101). In accordance with 31 U.S.C. 6303, procurement contracts are the appropriate legal instruments for acquiring such property or services.

Assistance. The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants and cooperative agreements are examples of legal instruments used to provide assistance.

Contract. See the definition for procurement contract in this section.

Contracting activity. An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

Contracting officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

Cooperative agreement. A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition ''grant''), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

Deviation. The issuance or use of a policy or procedure that is inconsistent with the DoDGARs.

DoD Components. The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

Grant. A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(1) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(2) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

Grants officer. An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

Nonprocurement instrument. A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provide services in lieu of money.

Procurement contract. A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition for contract at 48 CFR 2.101.

Recipient. An organization or other entity receiving a grant or cooperative agreement from a DoD Component.

Subpart B—Authorities and Responsibilities

§ 21.200 Purpose.

This subpart describes the sources and flow of authority to use grants and cooperative agreements, and assigns the broad responsibilities associated with DoD Components' use of such instruments.

§ 21.205 DoD Components' authorities.

(a) In accordance with 31 U.S.C. 6301 *et seq.*, DoD Components shall use grants and cooperative agreements as legal instruments reflecting assistance relationships between the United States Government and recipients.

(b) Unlike the use of a procurement contract (for which Federal agencies have inherent, Constitutional authority), use of a grant or cooperative agreement to carry out a program requires authorizing legislation, the intent of which supports the use of an assistance instrument (e.g., the intent of the legislation authorizing a program supports a judgment that the principal purpose of the program is assistance, rather than acquisition). DoD Components may award grants and cooperative agreements under a number of statutory authorities that fall into three categories:

(1) *Authorities that statutes provide to the Secretary of Defense.* These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD directives, instructions, or policy memoranda that are not part of the Defense Grant and Agreement Regulatory System. Examples of statutory authorities in this category are:

(i) Authority under 10 U.S.C. 2391 to make grants or conclude cooperative agreements to assist State and local governments in planning and carrying out community adjustments and economic diversification required by changes in military installations or in DoD contracts or spending that may have a direct and significant adverse consequence on the affected community.

(ii) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(2) *Authorities that statutes may provide directly to Heads of DoD Components.* When a statute authorizes the head of a DoD Component to use a grant or cooperative agreement or to carry out a program with a principal purpose of assistance, use of that authority requires no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements. A Military Department's use of the authority of 10 U.S.C. 2358 therefore requires no delegation by the Secretary of Defense.

(3) *Authorities that arise indirectly as the result of statute.* For example, authority to use a grant or cooperative agreement may result from:

(i) A federal statute authorizing a program that is consistent with an assistance relationship (i.e., the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with 31 U.S.C. chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements.

(ii) Exemptions requested by the Department of Defense and granted by the Office of Management and Budget

under 31 U.S.C. 6307, as described in 32 CFR 22.220.

§ 21.210 Vesting and delegation of authority.

(a) The authority and responsibility for awarding grants and cooperative agreements is vested in the Head of each DoD Component that has such authority.

(b) The Head of each such DoD Component, or his or her designee, may delegate to the heads of contracting activities (HCAs) within that Component, authority to award grants or cooperative agreements, to appoint grants officers (see § 21.220(c)), and to broadly manage the DoD Component's functions related to grants and cooperative agreements. An HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101—the intent is that overall management responsibilities for a DoD Component's functions related to nonprocurement instruments be assigned only to officials that have similar responsibilities for procurement contracts.

§ 21.215 Contracting activities.

When designated by the Head of the DoD Component or his or her designee (see 32 CFR 21.210(b)), the HCA is responsible for the grants and cooperative agreements made by or assigned to that activity. He or she shall supervise and establish internal policies and procedures for that activity's assistance awards.

§ 21.220 Grants officers.

(a) *Authority.* Only grants officers are authorized to sign grants or cooperative agreements, or to administer or terminate such legal instruments on behalf of the Department of Defense. Grants officers may bind the Government only to the extent of the authority delegated to them.

(b) *Responsibilities.* Grants officers should be allowed wide latitude to exercise judgment in performing their responsibilities. Grants officers are responsible for ensuring that:

(1) Individual grants and cooperative agreements are used effectively in the execution of DoD programs, and are awarded and administered in accordance with applicable laws, Executive orders, regulations, and DoD policies.

(2) Sufficient funds are available for obligation.

(3) Recipients of grants and cooperative agreements receive impartial, fair, and equitable treatment.

(c) *Selection, appointment and termination of appointment of grants officers.* Each DoD Component that awards grants or enters into cooperative agreements shall have a formal process (see § 21.210(b)) to select and appoint grants officers and terminate their appointments. DoD Components are not required to maintain a selection process for grants officers separate from the selection process for contracting officers, and written statements of appointment or termination for grants officers may be integrated into the necessary documentation for contracting officers, as appropriate.

(1) *Selection.* In selecting grants officers, appointing officials shall consider the complexity and dollar value of the grants and cooperative agreements to be assigned and judge whether candidates possess the necessary experience, training, education, business acumen, judgment, and knowledge of contracts and assistance instruments to function effectively as grants officers.

(2) *Appointment.* Statements of appointment shall be in writing and shall clearly state the limits of grants officers' authority, other than limits contained in applicable laws or regulations. Information on the limits of a grants officer's authority shall be readily available to the public and agency personnel.

(3) *Termination.* Written statements of termination are required, unless the written statement of appointment provides for automatic termination. No termination shall be retroactive.

Subpart C—Information Reporting on Grants, Cooperative Agreements, and Other Nonprocurement Instruments

§ 21.300 Purpose.

This subpart prescribes policies and procedures for compiling and reporting data related to grants, cooperative agreements, and other nonprocurement instruments subject to information reporting requirements of 31 U.S.C. chapter 61.

§ 21.305 Defense Assistance Awards Data System.

(a) *Purposes of the system.* Data from the Defense Assistance Awards Data System (DAADS) are used to provide:

(1) DoD inputs to meet statutory requirements for Federal Governmentwide reporting of data related to obligations of funds by grant, cooperative agreement, or other nonprocurement instrument.

(2) A basis for meeting Governmentwide requirements to report to the Federal Assistance Awards Data System maintained by the Department of Commerce and for preparing other recurring and special reports to the President, the Congress, the General Accounting Office, and the public.

(3) Information to support policy formulation and implementation and to meet management oversight requirements related to the use of grants, cooperative agreements, and other nonprocurement instruments.

(b) *Responsibilities.* (1) The Deputy Director, Defense Research and Engineering (DDDR&E), or his or her designee, shall issue the manual described in paragraph (b)(2)(ii) of this section.

(2) The Director for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) shall, consistent with guidance issued by the DDDR&E:

(i) Process DAADS information on a quarterly basis and prepare recurring and special reports using such information.

(ii) Prepare, update, and disseminate ''Department of Defense Assistance Awards Data System,'' an instruction manual for reporting information to DAADS. The manual, which shall be issued by the office of the DDR&E, shall specify procedures, formats, and editing processes to be used by DoD Components, including magnetic tape layout and error correction schedules.

(3) The following offices shall serve as central points for collecting DAADS information from contracting activities within the DoD Components:

(i) For the Army: As directed by the U.S. Army Contracting Support Agency.

(ii) For the Navy: As directed by the Office of Naval Research.

(iii) For the Air Force: As directed by SAF/AQCP.

(iv) For the Office of the Secretary of Defense, Defense Agencies, and DoD Field Activities: Each Defense Agency shall identify a central point for collecting and reporting DAADS information to the DIOR, WHS, at the address given in paragraph (c)(2) of this section. DIOR, WHS shall serve as the central point for offices and activities within the Office of the Secretary of Defense and for DoD Field Activities.

(4) The office that serves, in accordance with paragraph (b)(3) of this section, as the central point for collecting DAADS information from contracting activities within each DoD Component shall:

(i) Establish internal procedures to ensure reporting by contracting activities that use grants, cooperative agreements or other nonprocurement instruments subject to 31 U.S.C. chapter 61.

(ii) Collect information required by DD Form 2566, ''DoD Assistance Award

Action Report,'' from those contracting activities, and report it to DIOR, WHS, in accordance with paragraph (d) of this section.

(iii) Submit to the DDDR&E, at the address given in § 21.125(c), any recommended changes to the DAADS or to the instruction manual described in paragraph (b)(2)(ii) of this section.

(c) *Reporting procedures.* The data required by the DD Form 2566 shall be:

(1) Collected for each individual grant, cooperative agreement, or other nonprocurement action that is subject to 31 U.S.C. chapter 61 and involves the obligation or deobligation of Federal funds. Each action is reported as an obligation under a specific program listed in the Catalog of Federal Domestic Assistance (CFDA, see § 21.310). The program to be shown is the one that provided the funds being obligated (i.e., if a grants officer in one DoD Component obligates appropriations of a second DoD Component's program, the grants officer would show the CFDA program of the second DoD Component on the DD Form 2566).

(2) Reported on a quarterly basis to DIOR, WHS by the offices that are designated pursuant to paragraph (b)(3) of this section. For the first three quarters of the Federal fiscal year, the data are due by close-of-business (COB) on the 15th day after the end of the quarter (i.e., first-quarter data are due by COB on January 15th, second-quarter data by COB April 15th, and third-quarter data by COB July 15th). Fourth-quarter data are due by COB October 25th, the 25th day after the end of the quarter. If any due date falls on a weekend or holiday, the data are due on the next regular workday. The mailing address for DIOR, WHS is 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

(3) Reported on a computer tape, floppy diskette or by other means permitted by the instruction manual described in paragraph (b)(2)(ii) of this section. The data shall be reported in the format specified in the instruction manual.

(d) *Report control symbol.* DoD Components' reporting of DAADS data is used by DoD to satisfy Governmentwide requirements to report to the Federal Assistance Awards Data System, which is assigned Interagency Report Control Number 0252–DOC–QU.

§ 21.310 Catalog of Federal Domestic Assistance.

(a) *Purpose and scope of the reporting requirement.* (1) Under the Federal Program Information Act (31 U.S.C. 6101 *et seq.*), as implemented through OMB Circular A–89,[2] the Department of Defense is required to provide certain information about its domestic assistance programs to OMB and the General Services Administration (GSA). GSA makes this information available to the public by publishing it in the Catalog of Federal Domestic Assistance (CFDA) and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information.

(2) The CFDA covers all domestic assistance programs and activities, regardless of the number of awards made under the program, the total dollar value of assistance provided, or the duration. In addition to programs using grants and cooperative agreements, covered programs include those providing assistance in other forms, such as payments in lieu of taxes or indirect assistance resulting from Federal operations.

(b) *Responsibilities.* (1) Each DoD Component that provides domestic financial assistance shall:

(i) Report to the Director for Information Operations and Reports, Washington Headquarters Services (DIOR, WHS) all new programs and changes as they occur, or as DIOR, WHS requests annual updates to existing CFDA information.

(ii) Identify to the DIOR, WHS a point-of-contact who will be responsible for reporting such program information and for responding to inquiries related to it.

(2) The DIOR, WHS shall act as the Department of Defense's single office for collecting, compiling and reporting such program information to OMB and GSA.

§ 21.315 Uniform grants and agreements numbering system.

DoD Components shall assign identifying numbers to all nonprocurement instruments subject to this subpart, including grants and cooperative agreements. The numbering system parallels the procurement instrument identification (PII) numbering system specified in 48 CFR 204.70 (in the ''Defense Federal Acquisition Regulation Supplement''), as follows:

(a) The first six alphanumeric characters of the assigned number shall be identical to those specified by 48 CFR 204.7003(a)(1) to identify the DoD Component and contracting activity.

(b) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned to the grant, cooperative agreement, or other nonprocurement instrument.

(c) The 9th position shall be a number: ''1'' for grants; ''2'' for cooperative agreements; and ''3'' for other nonprocurement instruments.

(d) The 10th through 13th positions shall be the serial number of the instrument. DoD Components and contracting activities need not follow any specific pattern in assigning these numbers and may create multiple series of letters and numbers to meet internal needs for distinguishing between various sets of awards.

3. Part 22 is added to read as follows:

PART 22—DoD GRANTS AND AGREEMENTS—AWARD AND ADMINISTRATION

Subpart A—General

Sec.
22.100 Purpose, relation to other parts, and organization.
22.105 Definitions.

Subpart B—Selecting the Appropriate Instrument

22.200 Purpose.
22.205 Distinguishing assistance from procurement.
22.210 Authority for providing assistance.
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Subpart C—Competition

22.300 Purpose.
22.305 General policy and requirement for competition.
22.310 Statutes concerning certain research, development, and facilities construction grants.
22.315 Merit-based, competitive procedures.
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22.325 Historically Black colleges and universities (HBCUs) and other minority institutions (MIs).

Subpart D—Recipient Qualification Matters—General Policies and Procedures

22.400 Purpose.
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22.505 Purpose.
22.510 Certifications, representations, and assurances.
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Subpart F—Award

22.600 Purpose.
22.605 Grants officers' responsibilities.
22.610 Award instruments.

Subpart G—Field Administration

22.700 Purpose.
22.705 Policy.

[2] Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

22.710 Assignment of grants administration offices.
22.715 Grants administration office functions.

Subpart H—Post-Award Administration

22.800 Purpose and relation to other parts.
22.805 Post-award requirements in other parts.
22.810 Payments.
22.815 Claims, disputes, and appeals.
22.820 Debt collection.
22.825 Closeout audits.
Appendix A to Part 22—Proposal Provision for Required Certifications.
Appendix B to Part 22—Suggested Award Provisions for National Policy Requirements That Often Apply.
Appendix C to Part 22—Administrative Requirements and Issues To Be Addressed in Award Terms and Conditions.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 22.100 Purpose, relation to other parts, and organization.

(a) This part outlines grants officers' and DoD Components' responsibilities related to the award and administration of grants and cooperative agreements.

(b) In doing so, it also supplements other parts of the DoD Grant and Agreement Regulations (DoDGARs) that are either Governmentwide rules or DoD implementation of Governmentwide guidance in Office of Management and Budget (OMB) Circulars. Those other parts of the DoDGARs, which are referenced as appropriate in this part, are:

(1) Governmentwide rules on debarment, suspension and drug-free workplace requirements, in 32 CFR part 25.

(2) The Governmentwide rule on lobbying restrictions, in 32 CFR part 28.

(3) Administrative requirements for grants and agreements awarded to specific types of recipients:

(i) For State and local governmental organizations, in the Governmentwide rule at 32 CFR part 33.

(ii) For institutions of higher education and other nonprofit organizations, at 32 CFR part 32.

(iii) For for-profit organizations, at 32 CFR part 34.

(c) The organization of this part parallels the award and administration process, from pre-award through post-award matters. It therefore is organized in the same manner as the parts of the DoDGARs (32 CFR parts 32, 33, and 34) that prescribe administrative requirements for specific types of recipients.

§ 22.105 Definitions.

Other than the terms defined in this section, terms used in this part are defined in 32 CFR 21.130.

Administrative offset. An action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt the recipient owes the Government.

Advanced research. Advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (i.e., early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Advanced Technology Development (Budget Activity 3 and Research Category 6.3A) programs within Research, Development, Test and Evaluation (RDT&E).

Applied research. Efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology such as new materials, devices, methods and processes. It typically is funded in Applied Research (Budget Activity 2 and Research Category 6.2) programs within Research, Development, Test and Evaluation (RDT&E). Applied research normally follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition; these efforts are within the definition of ''development.''

Basic research. Efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Basic Research (Budget Activity 1 and Research Category 6.1) programs within Research, Development, Test and Evaluation (RDT&E). For the purposes of this part, basic research includes:

(1) Research-related, science and engineering education, including graduate fellowships and research traineeships.

(2) Research instrumentation and other activities designed to enhance the infrastructure for science and engineering research.

Claim. A written demand or written assertion by one of the parties to a grant or cooperative agreement seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to a grant or cooperative agreement. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants officer if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

Debt. Any amount of money or any property owed to a Federal Agency by any person, organization, or entity except another United States Federal Agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources. Amounts due a nonappropriated fund instrumentality are not debts owed the United States, for the purposes of this subchapter.

Delinquent debt. A debt:

(1) That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

(2) With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

Development. The systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

Electronic commerce. The conduct of business through the use of automation and electronic media, in lieu of paper transactions, direct personal contact, telephone, or other means. For grants and cooperative agreements, electronic commerce can include the use of electronic data interchange, electronic mail, electronic bulletin board systems, and electronic funds transfer for: program announcements or solicitations; applications or proposals; award documents; recipients' requests for payment; payment authorizations; and payments.

Electronic data interchange. The exchange of standardized information communicated electronically between business partners, typically between computers. It is DoD policy that DoD Component EDI applications conform to the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X–12 standard.[1]

Electronic funds transfer. A system that provides the authority to debit or credit accounts in financial institutions by electronic means rather than source documents (e.g., paper checks). Processing typically occurs through the Federal Reserve System and/or the Automated Clearing House (ACH) computer network. It is DoD policy that DoD Component EFT transmissions conform to the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X–12 standard.

Historically Black colleges and universities. Institutions of higher education determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. Each DoD Component's contracting activities and grants officers may obtain a list of historically Black colleges and universities from that DoD Component's Small and Disadvantaged Business Utilization office.

Institution of higher education. An educational institution that meets the criteria in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)). Note, however, that institution of higher education has a different meaning in § 22.520, as given at § 22.520(b)(2).

Minority institutions. Institutions of higher education that meet the criteria for *minority institutions* specified in 10 U.S.C. 2323. Each DoD Component's contracting activities and grants officers may obtain copies of a current list of institutions that qualify as *minority institutions* under 10 U.S.C. 2323 from that DoD Component's Small and Disadvantaged Business Utilization office (the list of *minority institutions* changes periodically, based on Department of Education data on institutions' enrollments of minority students).

Research. Basic, applied, and advanced research, as defined in this section.

Subaward. An award of financial assistance in the form of money, or property in lieu of money, made under a DoD grant or cooperative agreement by a recipient to an eligible subrecipient. The term includes financial assistance for substantive program performance by the subrecipient of a portion of the program for which the DoD grant or cooperative agreement was made. It does not include the recipient's procurement of goods and services needed to carry out the program.

[1] Available from Accredited Standards Committee, X–12 Secretariat, Data Interchange Standards Association, 1800 Diagonal Road, Suite 355, Alexandria, VA 22314–2852; Attention: Manager Maintenance and Publications.

Subpart B—Selecting the Appropriate Instrument

§ 22.200 Purpose.

This subpart provides the bases for determining the appropriate type of instrument in a given situation.

§ 22.205 Distinguishing assistance from procurement.

Before using a grant or cooperative agreement, the grants officer shall make a positive judgment that an assistance instrument, rather than a procurement contract, is the appropriate instrument, based on the following:

(a) *Purpose.* (1) The grants officer must judge that the principal purpose of the activity to be carried out under the instrument is to stimulate or support a public purpose (i.e., to provide assistance), rather than acquisition (i.e., to acquire goods and services for the direct benefit of the United States Government). If the principal purpose is acquisition, then the grants officer shall judge that a procurement contract is the appropriate instrument, in accordance with 31 U.S.C. chapter 63 (''Using Procurement Contracts and Grant and Cooperative Agreements''). Assistance instruments shall not be used in such situations, except:

(i) When a statute specifically provides otherwise; or

(ii) When an exemption is granted, in accordance with § 22.220.

(2) For research and development, the appropriate use of grants and cooperative agreements therefore is almost exclusively limited to the performance of selected basic, applied, and advanced research projects. Development projects nearly always shall be performed by contract or other acquisition transaction because their principal purpose is the acquisition of specific deliverable items (e.g., prototypes or other hardware) for the benefit of the Department of Defense.

(b) *Fee or profit.* Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is assistance. Therefore, the grants officer shall use a procurement contract, rather than an assistance instrument, in all cases where:

(1) Fee or profit is to be paid to the recipient of the instrument; or

(2) The instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives.

§ 22.210 Authority for providing assistance.

(a) Before a grant or cooperative agreement may be used, the grants officer must:

(1) Identify the program statute, the statute that authorizes the DoD Component to carry out the activity the principal purpose of which is assistance (see 32 CFR 21.205(b)).

(2) Review the program statute to determine if it contains requirements that affect the:

(i) Solicitation, selection, and award processes. For example, program statutes may authorize assistance to be provided only to certain types of recipients; may require that recipients meet certain other criteria to be eligible to receive assistance; or require that a specific process shall be used to review recipients' proposals.

(ii) Terms and conditions of the award. For example, some program statutes require a specific level of cost sharing or matching.

(b) The grants officer shall ensure that the award of DoD appropriations through a grant or cooperative agreement for a research project meets the standards of 10 U.S.C. 2358, DoD's broad authority to carry out research, even if the research project is authorized under a statutory authority other than 10 U.S.C. 2358. The standards of 10 U.S.C. 2358 are that, in the opinion of the Head of the DoD Component or his or her designee, the projects must be:

(1) Necessary to the responsibilities of the DoD Component.

(2) Related to weapons systems and other military needs or of potential interest to the DoD Component.

§ 22.215 Distinguishing grants and cooperative agreements.

(a) Once a grants officer judges, in accordance with §§ 22.205 and 22.210, that either a grant or cooperative agreement is the appropriate instrument, the grants officer shall distinguish between the two instruments as follows:

(1) Grants shall be used when the grants officer judges that substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated in the agreement.

(2) Cooperative agreements shall be used when the grants officer judges that substantial involvement is expected.

The grants officer should document the nature of the substantial involvement that led to selection of a cooperative agreement. Under no circumstances are cooperative agreements to be used solely to obtain the stricter controls typical of a contract.

(b) In judging whether substantial involvement is expected, grants officers should recognize that ''substantial involvement'' is a relative, rather than an absolute, concept, and that it is primarily based on programmatic factors, rather than requirements for grant or cooperative agreement award or administration. For example, substantial involvement may include collaboration, participation, or intervention in the program or activity to be performed under the award.

§ 22.220 Exemptions.

Under 31 U.S.C. 6307, ''the Director of the Office of Management and Budget may exempt an agency transaction or program'' from the requirements of 31 U.S.C. chapter 63. Grants officers shall request such exemptions only in exceptional circumstances. Each request shall specify for which individual transaction or program the exemption is sought; the reasons for requesting an exemption; the anticipated consequences if the exemption is not granted; and the implications for other agency transactions and programs if the exemption is granted. The procedures for requesting exemptions shall be:

(a) In cases where 31 U.S.C. chapter 63 would require use of a contract and an exemption from that requirement is desired:

(1) The grants officer shall submit a request for exemption, through appropriate channels established by his or her DoD Component (see 32 CFR 21.115(b)(1)), to the Director of Defense Procurement (DDP).

(2) The DDP, after coordination with the Director of Defense Research and Engineering (DDR&E), shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(b) In other cases, the DoD Component shall submit a request for the exemption through appropriate channels to the DDR&E. The DDR&E shall transmit the request to OMB or notify the DoD Component that the request has been disapproved.

(c) Where an exemption is granted, documentation of the approval shall be maintained in the award file.

Subpart C—Competition

§ 22.300 Purpose.

This subpart establishes DoD policy and implements statutes related to the use of competitive procedures in the award of grants and cooperative agreements.

§ 22.305 General policy and requirement for competition.

(a) It is DoD policy to maximize use of competition in the award of grants and cooperative agreements. This also conforms with:

(1) 31 U.S.C. 6301(3), which encourages the use of competition in awarding all grants and cooperative agreements.

(2) 10 U.S.C. 2374(a), which sets out Congressional policy that any new grant for research, development, test, or evaluation be awarded through merit-based selection procedures.

(b) Grants officers shall use merit-based, competitive procedures (as defined by § 22.315) to award grants and cooperative agreements:

(1) In every case where required by statute (e.g., 10 U.S.C. 2361, as implemented in § 22.310, for certain grants to institutions of higher education).

(2) To the maximum extent practicable in all cases where not required by statute.

§ 22.310 Statutes concerning certain research, development, and facilities construction grants.

(a) *Definitions specific to this section.* For the purposes of implementing the requirements of 10 U.S.C. 2374 in this section, the following terms are defined:

(1) *Follow-on grant.* A grant that provides for continuation of research and development performed by a recipient under a preceding grant. Note that follow-on grants are distinct from incremental funding actions during the period of execution of a multi-year award.

(2) *New grant.* A grant that is not a follow-on grant.

(b) *Statutory requirement to use competitive procedures.* (1) A grants officer shall not award a grant by other than merit-based, competitive procedures (as defined by § 22.315) to an institution of higher education for the performance of research and development or for the construction of research or other facilities, unless:

(i) In the case of a new grant for research and development, there is a statute meeting the criteria in paragraph (c)(1) of this section;

(ii) In the case of a follow-on grant for research and development, or of a grant for the construction of research or other facilities, there is a statute meeting the criteria in paragraph (c)(2) of this section; and

(iii) The Secretary of Defense submits to Congress a written notice of intent to make the grant. The grant may not be awarded until 180 calendar days have elapsed after the date on which Congress received the notice of intent. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Director, Defense Research and Engineering.

(2) Because subsequently enacted statutes may, by their terms, impose different requirements than set out in paragraph (b)(1) of this section, grants officers shall consult legal counsel on a case-by-case basis, when grants for the performance of research and development or for the construction of research or other facilities are to be awarded to institutions of higher education by other than merit-based competitive procedures.

(c) *Subsequent statutes.* In accordance with 10 U.S.C. 2361 and 10 U.S.C. 2374, a provision of law may not be construed as requiring the award of a grant through other than the merit-based, competitive procedures described in § 22.315, unless:

(1) *Institutions of higher education—new grants for research and development.* In the case of a new grant for research and development to an institution of higher education, such provision of law specifically:

(i) Identifies the particular institution of higher education involved;

(ii) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361 (a requirement that applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989); and

(iii) States that the award to the institution of higher education involved is required by such provision of law to be made in contravention of the policy set forth in 10 U.S.C. 2374(a).

(2) *Institutions of higher education—follow-on grants for research and development and grants for the construction of any research or other facility.* In the case of any such grant to an institution of higher education, such provision of law specifically:

(i) Identifies the particular institution of higher education involved; and

(ii) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361 (a requirement that applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989).

(3) *Other entities—new grants for research and development*—(i) *General.* In the case of a new grant for research and development to an entity other than

an institution of higher education, such provision of law specifically:

(A) Identifies the particular entity involved;

(B) States that the award to that entity is required by such provision of law to be made in contravention of the policy set forth in 10 U.S.C. 2374(a).

(ii) *Exception.* The requirement of paragraph (c)(3)(i) of this section does not apply to any grant that calls upon the National Academy of Sciences to:

(A) Investigate, examine, or experiment upon any subject of science or art of significance to the Department of Defense or any Military Department; and

(B) Report on such matters to the Congress or any agency of the Federal Government.

§ 22.315 Merit-based, competitive procedures.

Competitive procedures are methods that encourage participation in DoD programs by a broad base of the most highly qualified performers. These procedures are characterized by competition among as many eligible proposers as possible, with a published or widely disseminated notice. Competitive procedures include, as a minimum:

(a) Notice to prospective proposers. The notice may be a notice of funding availability or Broad Agency Announcement published in the **Federal Register** or Commerce Business Daily, respectively, or a notice that is made available broadly by electronic means. Alternatively, it may take the form of a specific notice that is distributed to eligible proposers (a specific notice must be distributed to at least two eligible proposers to be considered as part of a competitive procedure). Notices must include, as a minimum, the following information:

(1) Programmatic area(s) of interest, in which proposals or applications are sought.

(2) Eligibility criteria for potential recipients (see subpart D of this part).

(3) Criteria that will be used to select the applications or proposals that will be funded, and the method for conducting the evaluation.

(4) The type(s) of funding instruments (e.g., grants, cooperative agreements, other assistance instruments, or procurement contracts) that are anticipated to be awarded pursuant to the announcement.

(5) Instructions for preparation and submission of a proposal or application, including the time by which it must be submitted.

(b) At least two eligible, prospective proposers.

(c) Impartial review of the merits of applications or proposals received in response to the notice, using the evaluation method and selection criteria described in the notice. For research and development awards, in order to be considered as part of a competitive procedure, the two principal selection criteria, unless statute provides otherwise, must be the:

(1) Technical merits of the proposed research and development; and

(2) Potential relationship of the proposed research and development to Department of Defense missions.

§ 22.320 Special competitions.

Some programs may be competed for programmatic or policy reasons among specific classes of potential recipients. An example would be a program to enhance U.S. capabilities for academic research and research-coupled graduate education in defense-critical, science and engineering disciplines, a program that would be competed specifically among institutions of higher education. All such special competitions shall be consistent with program representations in the President's budget submission to Congress and with subsequent Congressional authorizations and appropriations for the programs.

§ 22.325 Historically Black colleges and universities (HBCUs) and other minority institutions (MIs).

Increasing the ability of HBCUs and MIs to participate in federally funded, university programs is an objective of Executive Order 12876 (3 CFR, 1993 Comp., p. 671) and 10 U.S.C. 2323. Grants officers shall include appropriate provisions in Broad Agency Announcements (BAAs) or other announcements for programs in which awards to institutions of higher education are anticipated, in order to promote participation of HBCUs and MIs in such programs. Also, whenever practicable, grants officers shall reserve appropriate programmatic areas for exclusive competition among HBCUs and MIs when preparing announcements for such programs.

Subpart D—Recipient Qualification Matters—General Policies and Procedures

§ 22.400 Purpose.

The purpose of this subpart is to specify policies and procedures for grants officers' determination of recipient qualifications prior to award.

§ 22.405 Policy.

(a) *General.* Grants officers normally shall award grants or cooperative agreements only to qualified recipients that meet the standards in § 22.415. This practice conforms with the Governmentwide policy, stated at 32 CFR 25.115(a), to do business only with responsible persons.

(b) *Exception.* In exceptional circumstances, grants officers may make awards to recipients that do not fully meet the standards in § 22.415 and include special award conditions that are appropriate to the particular situation, in accordance with 32 CFR 32.14, 33.12, or 34.4.

§ 22.410 Grants officers' responsibilities.

The grants officer is responsible for determining a recipient's qualification prior to award. The grants officer's signature on the award document shall signify his or her determination that either:

(a) The potential recipient meets the standards in § 22.415 and is qualified to receive the grant or cooperative agreement; or

(b) An award is justified to a recipient that does not fully meet the standards, pursuant to § 22.405(b). In such cases, grants officers shall document in the award file the rationale for making an award to a recipient that does not fully meet the standards.

§ 22.415 Standards.

To be qualified, a potential recipient must:

(a) Have the management capability and adequate financial and technical resources, given those that would be made available through the grant or cooperative agreement, to execute the program of activities envisioned under the grant or cooperative agreement.

(b) Have a satisfactory record of executing such programs or activities (if a prior recipient of an award).

(c) Have a satisfactory record of integrity and business ethics.

(d) Be otherwise qualified and eligible to receive a grant or cooperative agreement under applicable laws and regulations (see § 22.420(c)).

§ 22.420 Pre-award procedures.

(a) The appropriate method to be used and amount of effort to be expended in deciding the qualification of a potential recipient will vary. In deciding on the method and level of effort, the grants officer should consider factors such as:

(1) DoD's past experience with the recipient;

(2) Whether the recipient has previously received cost-type contracts, grants, or cooperative agreements from the Federal Government; and

(3) The amount of the prospective award and complexity of the project to be carried out under the award.

(b) There is no DoD-wide requirement to obtain a pre-award credit report, audit, or any other specific piece of information. On a case-by-case basis, the grants officer will decide whether there is a need to obtain any such information to assist in deciding whether the recipient meets the standards in § 22.415 (a), (b), and (c).

(1) Should the grants officer in a particular case decide that a pre-award credit report, audit, or survey is needed, he or she should consult first with the appropriate grants administration office (identified in § 22.710), and decide whether pre-existing surveys or audits of the recipient, such as those of the recipient's internal control systems under OMB Circular A–133 [2] will satisfy the need (see § 22.715(a)(1)).

(2) If, after consulting with the grants administration office, the grants officer decides to obtain a credit report, audit, or other information, and the report or other information discloses that a potential recipient is delinquent on a debt to an agency of the United States Government, then:

(i) The grants officer shall take such information into account when determining whether the potential recipient is qualified with respect to the grant or cooperative agreement; and

(ii) If the grants officer decides to make the award to the recipient, unless there are compelling reasons to do otherwise, the grants officer shall delay the award of the grant or cooperative agreement until payment is made or satisfactory arrangements are made to repay the debt.

(c) In deciding whether a recipient is otherwise qualified and eligible in accordance with the standard in § 22.415(d), the grants officer shall ensure that the potential recipient:

(1) Is not identified on the Governmentwide ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' as being debarred, suspended, or otherwise ineligible to receive the award. The grants officer shall check the list of such parties for:

(i) Potential recipients of prime awards, as described at 32 CFR 25.505(d);

(ii) A recipient's principals (e.g., officers, directors, or other key employees, as defined at 32 CFR 25.105); and

(iii) Potential recipients of subawards, where DoD Component approval of such principals or lower-tier recipients is required under the terms of the award (see 32 CFR 25.505(e)).

(2) Has provided all certifications and assurances required by Federal statute, Executive order, or codified regulation, unless they are to be addressed in award terms and conditions at the time of award (see § 22.510).

(3) Meets any eligibility criteria that may be specified in the statute authorizing the specific program under which the award is being made (see § 22.210(a)(2)).

(d) Grants officers shall obtain each recipient's Taxpayer Identification Number (TIN, which may be the Social Security Number for an individual and Employer Identification Number for a business or non-profit entity) and notify the recipient that the TIN is being obtained for purposes of collecting and reporting on any delinquent amounts that may arise out of the recipient's relationship with the Government. Obtaining the TIN and so notifying the recipient is a statutory requirement of 31 U.S.C. 7701, as amended by the Debt Collection Improvement Act of 1996 (section 31001(i)(1), Pub. L. 104–134).

Subpart E—National Policy Matters

§ 22.505 Purpose.

The purpose of this subpart is to supplement other regulations that implement national policy requirements, to the extent that it is necessary to provide additional guidance to DoD grants officers. The other regulations that implement national policy requirements include:

(a) The other parts of the DoDGARs (32 CFR parts 32, 33, and 34) that implement the Governmentwide guidance in OMB Circulars A–102 [3] and A–110 [4] on administrative requirements for grants and cooperative agreements. Those parts address some national policy matters that appear in the OMB Circulars.

(b) DoD regulations other than the DoDGARs.

(c) Other Federal agencies' regulations.

§ 22.510 Certifications, representations, and assurances.

(a) *Certifications*—(1) *Policy*. Certifications of compliance with national policy requirements are to be obtained from recipients only for those national policies where a statute, Executive order, or codified regulation specifically states that a certification is required. Other national policy requirements may be addressed by obtaining representations or assurances (see paragraph (b) of this section). Grants officers should utilize methods for obtaining certifications, in accordance with Executive Order 12866 (3 CFR, 1993 Comp., p. 638), that minimize administration and paperwork.

(2) *Procedures.* (i) When necessary, grants officers may obtain individual, written certifications.

(ii) Whenever possible, and to the extent consistent with statute and codified regulation, grants officers should identify the certifications that are required for the particular type of recipient and program, and consolidate them into a single certification provision that cites them by reference.

(A) Appendix A to this part lists the common certifications and cites their applicability. Because some certifications (e.g., the certification on lobbying in Appendix A to this part) are required by law to be submitted at the time of proposal, rather than at the time of award, Appendix A to this part includes language that may be used for incorporating common certifications by reference into a proposal.

(B) If a grants officer elects to have proposers incorporate certifications by reference into their proposals, he or she must do so in one of the two following ways. When required by statute or codified regulation, the solicitation must include the full text of the certifications that proposers are to provide by reference. In other cases, the grants officer may include language in the solicitation that informs the proposers where the full text may be found (e.g., in documents or computer network sites that are readily available to the public) and offers to provide it to proposers upon request.

(C) Grants officers may incorporate certifications by reference in award documents when doing so is consistent with statute and codified regulation. Note that a statute requires submission of the lobbying certification in Appendix A to this part at the time of proposal, and that 32 CFR 25.510(a) requires submission of certifications regarding debarment and suspension at the time of proposal. The provision that a grants officer would use to incorporate certifications in award documents, when consistent with statute and codified regulation, would be similar to the provision in Appendix A to this part, except that it would be modified to state that the recipient is providing the required certifications by signing the award document or by accepting funds under the award.

(b) *Representations and assurances.* Many national policies, either in statute or in regulation, require recipients of grants and cooperative agreements to make representations or provide

[2] Contact the Office of Management and Budget, EOP Publications, 725 17th St. NW, New Executive Office Building, Washington, DC 20503.

[3] See footnote 2 to § 22.420(b)(1).

[4] See footnote 2 to § 22.420(b)(1).

assurances (rather than certifications) that they are in compliance with the policies. As discussed in § 22.610(b), Appendix B to this part suggests award terms and conditions that may be used to address several of the more commonly applicable national policy requirements. These terms and conditions may be used to obtain required assurances and representations, if the grants officer wishes to do so at the time of award, rather than through the use of the standard application form (SF–424 [5]) or other means at the time of proposal.

§ 22.515 Provisions of annual appropriations acts.

An annual appropriations act can include general provisions stating national policy requirements that apply to the use of funds (e.g., obligation through a grant or cooperative agreement) appropriated by the act. Because these requirements are of limited duration (the period during which a given year's appropriations are available for obligation), and because they can vary from year to year and from one agency's appropriations act to another agency's, the grants officer must know the agency(ies) and fiscal year(s) of the appropriations being obligated by a given grant or cooperative agreement, and may need to consult legal counsel if he or she does not know the requirements applicable to those appropriations.

§ 22.520 Military recruiting on campus.

(a) *Purpose.* The purpose of this section is to implement section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337), as it specifically affects grants and cooperative agreements (note that section 558 appears as a note to 10 U.S.C. 503). This section thereby supplements DoD's primary implementation of section 558, in 32 CFR part 216, ''Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education.''

(b) *Definitions specific to this section.* In this section:

(1) *Directory information* has the following meaning, given in section 558(c) of Pub. L. 103–337. It means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.

(2) *Institution of higher education* has a different meaning in this section than it does in the rest of this part. The meaning of the term in other sections of this part is given at § 22.105. In this section, ''institution of higher education'' (IHE) has the following meaning, given at 32 CFR 216.3. The term means a domestic college, university, or subelement thereof providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of an IHE is a discrete (although not necessarily autonomous) organizational entity that may establish policy or practices affecting military recruiting and related actions (e.g., an undergraduate school, law school, medical school, or other graduate school).

(c) *Statutory requirement.* No funds available to the Department of Defense may be provided by grant to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students.

(d) *Policy.*—(1) *Applicability to subordinate elements of institutions of higher education.* 32 CFR part 216, DoD's primary implementation of section 558, establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section. In cases where those procedures lead to a determination that specific subordinate elements of an institution of higher education have such a policy or practice, rather than the institution as a whole, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

(2) *Applicability to cooperative agreements.* As a matter of DoD policy, the restrictions of section 558, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(3) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, DC 20301–3080.

(e) *Grants officers' responsibilities.* A grants officer shall:

(1) Not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified on the Governmentwide ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' as being ineligible to receive awards of DoD funds (note that 32 CFR 25.505(d) requires the grants officer to check the list prior to determining that a recipient is qualified to receive an award).

(2) [Reserved].

(3) Not consent to any subaward of DoD funds to such an organization, under a grant or cooperative agreement to any recipient, if such subaward requires the grants officer's consent.

(4) Include the clause in paragraph (f) of this section in each grant or cooperative agreement with an institution of higher education. Note that this requirement does not flow down (i.e., recipients are not required to include the clause in subawards).

(5) If an institution of higher education refuses to accept the clause in paragraph (f) of this section:

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, OASD(FMP), 4000 Defense Pentagon, Washington, DC 20301–4000. This will allow OASD(FMP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(f) *Clause for award documents.* The following clause is to be included in grants and cooperative agreements with institutions of higher education:

''As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy of denying, and that it is not an institution of higher education that effectively prevents, the Secretary of Defense from obtaining for

[5] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''DoD Directory of Contract Administration Services Components,'' DLAH 4105.4, which can be obtained either from: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220; or from the Defense Contract Management Command home page at http://www.dcmc.dcrb.dla.mil.''

military recruiting purposes: (A) Entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.''

§ 22.525 Paperwork Reduction Act.

Grants officers shall include appropriate award terms or conditions, if a recipient's activities under an award will be subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3500, et seq.):

(a) Generally, the Act only applies to Federal agencies—it requires agencies to obtain clearance from the Office of Management and Budget before collecting information using forms, schedules, questionnaires, or other methods calling either for answers to:

(1) Identical questions from ten or more persons other than agencies, instrumentalities, or employees of the United States.

(2) Questions from agencies, instrumentalities, or employees of the United States which are to be used for statistical compilations of general public interest.

(b) The Act applies to similar collections of information by recipients of grants or cooperative agreements only when:

(1) A recipient collects information at the specific request of the awarding Federal agency; or

(2) The terms and conditions of the award require specific approval by the agency of the information collection or the collection procedures.

§ 22.530 Metric system of measurement.

(a) *Statutory requirement.* The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205) and implemented by Executive Order 12770 (3 CFR, 1991 Comp., p. 343), states that:

(1) The metric system is the preferred measurement system for U.S. trade and commerce.

(2) The metric system of measurement will be used, to the extent economically feasible, in federal agencies' procurements, grants, and other business-related activities.

(3) Metric implementation shall not be required to the extent that such use is likely to cause significant inefficiencies or loss of markets to United States firms.

(b) *Responsibilities.* DoD Components shall ensure that the metric system is used, to the maximum extent practicable, in measurement-sensitive activities supported by programs that use grants and cooperative agreements, and in measurement-sensitive outputs of such programs.

Subpart F—Award

§ 22.600 Purpose.

This subpart sets forth grants officers' responsibilities relating to the award document and other actions at the time of award.

§ 22.605 Grants officers' responsibilities.

At the time of award, the grants officer is responsible for ensuring that:

(a) The award instrument contains the appropriate terms and conditions, in accordance with § 22.610.

(b) Information about the award is provided to the office responsible for preparing reports for the Defense Assistance Award Data System (DAADS), to ensure timely and accurate reporting of data required by 31 U.S.C. 6101–6106 (see 32 CFR part 21, subpart C).

(c)(1) In addition to the copy of the award document provided to the recipient, a copy is forwarded to the office designated to administer the grant or cooperative agreement, and another copy is forwarded to the finance and accounting office designated to make the payments to the recipient.

(2) For any award subject to the electronic funds transfer (EFT) requirement described in § 22.810(b)(2), the grants officer shall include a prominent notification of that fact on the first page of the copies forwarded to the recipient, the administrative grants officer, and the finance and accounting office. On the first page of the copy forwarded to the recipient, the grants officer also shall include a prominent notification that the recipient, to be paid, must submit a Payment Information Form (Standard Form SF–3881[6]) to the responsible DoD payment office, if that payment office does not currently have the information (e.g., bank name and account number) needed to pay the recipient by EFT.

§ 22.610 Award instruments.

(a) Each award document shall include terms and conditions that:

(1) Address programmatic requirements (e.g., a statement of work or other appropriate terms or conditions that describe the specific goals and objectives of the project). The grants officer shall develop such terms and conditions in coordination with program officials.

(2) Provide for the recipient's compliance with:

(i) Pertinent Federal statutes or Executive orders that apply broadly to Federal or DoD assistance awards.

(ii) Any program-specific requirements that are prescribed in the program statute (see § 22.210(a)(2)), or appropriation-specific requirements that are stated in the pertinent Congressional appropriations (see § 22.515).

(iii) Pertinent portions of the DoDGARs or other Federal regulations, including those that implement the Federal statutes or Executive orders described in paragraphs (a)(2) (i) and (ii) of this section.

(3) Specify the grants officer's instructions for post-award administration, for any matter where the post-award administration provisions in 32 CFR part 32, 33, or 34 give the grants officer options for handling the matter. For example, under 32 CFR 32.24(b), the grants officers must choose among possible methods for the recipient's disposition of program income. It is essential that the grants officer identify the option selected in each case, to provide clear instructions to the recipient and the grants officer responsible for post-award administration of the grant or cooperative agreement.

(b) To assist grants officers:

(1) Appendix B to this part provides model clauses to implement certain Federal statutes, Executive orders, and regulations (see paragraph (a)(2)(i) of this section) that frequently apply to DoD grants and cooperative agreements. Grants officers may incorporate the model clauses into award terms and conditions, as appropriate. It should be noted that Appendix B to this part is an aid, and not an exhaustive list of all requirements that apply in all cases. Depending on the circumstances of a given award, other statutes, Executive orders, or codified regulations also may apply (e.g., Appendix B to this part does not list program-specific requirements described in paragraph (a)(2)(ii) of this section).

(2) Appendix C to this part is a list of administrative requirements that apply to awards to different types of recipients. It also identifies post-award administration issues that the grants officer must address in the award terms and conditions.

[6] See footnote 5 to § 22.510(b).

Subpart G—Field Administration

§ 22.700 Purpose.

This subpart prescribes policies and procedures for administering grants and cooperative agreements. It does so in conjunction with 32 CFR parts 32, 33, and 34, which prescribe administrative requirements for particular types of recipients.

§ 22.705 Policy.

(a) DoD policy is to have each recipient deal with a single office, to the maximum extent practicable, for post-award administration of its grants and cooperative agreements. This reduces burdens on recipients that can result when multiple DoD offices separately administer grants and cooperative agreements they award to a given recipient. It also minimizes unnecessary duplication of field administration services.

(b) To further reduce burdens on recipients, the office responsible for performing field administration services for grants and cooperative agreements to a particular recipient shall be, to the maximum extent practicable, the same office that is assigned responsibility for performing field administration services for contracts awarded to that recipient.

(c) Contracting activities and grants officers therefore shall use cross-servicing arrangements whenever practicable and, to the maximum extent possible, delegate responsibility for post-award administration to the cognizant grants administration offices identified in § 22.710.

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as ''grants administration offices'') that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the ''DoD Directory of Contract Administration Services Components,'' DLAH 4105.4,[7] for specific addresses of administration offices):

(a) Regional offices of the Office of Naval Research, for grants and cooperative agreements with:

(1) Institutions of higher education and laboratories affiliated with such institutions, to the extent that such organizations are subject to the university cost principles in OMB Circular A–21.[8]

(2) Nonprofit organizations that are subject to the cost principles in OMB Circular A–122,[9] if their principal business with the Department of Defense is research and development.

(b) Field offices of the Defense Contract Management Command, for grants and cooperative agreements with all other entities, including:

(1) For-profit organizations.

(2) Nonprofit organizations identified in Attachment C of OMB Circular A–122 that are subject to for-profit cost principles in 48 CFR part 31.

(3) Nonprofit organizations subject to the cost principles in OMB Circular A–122, if their principal business with the Department of Defense is other than research and development.

(4) State and local governments.

§ 22.715 Grants administration office functions.

The primary responsibility of cognizant grants administration offices shall be to advise and assist grants officers and recipients prior to and after award, and to help ensure that recipients fulfill all requirements in law, regulation, and award terms and conditions. Specific functions include:

(a) Conducting reviews and coordinating reviews, audits, and audit requests. This includes:

(1) Advising grants officers on the extent to which audits by independent auditors (i.e., public accountants or Federal auditors) have provided the information needed to carry out their responsibilities. If a recipient has had an independent audit in accordance with OMB Circular A–133, and the audit report disclosed no material weaknesses in the recipient's financial management and other management and control systems, additional preaward or closeout audits usually will not be needed (see §§ 22.420(b) and 22.825(b)).

(2) Performing pre-award surveys, when requested by a grants officer, after providing advice described in paragraph (a)(1) of this section.

(3) Reviewing recipients' systems and compliance with Federal requirements, in coordination with any reviews and compliance audits performed by independent auditors under OMB Circular A–133, or in accordance with the terms and conditions of the award. This includes:

(i) Reviewing recipients' financial management, property management, and purchasing systems, to determine the adequacy of such systems.

(ii) Determining that recipients have drug-free workplace programs, as required under 32 CFR part 25.

(4) Notifying the Office of the Assistant Inspector General for Policy and Oversight (OAIG(P&O)), 400 Army-Navy Drive, Arlington, VA 22202, if either of the following is not available within a reasonable period of time (e.g., six months) after the date on which a recipient of DoD grants and agreements was to have submitted its audit report under OMB Circular A–133 to the OAIG(P&O):

(i) The recipient's audit report under OMB Circular A–133.

(ii) The OAIG(P&O)'s desk review of the recipient's audit report, or a letter stating that the OAIG(P&O) has decided not to conduct a desk review.

(b) Performing property administration services for Government-owned property, and for any property acquired by a recipient, with respect to which the recipient has further obligations to the Government.

(c) Ensuring timely submission of required reports.

(d) Executing administrative closeout procedures.

(e) Establishing recipients' indirect cost rates, where the Department of Defense is the cognizant or oversight Federal agency with the responsibility for doing so.

(f) Performing other administration functions (e.g., receiving recipients' payment requests and transmitting approved payment authorizations to payment offices) as delegated by applicable cross-servicing agreements or letters of delegation.

Subpart H—Post-Award Administration

§ 22.800 Purpose and relation to other parts.

This subpart sets forth grants officers' and DoD Components' responsibilities for post-award administration, by providing DoD-specific requirements on payments; debt collection; claims, disputes and appeals; and closeout audits.

§ 22.805 Post-award requirements in other parts.

Grants officers responsible for post-award administration of grants and cooperative agreements shall administer such awards in accordance with the following parts of the DoDGARs, as supplemented by this subpart:

(a) *Awards to domestic recipients.* Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified in other parts of the DoDGARs, as follows:

[7] Copies may be obtained either from the Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220, or from the Defense Contract Management Command home page at http://www.dcmc.dcrb.dla.mil.

[8] See footnote 2 to § 22.420(b)(1).

[9] See footnote 2 to § 22.420(b)(1).

(1) For awards to domestic institutions of higher education and other nonprofit organizations, requirements are specified in 32 CFR part 32, which is the DoD implementation of OMB Circular A–110.

(2) For awards to State and local governments, requirements are specified in 32 CFR part 33, which is the DoD codification of the Governmentwide common rule to implement OMB Circular A–102.

(3) For awards to domestic for-profit organizations, requirements are specified in 32 CFR part 34, which is modeled on the requirements in OMB Circular A–110.

(b) *Awards to foreign recipients.* DoD Components shall use the administrative requirements specified in paragraph (a) of this section, to the maximum extent practicable, for grants and cooperative agreements to foreign recipients.

§ 22.810 Payments.

(a) *Purpose.* This section prescribes policies and grants officers' post-award responsibilities, with respect to payments to recipients of grants and cooperative agreements.

(b) *Policy.* (1) It is Governmentwide policy to minimize the time elapsing between any payment of funds to a recipient and the recipient's disbursement of the funds for program purposes (see 32 CFR 32.22(a) and 33.21(b), and the implementation of the Cash Management Improvement Act at 31 CFR part 205).

(2) It also is a Governmentwide requirement to use electronic funds transfer (EFT) in the payment of any grant for which an application or proposal was submitted or renewed on or after July 26, 1996, unless the recipient has obtained a waiver by submitting to the head of the pertinent Federal agency a certification that it has neither an account with a financial institution nor an authorized payment agent. This requirement is in 31 U.S.C. 3332, as amended by the Debt Collection Improvement Act of 1996 (section 31001(x)(1)(A), Pub. L. 104–134), and as implemented by Department of Treasury regulations at 31 CFR part 208. As a matter of DoD policy, this requirement applies to cooperative agreements, as well as grants. Within the Department of Defense, the Defense Finance and Accounting Service implements this EFT requirement, and grants officers have collateral responsibilities at the time of award, as described in § 22.605(c), and in postaward administration, as described in § 22.810(c)(3)(iv).

(3) Expanding on these Governmentwide policies, DoD policy is for DoD Components to use electronic commerce, to the maximum extent practicable, in the portions of the payment process for grants and cooperative agreements for which grants officers are responsible. In cases where recipients submit each payment request to the grants officer, this includes using electronic methods to receive recipients' requests for payment and to transmit authorizations for payment to the DoD payment office. Using electronic methods will improve timeliness and accuracy of payments and reduce administrative burdens associated with paper-based payments.

(c) *Post-award responsibilities.* In cases where the recipient submits each payment request to the grants officer, the administrative grants officer designated to handle payments for a grant or cooperative agreement is responsible for:

(1) Handling the recipient's requests for payments in accordance with DoD implementation of Governmentwide guidance (see 32 CFR 32.22, 33.21, or 34.12, as applicable).

(2) Reviewing each payment request to ensure that:

(i) The request complies with the award terms.

(ii) Available funds are adequate to pay the request.

(iii) The recipient will not have excess cash on hand, based on expenditure patterns.

(3) Maintaining a close working relationship with the personnel in the finance and accounting office responsible for making the payments. A good working relationship is necessary, to ensure timely and accurate handling of financial transactions for grants and cooperative agreements. Administrative grants officers:

(i) Should be generally familiar with policies and procedures for disbursing offices that are contained in Chapter 19 of Volume 10 of the DoD Financial Management Regulation (the FMR, DoD 7000.14-R[10]).

(ii) Shall forward authorizations to the designated payment office expeditiously, so that payments may be made in accordance with the timely payment guidelines in Chapter 19 of Volume 10 of the FMR. Unless alternative arrangements are made with the payment office, authorizations should be forwarded to the payment office at least 3 working days before the end of the period specified in the FMR. The period specified in the FMR is:

(A) No more than seven calendar days after receipt of the recipient's request by the administrative grants officer, whenever electronic commerce is used (i.e., EDI to request and authorize payments and electronic funds transfer (EFT) to make payments).

(B) No more than thirty calendar days after receipt of the recipient's request by the administrative grants officer, when it is not possible to use electronic commerce and paper transactions are used.

(C) No more than seven calendar days after each date specified, when payments are authorized in advance based on a predetermined payment schedule, provided that the payment schedule was received in the disbursing office at least 30 calendar days in advance of the date of the scheduled payment.

(iii) Shall ensure that the recipients' Taxpayer Identification Number (TIN) is included with each payment authorization forwarded to the payment office. This is a statutory requirement of 31 U.S.C. 3325, as amended by the Debt Collection Improvement Act of 1996 (section 31001(y), Pub. L. 104–134).

(iv) For each award that is required to be paid by EFT (see § 22.605(c) and (§ 22.810(b)(2)), shall prominently indicate that fact in the payment authorization.

§ 22.815 Claims, disputes, and appeals.

(a) *Award terms.* Grants officers shall include in grants and cooperative agreements a term or condition that incorporates the procedures of this section for:

(1) Processing recipient claims and disputes.

(2) Deciding appeals of grants officers' decisions.

(b) *Submission of claims*—(1) *Recipient claims.* If a recipient wishes to submit a claim arising out of or relating to a grant or cooperative agreement, the grants officer shall inform the recipient that the claim must:

(i) Be submitted in writing to the grants officer for decision;

(ii) Specify the nature and basis for the relief requested; and

(iii) Include all data that supports the claim.

(2) *DoD Component claims.* Claims by a DoD Component shall be the subject of a written decision by a grants officer.

(c) *Alternative Dispute Resolution (ADR)*—(1) *Policy.* DoD policy is to try

[10] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218.

to resolve all issues concerning grants and cooperative agreements by mutual agreement at the grants officer's level. DoD Components therefore are encouraged to use ADR procedures to the maximum extent practicable. ADR procedures are any voluntary means (e.g., mini-trials or mediation) used to resolve issues in controversy without resorting to formal administrative appeals (see paragraph (e) of this section) or to litigation.

(2) *Procedures.* (i) The ADR procedures or techniques to be used may either be agreed upon by the Government and the recipient in advance (e.g., when agreeing on the terms and conditions of the grant or cooperative agreement), or may be agreed upon at the time the parties determine to use ADR procedures.

(ii) If a grants officer and a recipient are not able to resolve an issue through unassisted negotiations, the grants officer shall encourage the recipient to enter into ADR procedures. ADR procedures may be used prior to submission of a recipient's claim or at any time prior to the Grant Appeal Authority's decision on a recipient's appeal (see paragraph (e)(3)(iii) of this section).

(d) *Grants officer decisions.* (1) Within 60 calendar days of receipt of a written claim, the grants officer shall either:

(i) Prepare a written decision, which shall include the reasons for the decision; shall identify all relevant data on which the decision is based; shall identify the cognizant Grant Appeal Authority and give his or her mailing address; and shall be included in the award file; or

(ii) Notify the recipient of a specific date when he or she will render a written decision, if more time is required to do so. The notice shall inform the recipient of the reason for delaying the decision (e.g., the complexity of the claim, a need for more time to complete ADR procedures, or a need for the recipient to provide additional information to support the claim).

(2) The decision of the grants officer shall be final, unless the recipient decides to appeal. If a recipient decides to appeal a grants officer's decision, the grants officer shall encourage the recipient to enter into ADR procedures, as described in paragraph (c) of this section.

(e) *Formal administrative appeals*—(1) *Grant appeal authorities.* Each DoD Component that awards grants or cooperative agreements shall establish one or more Grant Appeal Authorities to decide formal, administrative appeals in accordance with paragraph (e)(3) of this section. Each Grant Appeal Authority shall be either:

(i) An individual at a grade level in the Senior Executive Service, if civilian, or at the rank of Flag or General Officer, if military; or

(ii) A board chaired by such an individual.

(2) *Right of appeal.* A recipient has the right to appeal a grants officer's decision to the Grant Appeal Authority (but note that ADR procedures, as described in paragraph (c) of this section, are the preferred means for resolving any appeal).

(3) *Appeal procedures*—(i) *Notice of appeal.* A recipient may appeal a decision of the grants officer within 90 calendar days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the grants officer. If a recipient elects to use an ADR procedure, the recipient is permitted an additional 60 calendar days to file the written notice of appeal to the Grant Appeal Authority and grants officer.

(ii) *Appeal file.* Within 30 calendar days of receiving the notice of appeal, the grants officer shall forward to the Grant Appeal Authority and the recipient the appeal file, which shall include copies of all documents relevant to the appeal. The recipient may supplement the file with additional documents it deems relevant. Either the grants officer or the recipient may supplement the file with a memorandum in support of its position. The Grant Appeal Authority may request additional information from either the grants officer or the recipient.

(iii) *Decision.* The appeal shall be decided solely on the basis of the written record, unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

(f) *Representation.* A recipient may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding brought pursuant to this section, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

(g) *Non-exclusivity of remedies.* Nothing in this section is intended to limit a recipient's right to any remedy under the law.

§ 22.820 Debt collection.

(a) *Purpose.* This section prescribes procedures for establishing debts owed by recipients of grants and cooperative agreements, and transferring them to payment offices for collection.

(b) *Resolution of indebtedness.* The grants officer shall attempt to resolve by mutual agreement any claim of a recipient's indebtedness to the United States arising out of a grant or cooperative agreement (e.g., by a finding that a recipient was paid funds in excess of the amount to which the recipient was entitled under the terms and conditions of the award).

(c) *Grants officer's decision.* In the absence of such mutual agreement, any claim of a recipient's indebtedness shall be the subject of a grants officer decision, in accordance with § 22.815(b)(2). The grants officer shall prepare and transmit to the recipient a written notice that:

(1) Describes the debt, including the amount, the name and address of the official who determined the debt (e.g., the grants officer under § 22.815(d)), and a copy of that determination.

(2) Informs the recipient that:

(i) Within 30 calendar days of the grants officer's decision, the recipient shall either pay the amount owed to the grants officer (at the address that was provided pursuant to paragraph (c)(1) of this section) or inform the grants officer of the recipient's intention to appeal the decision.

(ii) If the recipient elects not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

(iii) If the recipient elects to appeal the grants officer's decision the recipient has 90 calendar days, or 150 calendar days if ADR procedures are used, after receipt of the grants officer's decision to file the appeal, in accordance with § 22.815(e)(3)(i).

(iv) The debt will bear interest, and may include penalties and other administrative costs, in accordance with the debt collection provisions in Chapters 29, 31, and 32 of Volume 5 and Chapters 18 and 19 of Volume 10 of the DoD Financial Management Regulation (DoD 7000.14–R). No interest will be charged if the recipient pays the amount owed within 30 calendar days of the grants officer's decision. Interest will be charged for the entire period from the date the decision was mailed, if the recipient pays the amount owed after 30 calendar days.

(d) *Follow-up.* Depending upon the response from the recipient, the grants officer shall proceed as follows:

(1) If the recipient pays the amount owed within 30 calendar days to the grants officer, the grants officer shall forward the payment to the responsible payment office.

(2) If within 30 calendar days the recipient elects to appeal the grants officer's decision, further action to collect the debt is deferred, pending the outcome of the appeal. If the final result of the appeal is a determination that the recipient owes a debt to the Federal Government, the grants officer shall send a demand letter to the recipient and transfer responsibility for further debt collection to a payment office, as described in paragraph (d)(3) of this section.

(3) If within 30 calendar days the recipient has neither paid the amount due nor provided notice of intent to file an appeal of the grants officer's decision, the grants officer shall send a demand letter to the recipient, with a copy to the payment office that will be responsible for collecting the delinquent debt. The payment office will be responsible for any further debt collection activity, including issuance of additional demand letters (see Chapter 19 of volume 10 of the DoD Financial Management Regulation, DoD 7000.14–R). The grants officer's demand letter shall:

(i) Describe the debt, including the amount, the name and address of the official that determined the debt (e.g., the grants officer under § 22.815(d)), and a copy of that determination.

(ii) Notify the recipient that the debt is a delinquent debt that bears interest from the date of the grants officer's decision, and that penalties and other administrative costs may be assessed.

(iii) Identify the payment office that is responsible for the collection of the debt, and notify the recipient that it may submit a proposal to that payment office to defer collection, if immediate payment is not practicable.

(e) *Administrative offset.* In carrying out the responsibility for collecting delinquent debts, a disbursing officer may need to consult grants officers, to determine whether administrative offset against payments to a recipient owing a delinquent debt would interfere with execution of projects being carried out under grants or cooperative agreements. Disbursing officers may also ask grants officers whether it is feasible to convert payment methods under grants or cooperative agreements from advance payments to reimbursements, to facilitate use of administrative offset. Grants officers therefore should be familiar with guidelines for disbursing officers, in Chapter 19 of Volume 10 of the Financial Management Regulation (DoD 7000.14–R), concerning withholding and administrative offset to recover delinquent debts.

§ 22.825 Closeout audits.

(a) *Purpose.* This section establishes DoD policy for obtaining audits at closeout of individual grants and cooperative agreements. It thereby supplements the closeout procedures specified in:

(1) 32 CFR 32.71 and 32.72, for awards to institutions of higher education and other nonprofit organizations.

(2) 32 CFR 33.50 and 33.51, for awards to State and local governments.

(3) 32 CFR 34.61 and 34.62, for awards to for-profit entities.

(b) *Policy.* Grants officers shall use their judgment on a case-by-case basis, in deciding whether to obtain an audit prior to closing out a grant or cooperative agreement (i.e., there is no specific DoD requirement to obtain an audit prior to doing so). Factors to be considered include:

(1) The amount of the award.

(2) DoD's past experience with the recipient, including the presence or lack of findings of material deficiencies in recent:

(i) Audits of individual awards; or

(ii) Systems-wide financial audits and audits of the compliance of the recipient's systems with Federal requirements, under OMB Circular A–133, where that Circular is applicable. (See § 22.715(a)(1)).

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APPENDIX A TO PART 22-PROPOSAL PROVISION FOR REQUIRED CERTIFICATIONS

PROVISION IN PROPOSAL (or, suitably modified, in award)	USED FOR			SOURCE OF REQUIREMENT
	Type of Award	Type of Recipient	Specific Situation	
By signing and submitting this proposal , the recipient is providing the:				
(1) Certification at Appendix A to 32 CFR Part 25 regarding debarment, suspension, and other responsibility matters.	Any nonprocurement transaction [see "primary covered transaction," defined at 32 CFR 25.110(a)(1)(i)]	All but foreign governments, foreign governmental entities, and others excluded from "person," as defined at 32 CFR 25.105	Any	Subparts A through E of 32 CFR 25, which implement E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federal Acquisition and Streamlining Act of 1994 (Pub. L. 103-355)
(2) Certification at Appendix C to 32 CFR Part 25 regarding drug-free workplace requirements.	Any financial assistance, including any grant or cooperative agreement [see "grant," as broadly defined at 32 CFR 25.605(b)(7)]	Any	Any, except where inconsistent with international obligations of the U.S. or the laws or regulations of a foreign government [see 32 CFR 25.610(b)]	Subpart F of 32 CFR 25, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.)
(3) Certification at Appendix A to 32 CFR Part 28 regarding lobbying.	Any financial assistance [see 32 CFR 28.105(b) and definitions of "Federal grant," "Federal cooperative agreement," and "Federal loan" in 32 CFR 28.105(c),(d), and (e)]	All but Indian tribe or tribal organization with respect to expenditures specifically permitted by other Federal law [see 32 CFR 28.105(l)]	Any	32 CFR 28, which implements 31 U.S.C. 1352

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Nondiscrimination By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:				
a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) , as implemented by DoD regulations at 32 CFR part 195.	Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).	Any.	Any.	32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.
b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	Any.	Awards under which construction work is to be done.	The grants officer should inform the recipient that 41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted, construction awards and subawards [60-1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(I)(3) and at paragraphs 1. of Appendices A to 32 CFR part 32 and 32 CFR part 34.
c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.).	Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.	Educational institution [for sex discrimination, excepts any Institution controlled by religious organization, when inconsistent with the organization's religious tenets].	Any educational program or activity receiving Federal financial assistance.	
d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	Any.	Any.	45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of "recipient" at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in "Federal financial assistance" definition at 32 CFR 56.3(b).	Any.	Any.	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards ["recipient," defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).	Grant or loan.	Any.	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel .	
Live Organisms By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any.	Any.	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. For animals:				
1. Rules on animal acquisition, transport, care, handling, and use in: (i) 9 CFR parts 1-4, Department of Agriculture rules that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156); and (ii) the "Guide for the Care and Use of Laboratory Animals," National Institutes of Health Publication No. 86-23.	Any.	Any.	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1[1] requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, in Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101-511).	Any.	Any.	Use of DoD appropriations for training on treatment of wounds.	
3. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	Any.	Any.	Activities which may involve or impact wildlife and plants.	

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APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Hatch Act The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.	Grants or loans.	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthropic, or cultural organization.	
Environmental Standards By signing this agreement or accepting funds under this agreement, the recipient assures that it will: a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at 40 CFR part 15. In accordance with the EPA rules, the recipient further agrees that it will: - Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5, as long as the facility remains on the list. - Notify the awarding agency if it intends to use a facility in performing this award that is on the List of Violating Facilities or that the recipient knows has been recommended to be placed on the List of Violating Facilities.	Grants, cooperative agreements, and other awards included in definitions of "grant" and "loan" in 40 CFR part 15.	Any.	Any, for Clean Air Act, Clean Water Act, and Executive Order 11738. 40 CFR 15.5 makes awards of less than $100,000, and certain other awards, exempt from the EPA regulations.	40 CFR 15.31 requires the assurances in the suggested award provision. It also requires that recipients flow down requirements to subawards ("grant" as defined at 40 CFR 15.4 includes subagreements). Executive Order 11738 establishes additional responsibilities for grants officers.

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. Identify to the awarding agency any impact this award may have on:				
1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.	Any.	Any.	Any actions that may affect the environment.	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.) , which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any.	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The grants officer should inform the recipient that 42 U.S.C. 4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the Federal Register), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional pre-award procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any.	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504-3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).	Any.	Any.	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).	Any.	Any.	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
National Historic Preservation The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].	Any.	Any.	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
Officials Not to Benefit No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.	Grants, cooperative agreements, and other "agreements."	Any.	Any.	
Preference for U.S. Flag Carriers Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.	Any.	Any.	Any agreement under which international air travel may be supported by U.S. Government funds.	

APPENDIX B TO PART 22-SUGGESTED AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS THAT OFTEN APPLY

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Cargo Preference The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any.	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [e.g., see clause at 46 CFR 381.7(b)].
Military Recruiters [Grants officers shall include the exact award provision specified at 32 CFR 22.520]	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
Relocation and Real Property Acquisition The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.	Grants, cooperative agreements, and other "Federal financial assistance" [see 49 CFR 24.2(j)].	"State agency" as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

APPENDIX C TO PART 22-ADMINISTRATIVE REQUIREMENTS AND ISSUES TO BE ADDRESSED IN AWARD TERMS AND CONDITIONS

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Standards for Financial Management Systems. Recipients' systems to comply with:	32 CFR 32.21	32 CFR 33.20	32 CFR 34.11	For university, nonprofit, or for-profit entity, specify if want: • Bonding and insurance [32 CFR 32.21(c) or 32 CFR 34.11(b)]. • Fidelity bond [32 CFR 32.21(d) or 32 CFR 34.11(c)].
Payment. Recipients request payments and handle advances and interest in compliance with:	32 CFR 32.22	32 CFR 33.21, 33.41(d) and (e)	32 CFR 34.12	Specify: • Payment method (e.g., advance, reimbursement, working capital advance). NOTE: if predetermined payment schedule is used, must specify means to ensure that recipients don't develop large cash balances well in advance of needs for such funds (e.g., recipient submits SF-269 or SF-270 forms at regular intervals, for grants officer to review recipients' cash on hand). • Name/address of office to which recipient sends payment requests. • How frequently recipient may submit payment requests. • Whether recipient requests payment by SF-270, SF-271, or other form, or by electronic means (e.g., electronic data interchange). • Name/address of office that will make payments, and whether the recipient is to receive payments by electronic funds transfer (see §22.605(c) and §22.810(b)(2)). • Name/address of office to which recipient is to remit any interest earned, if advance payment method is to be used. If interest is to be remitted using electronic commerce, information should be provided on required format and data elements.
Allowable costs. Allowability of costs to be in accordance with:	32 CFR 32.27 and 32.28	32 CFR 33.22 and 33.23	32 CFR 34.17	
Fee/profit. None allowed.			32 CFR 34.18	
Cost share or match. If cost share or match is required, allowability and valuation are governed by:	32 CFR 32.23	32 CFR 33.24	32 CFR 34.13	Specify if want to allow inclusion of certain types of items as cost share or allow them to be valued in certain ways [32 CFR 32.23(b), (c), and (g); 32 CFR 33.24(b)(4), (b)(5), and (e)(2); 32 CFR 34.13(a)(7), (b)(1), and (b)(4)(ii)].

APPENDIX C TO PART 22-ADMINISTRATIVE REQUIREMENTS AND ISSUES TO BE ADDRESSED IN AWARD TERMS AND CONDITIONS

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Program income. Recipients account for program income in accordance with:	32 CFR 32.24	32 CFR 33.25	32 CFR 34.14	Specify: • Method for disposition [32 CFR 32.24(b), (c), and (d); 32 CFR 33.25(g); 32 CFR 34.14(d), (e), and (f)]. • If want recipient to have obligation to Government for certain types of income or for income earned after end of project period [32 CFR 32.24(e) and (h), 32 CFR 33.25(a), (d), (e), and (h), 32 CFR 34.14(b)]. • If want to allow recipient to deduct costs of generating income [32 CFR 32.24(f), 32 CFR 33.25(c), 32 CFR 34.14(c)].
Revision of budget/program plans. Recipients request prior approval for plan changes, in accordance with:	32 CFR 32.25	32 CFR 33.30	32 CFR 34.15	Specify if wish to: • Waive some prior approvals that are optional, but are in effect unless specifically waived [32 CFR 33.30(b), (c)(1), (d)(3); 32 CFR 34.15(c)(2)]. • Require some prior approvals that are optional, but are only in effect if specifically stated [32 CFR 32.25(c)(5), (d), (e), (h); 32 CFR 34.15(c)(3)]. • Waive the requirement for prior approval [32 CFR 25.25(d)(3)] for recipient to initiate one-time, no-cost extension, as long as the DoD Component judges that the recipient's doing so would not cause the DoD Component to fail to comply with DoD funding policies (e.g., the incremental programming and budgeting policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation (DoD 7000.14-R).
Audit. Recipients periodically to have independent, financial and compliance audit and report to DoD, subject to provisions of:	32 CFR 32.26	32 CFR 33.26	32 CFR 34.16	Require all but for-profit entities to submit copy of OMB Circular A-133 audit reports to IG, DoD. Require for-profit entities to submit audit reports to whichever office(s) the DoD Component wishes audit reports to be sent.
Procurement. Recipients systems for acquiring goods and services under awards are to comply with:	32 CFR 32.40 through 32.49	32 CFR 33.36	32 CFR 34.30 through 34.31	Specify if want to require recipient to make certain preaward documents available for DoD Component's review [32 CFR 32.44(e); 32 CFR 33.36(g); 32 CFR 34.31(b)].
Subawards. Recipients flow down requirements to subawards in accordance with:	32 CFR 32.5, 32 CFR 33.37, and 32 CFR 34.1(b)(2)			

APPENDIX C TO PART 22-ADMINISTRATIVE REQUIREMENTS AND ISSUES TO BE ADDRESSED IN AWARD TERMS AND CONDITIONS

REQUIREMENT, IN BRIEF	SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND)			ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS
	University or other nonprofit	Governmental entity	For-profit entity	
Property. Recipients manage in accordance with:	32 CFR 32.30 through 32.37	32 CFR 33.31 through 33.34	32 CFR 34.20 through 34.25	Specify if want: • To allow for-profit entities to acquire real property under awards [32 CFR 34.21(a)]. • University or other nonprofit to have any further obligation to Government for exempt property [32 CFR 32.33(b)]. • To retain right to transfer title [32 CFR 32.34(h). 32 CFR 33.32(g)]. • To allow recipients to use equipment for certain purposes [32 CFR 32.34(d) and (e); 32 CFR 33.32(c)(4); 32 CFR 34.21(d)]. • To waive data rights [32 CFR 32.36(c); 32 CFR 34.24(b)(1)(ii)]. • To require recipients to record liens [32 CFR 32.37]. For research awards to certain recipients, include patents clause required by 37 CFR 401 [32 CFR 32.36(b); 32 CFR 34.24(a)].
Reports. Requirements are specified in:	32 CFR 32.51 and 32.52	32 CFR 33.40 and 33.41	32 CFR 34.41	Specify: • When recipients are to submit periodic and final performance reports [32 CFR 32.51(b) and (c); 32 CFR 33.40(b), (c), and (f); 32 CFR 34.41]. • Frequency of financial status/cash transaction reports [32 CFR 32.52(a)(1)(iii) and (a)(2)(iv); 32 CFR 33.41(b)(3) and (c); 32 CFR 34.41], or if wish to waive them under certain conditions [32 CFR 32.52(a)(1)(i) and (a)(2)(v); 32 CFR 33.41(a)(6); 32 CFR 34.41]. • Whether want reports on cash or accrual basis [32 CFR 32.52(a)(1)(ii); 32 CFR 33.41(b)(2); 32 CFR 34.41].
Records. Retention and access requirements specified in:	32 CFR 32.53	32 CFR 33.42	32 CFR 34.42	
Termination and enforcement. Award is subject to:	32 CFR 32.61 and 32.62	32 CFR 33.43 and 33.44	32 CFR 34.51 and 34.52	
Disputes, claims, and appeals. Procedures are specified in:	32 CFR 22.815			• Include term or condition that incorporates procedures, in accordance with 32 CFR 22.815(a).
After-the-award requirements. Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to requirements in:	32 CFR 32.71 through 32.73	32 CFR 33.50 through 33.52	32 CFR 34.61 through 34.63	

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PART 23—[REMOVED]

4. Under the authority of 5 U.S.C. 301, Part 23 is removed.

PART 28—[AMENDED]

5. Part 28 is amended as follows:

a. The authority citation for part 28 continues to read as follows:

Authority: Sect. 319, Pub. L. 102–121 (31 U.S.C. 1352); 5 U.S.C. 301; 10 U.S.C. 113.

b. Section 28.500 is revised to read as follows:

§ 28.500 Secretary of Defense.

(a) *Exemption authority.* The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) *Policy.* It is the policy of the Department of Defense that exemptions under paragraph (a) of this section shall be requested only rarely and in exceptional circumstances.

(c) *Procedures.* Each DoD Component that awards or administers Federal grants, Federal cooperative agreements, or Federal loans subject to this part shall establish procedures whereby:

(1) A grants officer wishing to request an exemption for a grant, cooperative agreement, or loan shall transmit such request through appropriate channels to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, DC. 20301–3080.

(2) Each such request shall explain why an exemption is in the national interest, a justification that must be transmitted to Congress for each exemption that is approved.

6. Part 32 is added to read as follows:

PART 32—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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32.21 Standards for financial management systems.
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32.30 Purpose of property standards.
32.31 Insurance coverage.
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32.40 Purpose of procurement standards.
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Reports and Records

32.50 Purpose of reports and records.
32.51 Monitoring and reporting program performance.
32.52 Financial reporting.
32.53 Retention and access requirements for records.

Termination and Enforcement

32.60 Purpose of termination and enforcement.
32.61 Termination.
32.62 Enforcement.

Subpart D—After-the-Award Requirements

32.70 Purpose.
32.71 Closeout procedures.
32.72 Subsequent adjustments and continuing responsibilities.
32.73 Collection of amounts due.
Appendix A to Part 32—Contract Provisions

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 32.1 Purpose.

(a) *General.* This part implements OMB Circular A–110 [1] and establishes uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, and other non-governmental, non-profit organizations.

(b) *Relationship to other parts.* This part is an integral part of the DoD Grant and Agreement Regulations (DoDGARs), which comprise this subchapter of the Code of Federal Regulations. This part includes references to other parts of the DoDGARs that implement Governmentwide guidance and provide uniform internal policies and procedures for DoD Components that make or administer awards. Although parts 21 and 22 of this subchapter do not impose any direct requirements on recipients, and recipients therefore are not required to be familiar with those parts, the information in those parts concerning internal policies and procedures should be helpful to recipients of DoD awards.

(c) *Prime awards.* DoD Components shall apply the provisions of this part to awards to recipients that are institutions of higher education, hospitals, and other non-profit organizations. DoD Components shall not impose additional or inconsistent requirements, except as provided in §§ 32.4 and 32.14, or unless specifically required by Federal statute or executive order.

(d) *Subawards.* Any legal entity that receives an award from a DoD Component shall apply the provisions of this part to subawards with institutions of higher education, hospitals, and other non-profit organizations. Thus, a governmental or for-profit organization, whose prime award from a DoD Component is subject to 32 CFR part 33 or part 34, respectively, applies this part to subawards with institutions of higher education, hospitals, or other non-profit organizations. It should be noted that subawards are for the performance of substantive work under awards, and are distinct from contracts for procuring goods and services. It should be further noted that non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 32.2 Definitions.

The following are definitions of terms used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations, because this part implements OMB Circular A–110 and uses definitions as stated in that

[1] For copies of the Circular, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW, New Executive Office Building, Washington, DC 20503.

Circular. In such cases, the definition given in this section applies to the term as it is used in this part, and the definition given in other parts applies to the term as it is used in those parts. For example, *suspension* is defined in this section to mean temporary withdrawal of Federal sponsorship under an award, but is defined at 32 CFR 25.105 to be an action taken to exclude a person from participating in a grant, cooperative agreement, or other covered transaction.

Accrued expenditures. The charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income. The sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient; and

(ii) Goods and other tangible property delivered to purchasers.

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

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

Advance. A payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award. Financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which the grants officer administering an award made by a DoD Component determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DoD Component.

Contract. A procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government.

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

Disallowed costs. Those charges to an award that the grants officer administering an award made by a DoD Component determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DoD Component. A Military Department, Defense Agency, DoD field activity, or organization within the Office of the Secretary of Defense that provides or administers an award to a recipient.

Equipment. Tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property. Property under the control of any DoD Component that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Exempt property. Tangible personal property acquired in whole or in part with Federal funds, where the DoD Component has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal funds authorized. The total amount of Federal funds obligated by a DoD Component for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

Federal share (of real property, equipment, or supplies). That percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period. The period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments. Property that includes, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations. The amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

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

Personal property. Property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval. Written approval by an authorized official evidencing prior consent.

Program income. Gross income earned by the recipient that is directly generated by a supported activity or

earned as a result of the award (see exclusions in § 32.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs. All allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period. The period established in the award document during which Federal sponsorship begins and ends.

Property. Real property and personal property (equipment, supplies, intangible property and debt instruments), unless stated otherwise.

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

Recipient. An organization receiving financial assistance directly from DoD Components to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term also includes consortia comprised of any combination of universities, other nonprofit organizations, governmental organizations, for-profit organizations, and other entities, to the extent that the consortia are legally incorporated as nonprofit organizations. The term does not include Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are Government-owned or controlled, or are designated as federally-funded research and development centers.

Research and development. All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small award. An award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Subaward. An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in this section.

Subrecipient. The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Supplies. All personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 32 CFR part 25.

Termination. The cancellation of an award, in whole or in part, at any time prior to the date of completion.

Third party in-kind contributions. The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations. The amount of obligations incurred by the recipient:

(1) That have not been paid, if financial reports are prepared on a cash basis.

(2) For which an outlay has not been recorded, if reports are prepared on an accrued expenditure basis.

Unobligated balance. The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost. The difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance. A procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 32.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 32.4.

§ 32.4 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.125(a) and (c).

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* (1) For classes of awards other than small awards, the Director of Defense Research and Engineering (DDR&E), or his or her designee, may grant exceptions from the requirements of this part:

(i) With the written concurrence of the Office of the Management and Budget (OMB). The DDR&E, or his or her designee, shall provide written notification to OMB of the Department of Defense's intention to grant a class deviation; and

(ii) When exceptions are not prohibited by statute.

(2) DoD Components shall request approval for such deviations in

accordance with 32 CFR 21.125(b) and (c). However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances.

§ 32.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 32 CFR part 33. Subrecipients that are for-profit organizations are subject to 32 CFR part 34.

Subpart B—Pre-Award Requirements

§ 32.10 Purpose.

Sections 32.11 through 32.17 prescribe application forms and instructions and other pre-award matters.

§ 32.11 Pre-award policies.

(a) *Use of grants, cooperative agreements, and contracts.* (1) OMB Circular A–110 states that:

(i) In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract).

(ii) The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308) governs the use of grants, cooperative agreements, and contracts. Under that Act:

(A) A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute.

(B) Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(C) The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.''

(2) In selecting the appropriate award instruments, DoD Components' grants officers shall comply with the DoD implementation of the Federal Grant and Cooperative Agreement Act at 32 CFR 21.205(a) and 32 CFR part 22, subpart B.

(b) *Public notice and priority setting.* As a matter of Governmentwide policy, Federal awarding agencies shall notify the public of intended funding priorities for programs that use discretionary awards, unless funding priorities are established by Federal statute. For DoD Components, compliance with competition policies and statutory requirements implemented in 32 CFR part 22, subpart C, shall constitute compliance with this Governmentwide policy.

§ 32.12 Forms for applying for Federal assistance.

(a) DoD Components shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used in place of or as a supplement to the Standard Form 424[2] (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by DoD Components.

(c) For Federal programs covered by E.O. 12372 (3 CFR, 1982 Comp., p. 197), ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the DoD Component or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoD Components that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the nonprocurement debarment and suspension common rule at 32 CFR part 25. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

[2] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''DoD Directory of Contract Administration Services Components,'' DLAH 4105.4, which can be obtained from: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220.

§ 32.14 Special award conditions.

(a) DoD Components may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DoD Components shall notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(d) Grants officers:

(1) Should coordinate the imposition and removal of special award conditions with the cognizant grants administration office identified in 32 CFR 22.710.

(2) Shall include in the award file the written notification to the recipient, described in paragraph (b) of this section, and the documentation required by 32 CFR 22.410(b).

§ 32.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce, and for Federal agencies' procurements, grants, and other business-related activities. DoD grants officers shall comply with requirements concerning the use of the metric system at 32 CFR 22.530.

§ 32.16 Resource Conservation and Recovery Act (RCRA).

Recipients' procurements shall comply with applicable requirements of the Resource Conservation and Recovery Act (RCRA), as described at § 32.49.

§ 32.17 Certifications and representations.

(a) OMB Circular A–110 authorizes and encourages each Federal agency, unless prohibited by statute or codified regulation, to allow recipients to submit

certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. The Circular further states that annual certifications and representations, when used, shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(b) DoD grants officers shall comply with the provisions concerning certifications and representations at 32 CFR 22.510. Those provisions ease burdens on recipients to the extent possible, given current statutory and regulatory impediments to obtaining all certifications on an annual basis. The provisions thereby also comply with the intent of OMB Circular A–110, to use less burdensome methods for obtaining certifications and representations, as such methods become feasible.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 32.20 Purpose of financial and program management.

Sections 32.21 through 32.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 32.21 Standards for financial management systems.

(a) DoD Components shall require recipients to relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 32.52. If a DoD Component requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

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

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data. As discussed in paragraph (a) of this section, unit cost data is generally not appropriate for awards that support research.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents should be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles (see § 32.27) and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

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

(d) The DoD Component may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 32.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State agreements under the Cash Management Improvement Act (CMIA) (31 U.S.C. 3335 and 6503) or default procedures in 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 32.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the DoD Component to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270,[3] ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if inconsistent with DoD procedures for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. DoD Components may also use this method on any construction agreement,

[3] See footnote 2 to § 32.12(a).

or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the responsible DoD payment office generally makes payment within 30 calendar days after receipt of the billing by the office designated to receive the billing, unless the billing is improper (for further information about timeframes for payments, see 32 CFR 22.810(c)(3)(ii)).

(2) Recipients shall be authorized to submit requests for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the grants officer, in consultation with the program manager, has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the award may provide for cash on a working capital advance basis. Under this procedure, the award shall provide for advancing cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the award shall provide for reimbursing the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, grants officers shall not withhold payments for proper charges made by recipients at any time during the project period unless:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or

(2) The recipient or subrecipient is delinquent in a debt to the United States under OMB Circular A–129, ''Managing Federal Credit Programs'' (see definitions of ''debt'' and ''delinquent debt,'' at 32 CFR 22.105). Under such conditions, the grants officer may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated (also see 32 CFR 22.420(b)(2) and 22.820).

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, DoD Components shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless:

(1) The recipient receives less than $120,000 in Federal awards per year;

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l)(1) Interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, PO Box 6021, Rockville, MD 20852.

(2) In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the grants officer as being necessary to facilitate direct deposit in HHS' account at the Department of the Treasury.

(3) Recipients that do not have electronic remittance capability should use a check.

(4) Interest amounts up to $250 per year may be retained by the recipient for administrative expense.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. DoD Components shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each DoD Component shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. DoD Components, however, have the option of using this form for construction programs in lieu of the SF–271,[4] ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each DoD Component shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a DoD Component may substitute the SF–270 when the DoD Component determines that it provides adequate information to meet Federal needs.

§ 32.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

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

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the DoD Component.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs (see definition in § 32.2) may be included as part of cost sharing or matching.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a DoD Component authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of

[4] See footnote 2 to § 32.12(a).

the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(2) The current fair market value. However, when there is sufficient justification, the DoD Component may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The DoD Component may accept the use of any reasonable basis for determining the fair market value of the property.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if the purpose of the award is to:

(1) Assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching; or

(2) Support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the DoD Component has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

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

(4) The value of loaned equipment shall not exceed its fair rental value.

(i) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(1) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(2) The basis for determining the valuation for personal service and property shall be documented.

§ 32.24 Program income.

(a) DoD Components shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the following ways:

(1) Added to funds committed to the project by the DoD Component and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When a program regulation or award authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that program regulations or the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 32.14.

(e) Unless program regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by program regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (see §§ 32.30 through 32.37).

(h) Unless program regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. Note that the Patent and Trademark Amendments (35 U.S.C. chapter 18) apply to inventions made under an experimental, developmental, or research award.

§ 32.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon DoD Component requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from the cognizant grants officer for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the DoD Component. DoD Components should require this prior approval only in exceptional circumstances. The requirement in each such case must be stated in the award document.

(6) The inclusion, unless waived by the DoD Component, of costs that require prior approval in accordance with OMB Circular A–21,[5] ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122,[6] ''Cost Principles for Non-Profit Organizations,'' or Appendix E to 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable. However, it should be noted that many of the prior approvals in these cost principles are appropriately waived only after consultation with the cognizant federal agency responsible for negotiating the recipient's indirect costs.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(9) If required by the DoD Component, the transfer of funds among direct cost categories that is described in paragraph (e) of this section.

(d) (1) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, OMB Circular A–110 authorizes DoD Components, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122 (but see cautionary note at end of paragraph (c)(5) of this section).

(2) The two prior approvals listed in paragraphs (d)(2)(i) and (ii) of this section are automatically waived unless the award document states otherwise. DoD Components should override this automatic waiver and require the prior approvals, especially for research awards, only in exceptional circumstances. Absent an override in the award terms and conditions, recipients need not obtain prior approvals before:

(i) Incurring pre-award costs 90 calendar days prior to award (incurring pre-award costs more than 90 calendar days prior to award would still require the prior approval of the DoD Component). All pre-award costs are incurred at the recipient's risk (i.e., the DoD Component is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(ii) Carrying forward unobligated balances to subsequent funding periods.

(3) Under certain conditions, a DoD Component may authorize a recipient to initiate, without prior approval, a one-time, no-cost extension (i.e., an extension in the expiration date of an award that does not require additional Federal funds) for a period of up to twelve months, as long as the no-cost extension does not involve a change in the approved objectives or scope of the project. The conditions for waiving this prior approval requirement are that the DoD Component must:

(i) Judge that the recipient's subsequently initiating a one-time, no-cost extension would not cause the DoD Component to fail to comply with DoD funding policies (for further information on the location of DoD funding policies, grants officers may refer to Appendix C to 32 CFR part 22).

(ii) Require a recipient that wishes to initiate a one-time, no-cost extension to so notify the office that made the award at least 10 calendar days before the original expiration date of the award.

(e) The DoD Component may, at its option, restrict the transfer of funds among direct cost categories, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the DoD Component. As a matter of DoD policy, requiring prior approvals for such transfers generally is not appropriate for grants to support research. No DoD Component shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(f) For construction awards, recipients shall request prior written approval promptly from grants officers for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the project or program;

(2) The need arises for additional Federal funds to complete the project; or

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 32.27.

(g) When a DoD Component makes an award that provides support for both construction and nonconstruction work, the DoD Component may require the recipient to request prior approval from the grants officer before making any fund or budget transfers between the two types of work supported.

(h) No other prior approval requirements for specific items may be imposed unless a deviation has been approved, in accordance with the deviation procedures in § 32.4(c).

(i) For both construction and nonconstruction awards, DoD Components shall require recipients to notify the grants officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(j) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the grants officer indicates a letter of request suffices.

(k) Within 30 calendar days from the date of receipt of the request for budget revisions, the grants officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the grants officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 32.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB

[5] See footnote 1 to § 32.1(a).

[6] See footnote 1 to § 32.1(a).

Circular A–133,[7] ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments that are subrecipients shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) Hospitals that are subrecipients and are not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements specified in award terms and conditions.

(d) For-profit organizations that are subrecipients shall be subject to the audit requirements specified in 32 CFR 34.16.

§ 32.27 Allowable costs.

(a) *General.* For each kind of recipient or subrecipient of a cost-type assistance award, or each contractor receiving a. cost-type contract under an assistance award, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs.

(b) *Governmental organizations.* Allowability of costs incurred by State, local or federally-recognized Indian tribal governments that may be subrecipients or contractors under awards subject to this part is determined in accordance with the provisions of OMB Circular A–87,[8] ''Cost Principles for State and Local Governments.''

(c) *Non-profit organizations.* The allowability of costs incurred by non-profit organizations that may be recipients or subrecipients of awards subject to this part, or contractors under such awards, is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(d) *Higher educational institutions.* The allowability of costs incurred by institutions of higher education that may be recipients, subrecipients, or contractors is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(e) *Hospitals.* The allowability of costs incurred by hospitals that are recipients, subrecipients, or contractors is determined in accordance with the provisions of Appendix E to 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(f) *For-profit organizations.* The allowability of costs incurred by subrecipients or contractors that are either for-profit organizations or non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31; however, the grants officer or the award terms and conditions may in rare cases authorize a determination of allowable costs that are in accordance with uniform cost accounting standards and comply with cost principles acceptable to the Department of Defense.

§ 32.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs (see § 32.25(d)(2)(i)) authorized by the DoD Component.

Property Standards

§ 32.30 Purpose of property standards.

Sections 32.31 through 32.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government and property whose cost was charged to a project supported by a Federal award. DoD Components shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 32.31 through 32.37.

§ 32.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 32.32 Real property.

Each DoD Component that makes awards under which real property is acquired in whole or in part with Federal funds shall prescribe requirements for recipients concerning the use and disposition of such property. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the DoD Component.

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

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the DoD Component or its successor Federal agency. The responsible Federal agency shall observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the DoD Component and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 32.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the DoD Component that made the award. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the

[7] See footnote 1 to § 32.1(a).

[8] See footnote 1 to § 32.1(a).

DoD Component for further Federal agency utilization.

(2) If the DoD Component that made the award has no further need for the property, it shall be declared excess and either:

(i) Reported to the General Services Administration, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Disposed of by alternative methods pursuant to other specific statutory authority. For example, DoD Components are authorized by the Federal Technology Transfer Act (15 U.S.C. 3710(i)), to donate research equipment to educational and non-profit organizations for the conduct of technical and scientific education and research activities—donations under this Act shall be in accordance with the DoD implementation of E.O. 12999 (3 CFR, 1996 Comp., p. 180), ''Educational Technology: Ensuring Opportunity for All Children in the Next Century,'' as applicable. Appropriate instructions shall be issued to the recipient by the DoD Component.

(b) *Exempt property.* (1) When statutory authority exists, a DoD Component may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoD Component considers appropriate. For example, under 31 U.S.C. 6306, DoD Components may so vest title to tangible personal property under a grant or cooperative agreement for basic or applied research in a nonprofit institution of higher education or a nonprofit organization whose primary purpose is conducting scientific research. Such property is ''exempt property.''

(2) As a matter of policy, DoD Components shall make maximum use of the authority of 31 U.S.C. 6306 to vest title to exempt property in institutions of higher education, without further obligation to the Government, to enhance the university infrastructure for future performance of defense research and related, science and engineering education.

(3) DoD Components may establish conditions, in regulation or in award terms and conditions, for vesting title to exempt property. Should a DoD Component not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 32.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the DoD Component that made the award. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) First, activities sponsored by the DoD Component that funded the original project.

(2) Second, activities sponsored by other DoD Components.

(3) Then, activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DoD Component that financed the equipment; second preference shall be given to projects or programs sponsored by other DoD Components; and third preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the DoD Component that financed the property. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the DoD Component that financed the equipment.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned property shall include all of the following:

(1) Records for equipment and federally-owned property shall be maintained accurately and shall include the following information:

(i) A description of the equipment or federally-owned property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment or federally-owned property, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

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

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to property furnished by the Federal Government).

(vii) Location and condition of the equipment or federally-owned property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the DoD Component that made the award for its share.

(2) Property owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment and federally-owned property shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment or federally-owned property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment or federally-owned property. Any loss, damage, or theft of equipment or federally-owned property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the DoD Component.

(5) Adequate maintenance procedures shall be implemented to keep the equipment or federally-owned property in good condition.

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

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards.

(1) For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the DoD Component that originally made the award or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the DoD Component. The DoD Component shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(i) The grants officer, in consultation with the program manager, shall judge whether the age and nature of the equipment warrant a screening procedure to determine whether the equipment is useful to a DoD Component or other Federal agency. If a screening procedure is warranted:

(A) The DoD Component shall determine whether the equipment can be used to meet DoD requirements.

(B) If no DoD requirement exists, the availability of the equipment shall be reported to the General Services Administration by the DoD Component to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the DoD Component that made the award an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

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

(iv) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoD Component that made the award for such costs incurred in its disposition.

(h) The DoD Component may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing. For exempt property, in accordance with § 32.33(b)(3), note that this identification must occur by the time of award, or title to the property vests in the recipient without further obligation to the Government.

(2) The DoD Component shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with award funds and federally-owned property. If the DoD Component fails to issue disposition instructions for equipment within the 120 calendar day period, the recipient shall apply the standards of paragraph (g) of this section.

(3) When the DoD Component exercises its right to take title, the equipment shall be subject to the provisions for federally-owned property.

§ 32.35 Supplies.

(a) Title to supplies shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 32.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including Governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the DoD Component making the award, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward (rather than developed or produced under the award or subaward) vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the DoD Component that made the award. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 32.34(g).

§ 32.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. DoD Components may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 32.40 Purpose of procurement standards.

Sections 32.41 through 32.48 set forth standards for use by recipients in

establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

§ 32.41 Recipient responsibilities.

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

§ 32.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 32.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 32.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by the DoD implementation, in 32 CFR part 25, of E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the DoD Component's pre-award review, procurement documents such as request for proposals or invitations for bids, independent cost

estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the simplified acquisition threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product.

(4) The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold.

§ 32.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 32.46 Procurement records.

Procurement records and files for purchases in excess of the simplified acquisition threshold shall include the following at a minimum:

(a) Basis for contractor selection;

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

(c) Basis for award cost or price.

§ 32.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 32.48 Contract provisions.

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

(a) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall 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) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the DoD Component may accept the bonding policy and requirements of the recipient, provided the grants officer has made a determination that the Federal Government'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 shall, 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in §§ 32.40 through 32.49, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the Department of Defense, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including those for amounts less than the simplified acquisition threshold, by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

§ 32.49 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (section 6002, Pub. L. 94–580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

Reports and Records

§ 32.50 Purpose of reports and records.

Sections 32.51 through 32.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 32.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity

supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 32.26.

(b) The award terms and conditions shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the award year; quarterly or semi-annual reports shall be due 30 calendar days after the reporting period. DoD Components may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs. However, unit costs are generally inappropriate for research (see § 32.21 (a) and (b)(4)).

(2) Reasons why established goals were not met, if appropriate.

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

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the grants officer of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) DoD Components' representatives may make site visits, as needed.

(h) DoD Components shall comply with applicable clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 32.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) *SF–269* [9] *or SF–269A,*[10] *Financial Status Report.* (i) DoD Components shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A DoD Component may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272,[11] Report of Federal Cash Transactions, is determined to provide adequate information to meet agency needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

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

(iii) The DoD Component shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the award.

(iv) The DoD Component shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the grants officer upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients the DoD Component shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a.[12] The grants officer shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each award to the recipients.

(ii) DoD Components may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, DoD Components may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three working days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. DoD Components may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) DoD Components may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the grants officer's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When electronic payment mechanisms or SF–270 forms provide adequate data.

(b) When the DoD Component needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, grants officers shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a grants officer, after consultation with the Federal agency assigned cognizance for a recipient's audit and audit resolution, determines that the recipient's accounting system does not meet the standards in § 32.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The grants officer, in obtaining this information, shall comply with applicable report clearance requirements of 5 CFR part 1320.

(3) Grants officers are encouraged to shade out any line item on any report if not necessary.

(4) DoD Components are encouraged to accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

[9] See footnote 2 to § 32.12(a).

[10] See footnote 2 to § 32.12(a).

[11] See footnote 2 to § 32.12(a).

[12] See footnote 2 to § 32.12(a).

(5) DoD Components may provide computer or electronic outputs to recipients when it expedites or contributes to the accuracy of reporting.

§ 32.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. DoD Components shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the grants officer.

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoD Component shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoD Component can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the DoD Component making the award.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply 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).

(1) *If submitted for negotiation.* If the recipient submits an indirect-cost proposal, plan, or other computation to the Federal agency responsible for negotiating the recipient's indirect cost rate, as the basis for negotiation of the rate, or the subrecipient submits such a proposal, plan, or computation to the recipient, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the cognizant Federal agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients shall retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Recipients shall also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients shall not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 32.60 Purpose of termination and enforcement.

Sections 32.61 and 32.62 set forth uniform suspension, termination and enforcement procedures.

§ 32.61 Termination.

(a) Awards may be terminated in whole or in part only as follows:

(1) By the grants officer, if a recipient materially fails to comply with the terms and conditions of an award;

(2) By the grants officer with the consent of the recipient, 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

(3) By the recipient upon sending to the grants officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the grants officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 32.71, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 32.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the grants officer may, in addition to imposing any of the special conditions outlined in § 32.14, 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 recipient or more severe enforcement action by the grants officer and DoD Component.

(2) Disallow (that is, deny both use of funds and any applicable 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.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the DoD Component shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved. Award terms or conditions will incorporate the procedures of 32 CFR 22.815 for processing recipient claims and disputes and for deciding appeals of grants officers' decisions.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the grants officer expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient 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) 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 a recipient from being subject to debarment and suspension under 32 CFR part 25.

Subpart D—After-the-Award Requirements

§ 32.70 Purpose.

Sections 32.71 through 32.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 32.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports required by the terms and conditions of the award. The grants officer may approve extensions when requested by the recipient.

(b) Unless the grants officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The responsible grants officer and payment office shall expedite completion of steps needed to close out awards and make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the DoD Component has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129[13] governs unreturned amounts that become delinquent debts (see 32 CFR 22.820).

(e) When authorized by the terms and conditions of the award, the grants officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 32.31 through 32.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the DoD Component shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 32.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department of Defense to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 32.26.

(4) Property management requirements in §§ 32.31 through 32.37.

(5) Records retention as required in § 32.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the grants officer and the recipient, provided the responsibilities of the recipient referred to in § 32.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

[13] See footnote 1 to § 32.1(a).

§ 32.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government.

(b) OMB Circular A–110 informs each Federal agency that:

(1) If a debt is not paid within a reasonable period after the demand for payment, the Federal agency may reduce the debt by:

(i) Making administrative offset against other requests for reimbursement.

(ii) Withholding advance payments otherwise due to the recipient.

(iii) Taking other action permitted by statute.

(2) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

(c) DoD grants officers shall follow the procedures in 32 CFR 22.820 for issuing demands for payment and transferring debts to DoD payment offices for collection. Recipients will be informed about pertinent procedures and timeframes through the written notices of grants officers' decisions and demands for payment.

Appendix A to Part 32—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), ''Equal Employment Opportunity,'' as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR ch. 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all

suspected or reported violations to the responsible DoD Component.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—This Act applies to procurements under awards only when the Federal program legislation specifically makes it apply (i.e., Davis-Bacon does not by itself apply to procurements under awards). In cases where another statute does make the Davis-Bacon Act apply, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction or other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement*—Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)*, as amended—Contracts and subawards of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principals.

7. Part 34 is added to read as follows:

PART 34—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH FOR-PROFIT ORGANIZATIONS

Subpart A—General

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34.50 Purpose of termination and enforcement.
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Subpart C—After-the-Award Requirements

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34.63 Collection of amounts due.
Appendix A to Part 34—Contract Provisions

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 34.1 Purpose.

(a) This part prescribes administrative requirements for awards to for-profit organizations.

(b) Applicability to prime awards and subawards is as follows:

(1) *Prime awards.* DoD Components shall apply the provisions of this part to awards to for-profit organizations. DoD Components shall not impose requirements that are in addition to, or inconsistent with, the requirements provided in this part, except:

(i) In accordance with the deviation procedures or special award conditions in § 34.3 or § 34.4, respectively; or

(ii) As required by Federal statute, Executive order, or Federal regulation implementing a statute or Executive order.

(2) *Subawards.* (i) Any legal entity (including any State, local government, university or other nonprofit organization, as well as any for-profit entity) that receives an award from a DoD Component shall apply the provisions of this part to subawards with for-profit organizations. It should be noted that subawards (see definition in § 34.2) are financial assistance for substantive programmatic performance

and do not include recipients' procurement of goods and services.

(ii) For-profit organizations that receive prime awards covered by this part shall apply to each subaward the administrative requirements that are applicable to the particular type of subrecipient (e.g., 32 CFR part 33 specifies requirements for subrecipients that are States or local governments, and 32 CFR part 32 contains requirements for universities or other nonprofit organizations).

§ 34.2 Definitions.

The following are definitions of terms as used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations (DoDGARs).

Advance. A payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award. A grant or cooperative agreement.

Cash contributions. The recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout. The process by which the grants officer administering an award made by a DoD Component determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DoD Component.

Contract. Either:

(1) A procurement contract made by a recipient under a DoD Component's award or by a subrecipient under a subaward; or

(2) A procurement subcontract under a contract awarded by a recipient or subrecipient.

Cost sharing or matching. That portion of project or program costs not borne by the Federal Government.

Disallowed costs. Those charges to an award that the grants officer administering an award made by a DoD Component determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DoD Component. A Military Department, Defense Agency, DoD Field Activity, or organization within the Office of the Secretary of Defense that provides or administers an award to a recipient.

Equipment. Tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. That definition applies for the purposes of the Federal administrative requirements in this part. However, the recipient's policy may be to use a lower dollar value for defining ''equipment,'' and nothing in this part should be construed as requiring the recipient to establish a higher limit for purposes other than the administrative requirements in this part.

Excess property. Property under the control of any DoD Component that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Expenditures. See the definition for outlays in this section.

Federally owned property. Property in the possession of, or directly acquired by, the Government and subsequently made available to the recipient.

Funding period. The period of time when Federal funding is available for obligation by the recipient.

Intellectual property. Intangible personal property such as patents and patent applications, trademarks, copyrights, technical data, and software rights.

Obligations. The amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

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

Personal property. Property of any kind except real property. It may be:

(1) Tangible, having physical existence (i.e., equipment and supplies); or

(2) Intangible, having no physical existence, such as patents, copyrights, data and software.

Prior approval. Written or electronic approval by an authorized official evidencing prior consent.

Program income. Gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs. All allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period. The period established in the award document during which Federal sponsorship begins and ends.

Property. Real property and personal property (equipment, supplies, and intellectual property), unless stated otherwise.

Real property. Land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient. A for-profit organization receiving an award directly from a DoD Component to carry out a project or program.

Research. Basic, applied, and advanced research activities. *Basic research* is defined as efforts directed toward increasing knowledge or understanding in science and engineering. *Applied research* is defined as efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology, such as new materials, devices, methods, and processes. ''Advanced research,'' advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way, is most closely analogous to precommercialization or precompetitive technology development in the commercial sector (it does not include development of military systems and hardware where specific requirements have been defined).

Small award. An award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Small business concern. A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it has applied for an award, and qualified as a small business under the criteria and size standards in 13 CFR part 121. For more details, grants officers should see 48 CFR part 19 in the ''Federal Acquisition Regulation.''

Subaward. Financial assistance in the form of money, or property in lieu of money, provided under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but the term includes neither procurement of goods and services nor any form of assistance which is excluded from the definition of ''award'' in this section.

Subrecipient. The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

Supplies. Tangible expendable personal property that is charged directly to the award and that has a useful life of less than one year or an acquisition cost of less than $5000 per unit.

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a recipient under 32 CFR part 25.

Termination. The cancellation of an award, in whole or in part, under an agreement at any time prior to either:

(1) The date on which all work under an award is completed; or

(2) The date on which Federal sponsorship ends, as given on the award document or any supplement or amendment thereto.

Third party in-kind contributions. The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unobligated balance. The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 34.3 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.125(a).

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* For classes of awards other than small awards, the Director, Defense Research and Engineering, or his or her designee, may grant exceptions from the requirements of this part when exceptions are not prohibited by statute. DoD Components shall request approval for such deviations in accordance with 32 CFR 21.125 (b) and (c).

§ 34.4 Special award conditions.

(a) Grants officers may impose additional requirements as needed, over and above those provided in this part, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this part;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DoD Components shall notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(d) Grants officers:

(1) Should coordinate the imposition and removal of special award conditions with the cognizant grants administration office identified in 32 CFR 22.710.

(2) Shall include in the award file the written notification to the recipient, described in paragraph (b) of this section, and the documentation required by 32 CFR 22.410(b).

Subpart B—Post-award Requirements

Financial and Program Management

§ 34.10 Purpose of financial and program management.

Sections 34.11 through 34.17 prescribe standards for financial management systems; methods for making payments; and rules for cost sharing and matching, program income, revisions to budgets and program plans, audits, allowable costs, and fee and profit.

§ 34.11 Standards for financial management systems.

(a) Recipients shall be allowed and encouraged to use existing financial management systems established for doing business in the commercial marketplace, to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and the minimum standards in this section. As a minimum, a recipient's financial management system shall provide:

(1) Effective control of all funds. Control systems must be adequate to ensure that costs charged to Federal funds and those counted as the recipient's cost share or match are consistent with requirements for cost reasonableness, allowability, and allocability in the applicable cost principles (see § 34.17) and in the terms and conditions of the award.

(2) Accurate, current and complete records that document for each project funded wholly or in part with Federal funds the source and application of the Federal funds and the recipient's required cost share or match. These records shall:

(i) Contain information about receipts, authorizations, assets, expenditures, program income, and interest.

(ii) Be adequate to make comparisons of outlays with budgeted amounts for each award (as required for programmatic and financial reporting under § 34.41. Where appropriate, financial information should be related to performance and unit cost data. Note that unit cost data are generally not appropriate for awards that support research.

(3) To the extent that advance payments are authorized under § 34.12, procedures that minimize the time elapsing between the transfer of funds to the recipient from the Government and the recipient's disbursement of the funds for program purposes.

(4) The recipient shall have a system to support charges to Federal awards for salaries and wages, whether treated as direct or indirect costs. Where employees work on multiple activities

or cost objectives, a distribution of their salaries and wages will be supported by personnel activity reports which must:

(i) Reflect an after the fact distribution of the actual activity of each employee.

(ii) Account for the total activity for which each employee is compensated.

(iii) Be prepared at least monthly, and coincide with one or more pay periods.

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

(c) The DoD Component may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(d) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 34.12 Payment.

(a) *Methods available.* Payment methods for awards with for-profit organizations are:

(1) *Reimbursement.* Under this method, the recipient requests reimbursement for costs incurred during a time period. In cases where the recipient submits each request for payment to the grants officer, the DoD payment office reimburses the recipient by electronic funds transfer or check after approval of the request by the grants officer designated to do so.

(2) *Advance payments.* Under this method, a DoD Component makes a payment to a recipient based upon projections of the recipient's cash needs. The payment generally is made upon the recipient's request, although predetermined payment schedules may be used when the timing of the recipient's needs to disburse funds can be predicted in advance with sufficient accuracy to ensure compliance with paragraph (b)(2)(iii) of this section.

(b) *Selecting a method.* (1) The preferred payment method is the reimbursement method, as described in paragraph (a)(1) of this section

(2) Advance payments, as described in paragraph (a)(2) of this section, may be used in exceptional circumstances, subject to the following conditions:

(i) The grants officer, in consultation with the program official, must judge that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the award (e.g., as startup funds for a project performed by a newly formed company). The rationale for the judgment shall be documented in the award file.

(ii) Cash advances shall be limited to the minimum amounts needed to carry out the program.

(iii) Recipients and the DoD Component shall maintain procedures to ensure that the timing of cash advances is as close as is administratively feasible to the recipients' disbursements of the funds for program purposes, including direct program or project costs and the proportionate share of any allowable indirect costs.

(iv) Recipients shall maintain advance payments of Federal funds in interest-bearing accounts, and remit annually the interest earned to the administrative grants officer responsible for post-award administration (the grants officer shall forward the payment to the responsible payment office, for return to the Department of Treasury's miscellaneous receipts account), unless one of the following applies:

(A) The recipient receives less than $120,000 in Federal awards per year.

(B) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(C) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(c) *Frequency of payments.* For either reimbursements or advance payments, recipients shall be authorized to submit requests for payment at least monthly.

(d) *Forms for requesting payment.* DoD Components may authorize recipients to use the SF–270,[1] ''Request for Advance or Reimbursement;'' the SF–271,[2] ''Outlay Report and Request for Reimbursement for Construction Programs;'' or prescribe other forms or formats as necessary.

(e) *Timeliness of payments.* Payments normally will be made within 30 calendar days of the receipt of a recipient's request for reimbursement or advance by the office designated to receive the request (for further information about timeframes for payments, see 32 CFR 22.810(c)(3)(ii)).

(f) *Precedence of other available funds.* Recipients shall disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(g) *Withholding of payments.* Unless otherwise required by statute, grants officers shall not withhold payments for proper charges made by recipients during the project period for reasons other than the following:

(1) A recipient has failed to comply with project objectives, the terms and conditions of the award, or Federal reporting requirements, in which case the grants officer may suspend payments in accordance with § 34.52.

(2) The recipient is delinquent on a debt to the United States (see definitions of ''debt'' and ''delinquent debt'' in 32 CFR 22.105). In that case, the grants officer may, upon reasonable notice, withhold payments for obligations incurred after a specified date, until the debt is resolved.

§ 34.13 Cost sharing or matching.

(a) *Acceptable contributions.* All contributions, including cash contributions and third party in-kind contributions, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) They are verifiable from the recipient's records.

(2) They are not included as contributions for any other federally-assisted project or program.

(3) They are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) They are allowable under § 34.17.

(5) They are not paid by the Federal Government under another award, except:

(i) Costs that are authorized by Federal statute to be used for cost sharing or matching; or

(ii) Independent research and development (IR&D) costs. In accordance with the for-profit cost principle in 48 CFR 31.205–18(e), use of IR&D as cost sharing is permitted, whether or not the Government decides at a later date to reimburse any of the IR&D as allowable indirect costs. In such cases, the IR&D must meet all of the criteria in paragraphs (a) (1) through (4) and (a) (6) through (8) of this section.

(6) They are provided for in the approved budget, when approval of the budget is required by the DoD Component.

[1] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''DoD Directory of Contract Administration Services Components,'' DLAH 4105.4, which can be obtained from either: Defense Logistics Agency, Publications Distribution Division (DASC–WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060–6220; or the Defense Contract Management Command home page at http://www.dcmc.dcrb.dla.mil.

[2] See footnote 1 to this paragraph (d).

(7) If they are real property or equipment, whether purchased with recipient's funds or donated by third parties, they must have the grants officer's prior approval if the contributions' value is to exceed depreciation or use charges during the project period (paragraphs (b)(1) and (b)(4)(ii) of this section discuss the limited circumstances under which a grants officer may approve higher values). If a DoD Component requires approval of a recipient's budget (see paragraph (a)(6) of this section), the grants officer's approval of the budget satisfies this prior approval requirement, for real property or equipment items listed in the budget.

(8) They conform to other provisions of this part, as applicable.

(b) *Valuing and documenting contributions*—(1) *Valuing recipient's property or services of recipient's employees.* Values shall be established in accordance with the applicable cost principles in § 34.17, which means that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value shall be the lesser of the following:

(i) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(ii) The current fair market value. However, when there is sufficient justification, the grants officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The grants officer may accept the use of any reasonable basis for determining the fair market value of the property.

(2) *Valuing services of others' employees.* When an employer other than the recipient furnishes the services of an employee, those services shall be valued at the employee's regular rate of pay plus an amount of fringe benefits and overhead (at an overhead rate appropriate for the location where the services are performed) provided these services are in the same skill for which the employee is normally paid.

(3) *Valuing volunteer services.* Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) *Valuing property donated by third parties.* (i) Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(ii) Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the grants officer has approved the charges. When use charges are applied, values shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

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

(B) The value of loaned equipment shall not exceed its fair rental value.

(5) *Documentation.* The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal services and property shall be documented.

§ 34.14 Program income.

(a) DoD Components shall apply the standards in this section to the disposition of program income from projects financed in whole or in part with Federal funds.

(b) Recipients shall have no obligation to the Government, unless the terms and conditions of the award provide otherwise, for program income earned:

(1) From license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. Note, however, that the Patent and Trademark Amendments (35 U.S.C. Chapter 18), as implemented in § 34.25, apply to inventions made under a research award.

(2) After the end of the project period. If a grants officer anticipates that an award is likely to generate program income after the end of the project period, the grants officer should indicate in the award document whether the recipient will have any obligation to the Federal Government with respect to such income.

(c) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(d) Other than any program income excluded pursuant to paragraphs (b) and (c) of this section, program income earned during the project period shall be retained by the recipient and used in one or more of the following ways, as specified in program regulations or the terms and conditions of the award:

(1) Added to funds committed to the project by the DoD Component and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(e) If the terms and conditions of an award authorize the disposition of program income as described in paragraph (d)(1) or (d)(2) of this section, and stipulate a limit on the amounts that may be used in those ways, program income in excess of the stipulated limits shall be used in accordance with paragraph (d)(3) of this section.

(f) In the event that the terms and conditions of the award do not specify how program income is to be used, paragraph (d)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (d)(1) of this section shall apply automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 34.4.

(g) Proceeds from the sale of property that is acquired, rather than fabricated,

under an award are not program income and shall be handled in accordance with the requirements of the Property Standards (see §§ 34.20 through 34.25).

§ 34.15 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the sum of the Federal and non-Federal shares, or only the Federal share, depending upon DoD Component requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) Recipients shall immediately request, in writing, prior approval from the cognizant grants officer when there is reason to believe that within the next seven calendar days a programmatic or budgetary revision will be necessary for certain reasons, as follows:

(1) The recipient always must obtain the grants officer's prior approval when a revision is necessary for either of the following two reasons (i.e., these two requirements for prior approval may never be waived):

(i) A change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) A need for additional Federal funding.

(2) The recipient must obtain the grants officer's prior approval when a revision is necessary for any of the following six reasons, unless the requirement for prior approval is waived in the terms and conditions of the award (i.e., if the award document is silent, these prior approvals are required):

(i) A change in a key person specified in the application or award document.

(ii) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(iii) The inclusion of any additional costs that require prior approval in accordance with applicable cost principles for Federal funds and recipients' cost share or match, in § 34.17 and § 34.13, respectively.

(iv) The inclusion of pre-award costs. All such costs are incurred at the recipient's risk (i.e., the DoD Component is under no obligation to reimburse such costs if for any reason the recipient does not receive an award, or if the award is less than anticipated and inadequate to cover such costs).

(v) A ''no-cost'' extension of the project period that does not require additional Federal funds and does not change the approved objectives or scope of the project.

(vi) Any subaward, transfer or contracting out of substantive program performance under an award, unless described in the application and funded in the approved awards. This provision does not apply to the purchase of supplies, material, or general support services, except that procurement of equipment or other capital items of property always is subject to the grants officer's prior approval under § 34.21(a), if it is to be purchased with Federal funds, or § 34.13(a)(7), if it is to be used as cost sharing or matching.

(3) The recipient also must obtain the grants officer's prior approval when a revision is necessary for either of the following reasons, if specifically required in the terms and conditions of the award document (i.e., if the award document is silent, these prior approvals are not required):

(i) The transfer of funds among direct cost categories, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the DoD Component. No DoD Component shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(ii) For awards that provide support for both construction and nonconstruction work, any fund or budget transfers between the two types of work supported.

(d) Within 30 calendar days from the date of receipt of the recipient's request for budget revisions, the grants officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the grants officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 34.16 Audits.

(a) Any recipient that expends $300,000 or more in a year under Federal awards shall have an audit made for that year by an independent auditor, in accordance with paragraph (b) of this section. The audit generally should be made a part of the regularly scheduled, annual audit of the recipient's financial statements. However, it may be more economical in some cases to have the Federal awards separately audited, and a recipient may elect to do so, unless that option is precluded by award terms and conditions, or by Federal laws or regulations applicable to the program(s) under which the awards were made.

(b) The auditor shall determine and report on whether:

(1) The recipient has an internal control structure that provides reasonable assurance that it is managing Federal awards in compliance with Federal laws and regulations, and with the terms and conditions of the awards.

(2) Based on a sampling of Federal award expenditures, the recipient has complied with laws, regulations, and award terms that may have a direct and material effect on Federal awards.

(c) The recipient shall make the auditor's report available to DoD Components whose awards are affected.

(d) The requirement for an annual independent audit is intended to ascertain the adequacy of the recipient's internal financial management systems and to curtail the unnecessary duplication and overlap that usually results when Federal agencies request audits of individual awards on a routine basis. Therefore, a grants officer:

(1) Shall consider whether the independent audit satisfies his or her requirements, before requesting any additional audits; and

(2) When requesting an additional audit, shall:

(i) Limit the scope of such additional audit to areas not adequately addressed by the independent audit.

(ii) Coordinate the audit request with the Federal agency with the predominant fiscal interest in the recipient, as the agency responsible for the scheduling and distribution of audits. If DoD has the predominant fiscal interest in the recipient, the Defense Contract Management Command (DCMC) is responsible for monitoring audits, ensuring resolution of audit findings, and distributing audit reports. When an additional audit is requested and DoD has the predominant fiscal interest in the recipient, DCMC shall, to the extent practicable, ensure that the additional audit builds upon the independent audit or other audits performed in accordance with this section.

(e) There may be instances in which Federal auditors have recently performed audits, are performing audits, or are planning to perform audits, of a recipient. In these cases, the recipient and its Federal cognizant agency should seek to have the non-Federal,

independent auditors work with the Federal auditors to develop a coordinated audit approach, to minimize duplication of audit work.

(f) Audit costs (including a reasonable allocation of the costs of the audit of the recipient's financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DoD awards.

§ 34.17 Allowable costs.

Allowability of costs shall be determined in accordance with the cost principles applicable to the type of entity incurring the costs, as follows:

(a) *For-profit organizations.* Allowability of costs incurred by for-profit organizations that are recipients of prime awards from DoD Components, and those that are subrecipients under prime awards to other organizations, is to be determined in accordance with:

(1) The for-profit cost principles in 48 CFR parts 31 and 231 (in the Federal Acquisition Regulation, or FAR, and the Defense Federal Acquisition Regulation Supplement, or DFARS, respectively).

(2) The supplemental information on allowability of audit costs, in § 34.16(f).

(b) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(1) *Institutions of higher education.* Allowability is determined in accordance with OMB Circular A–21,[3] ''Cost Principles for Educational Institutions.''

(2) *Other nonprofit organizations.* Allowability is determined in accordance with OMB Circular A–122,[4] ''Cost Principles for Non-Profit Organizations.'' Note that Attachment C of the Circular identifies selected nonprofit organizations for whom cost allowability is determined in accordance with the FAR cost principles for for-profit organizations.

(3) *Hospitals.* Allowability is determined in accordance with the provisions of 45 CFR part 74, Appendix E, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(4) *Governmental organizations.* Allowability for State, local, or federally recognized Indian tribal governments is determined in accordance with OMB Circular A–87,[5] ''Cost Principles for State and Local Governments.''

§ 34.18 Fee and profit.

In accordance with 32 CFR 22.205(b), grants and cooperative agreements shall not:

(a) Provide for the payment of fee or profit to the recipient.

(b) Be used to carry out programs where fee or profit is necessary to achieving program objectives.

Property Standards

§ 34.20 Purpose of property standards.

Sections 34.21 through 34.25 set forth uniform standards for management, use, and disposition of property. DoD Components shall encourage recipients to use existing property-management systems, to the extent that the systems meet these minimum requirements.

§ 34.21 Real property and equipment.

(a) *Prior approval for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds under an award only with the prior approval of the grants officer.

(b) *Title.* Title to such real property or equipment shall vest in the recipient upon acquisition. Unless a statute specifically authorizes a DoD Component to vest title in the recipient without further obligation to the Government, and the DoD Component elects to do so, the title shall be a conditional title. Title shall vest in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the grants officer.

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the prior approval requirement in § 34.13(a)(7). If a recipient does so, the Government has a financial interest in the property, a share of the property value attributable to the Federal participation in the project. The property therefore shall be considered as if it had been acquired in part with Federal funds, and shall be subject to the provisions of paragraphs (b)(1), (b)(2) and (b)(3) of this section, and to the provisions of § 34.23.

(d) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award, and the award provides that title vests conditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs, if such other use will not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects will be in the following order of priority:

(i) Activities sponsored by DoD Components' grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts, or activities not sponsored by any Federal agency. If so used, use charges shall be assessed to those activities. For real property or equipment, the use charges shall be at rates equivalent to those for which comparable real property or equipment may be leased. The use charges shall be treated as program income.

(2) After Federal funding for the project ceases, or when the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient shall proceed with disposition of the real property or equipment, in accordance with paragraph (e) of this section.

(ii) The recipient obtains written approval from the grants officer to do so. The grants officer shall ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (d)(1) of this section.

(e) *Disposition.* (1) When an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient shall proceed as follows:

[3] For copies of the Circular, contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

[4] See footnote 3 to paragraph (b)(1) of this section.

[5] See footnote 3 to paragraph (b)(1) of this section.

(i) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project. In that case, the recipient may use the original equipment as trade-in or sell it and use the proceeds to offset the costs of the replacement equipment, subject to the approval of the responsible agency (i.e., the DoD Component or the Federal agency to which the DoD Component delegated responsibility for administering the equipment).

(ii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iii) If the recipient does not elect to retain title to real property or equipment (see paragraph (e)(1)(ii) of this section), or request approval to use equipment as trade-in or offset for replacement equipment (see paragraph (e)(1)(i) of this section), the recipient shall request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, in accordance with paragraph (e)(1)(iii) of this section, the responsible grants officer shall:

(i) For equipment (but not real property), consult with the Federal program manager and judge whether the age and nature of the equipment warrant a screening procedure, to determine whether the equipment is useful to a DoD Component or other Federal agency. If a screening procedure is warranted, the responsible agency shall determine whether the equipment can be used to meet a DoD Component's requirement. If no DoD requirement is found, the responsible agency shall report the availability of the equipment to the General Services Administration, to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The grants officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred. If title is transferred to the Federal Government, it shall be subject thereafter to provisions for Federally owned property in § 34.22.

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). When the recipient is authorized or required to sell the real property or equipment, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, as described in paragraph (e)(2)(ii) of this section, the recipient shall dispose of the real property or equipment through the option described in paragraph (e)(2)(ii)(B) of this section.

§ 34.22 Federally owned property.

(a) *Annual inventory.* Recipients shall submit annually an inventory listing of all Federally owned property in their custody (property furnished by the Federal Government, rather than acquired by the recipient with Federal funds under the award), to the DoD Component or other Federal agency responsible for administering the property under the award.

(b) *Use on other activities.* (1) Use of federally owned property on other activities is permissible, if authorized by the DoD Component responsible for administering the award to which the property currently is charged.

(2) Use on other activities will be in the following order of priority:

(i) Activities sponsored by DoD Components' grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts, or activities not sponsored by any Federal agency. If so used, use charges shall be assessed to those activities. For real property or equipment, the use charges shall be at rates equivalent to those for which comparable real property or equipment may be leased. The use charges shall be treated as program income.

(c) *Disposition of property.* Upon completion of the award, the recipient shall report the property to the responsible agency. The agency may:

(1) Use the property to meet another Federal Government need (e.g, by transferring accountability for the property to another Federal award to the same recipient, or by directing the recipient to transfer the property to a Federal agency that needs the property, or to another recipient with a currently funded award).

(2) Declare the property to be excess property and either:

(i) Report the property to the General Services Administration, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Dispose of the property by alternative methods, if there is statutory authority to do so (e.g., DoD Components are authorized by 15 U.S.C. 3710(i), the Federal Technology Transfer Act, to donate research equipment to educational and nonprofit organizations for the conduct of technical and scientific education and research activities. Such donations shall be in accordance with the DoD implementation of E.O. 12999 (3 CFR, 1996 Comp., p. 180), ''Educational Technology: Ensuring Opportunity for All Children in the Next Century,'' as applicable.) Appropriate instructions shall be issued to the recipient by the responsible agency.

§ 34.23 Property management system.

The recipient's property management system shall include the following, for property that is Federally owned, and for equipment that is acquired in whole or in part with Federal funds, or that is used as matching share:

(a) Property records shall be maintained, to include the following information:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or any other identification number.

(3) Source of the property, including the award number.

(4) Whether title vests in the recipient or the Federal Government.

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

(6) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government).

(7) The location and condition of the property and the date the information was reported.

(8) Ultimate disposition data, including date of disposal and sales

price or the method used to determine current fair market value where a recipient compensates the Federal Government for its share.

(b) Federally owned equipment shall be marked, to indicate Federal ownership.

(c) A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

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

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

§ 34.24 Supplies.

(a) Title shall vest in the recipient upon acquisition for supplies acquired with Federal funds under an award.

(b) Upon termination or completion of the project or program, the recipient shall retain any unused supplies. If the inventory of unused supplies exceeds $5,000 in total aggregate value and the items are not needed for any other Federally sponsored project or program, the recipient shall retain the items for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share.

§ 34.25 Intellectual property developed or produced under awards.

(a) *Patents.* Grants and cooperative agreements with:

(1) Small business concerns shall comply with 35 U.S.C. Chapter 18, as implemented by 37 CFR part 401, which applies to inventions made under grants and cooperative agreements with small business concerns for research and development. 37 CFR 401.14 provides a standard clause that is required in such grants and cooperative agreements in most cases, 37 CFR 401.3 specifies when the clause shall be included, and 37 CFR 401.5 specifies how the clause may be modified and tailored.

(2) For-profit organizations other than small business concerns shall comply with 35 U.S.C. 210(c) and Executive Order 12591 (3 CFR, 1987 Comp., p. 220) (which codifies a Presidential Memorandum on Government Patent Policy, dated February 18, 1983).

(i) The Executive order states that, as a matter of policy, grants and cooperative agreements should grant to all for-profit organizations, regardless of size, title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government (i.e., it extends the applicability of 35 U.S.C. Chapter 18, to the extent permitted by law, to for-profit organizations other than small business concerns).

(ii) 35 U.S.C. 210(c) states that 35 U.S.C. Chapter 18 is not intended to limit agencies' authority to agree to the disposition of rights in inventions in accordance with the Presidential memorandum codified by the Executive order. It also states that such grants and cooperative agreements shall provide for Government license rights required by 35 U.S.C. 202(c)(4) and march-in rights required by 35 U.S.C. 203.

(b) *Copyright, data and software rights.* Requirements concerning data and software rights are as follows:

(1) The recipient may copyright any work that is subject to copyright and was developed under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Unless waived by the DoD Component making the award, the Federal Government has the right to:

(i) Obtain, reproduce, publish or otherwise use for Federal Government purposes the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Procurement Standards

§ 34.30 Purpose of procurement standards.

Section 34.31 sets forth requirements necessary to ensure:

(a) Compliance of recipients' procurements that use Federal funds with applicable Federal statutes and executive orders.

(b) Proper stewardship of Federal funds used in recipients' procurements.

§ 34.31 Requirements.

The following requirements pertain to recipients' procurements funded in whole or in part with Federal funds or with recipients' cost-share or match:

(a) *Reasonable cost.* Recipients procurement procedures shall make maximum practicable use of competition, or shall use other means that ensure reasonable cost for procured goods and services.

(b) *Pre-award review of certain procurements.* Prior to awarding a procurement contract under an award, a recipient may be required to provide the grants officer administering the award with pre-award documents (e.g., requests for proposals, invitations for bids, or independent cost estimates) related to the procurement. Recipients will only be required to provide such documents for the grants officer's pre-award review in exceptional cases where the grants officer judges that there is a compelling need to do so. In such cases, the grants officer must include a provision in the award that states the requirement.

(c) *Contract provisions.* (1) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination for default by the recipient or for termination due to circumstances beyond the control of the contractor.

(3) All negotiated contracts in excess of the simplified acquisition threshold shall include a provision permitting access of the Department of Defense, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, and transcriptions.

(4) All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records

§ 34.40 Purpose of reports and records.

Sections 34.41 and 34.42 prescribe requirements for monitoring and reporting financial and program performance and for records retention.

§ 34.41 Monitoring and reporting program and financial performance.

Grants officers may use the provisions of 32 CFR 32.51 and 32.52 for awards to for-profit organizations, or may include equivalent technical and financial reporting requirements that

ensure reasonable oversight of the expenditure of appropriated funds. As a minimum, equivalent requirements must include:

(a) Periodic reports (at least annually, and no more frequently than quarterly) addressing both program status and business status, as follows:

(1) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(2) The business portions of the reports shall provide summarized details on the status of resources (federal funds and non-federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations.

(3) When grants officers previously authorized advance payments, pursuant to § 34.12(a)(2), they should consult with the program official and consider whether program progress reported in the periodic report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

(b) Unless inappropriate, a final performance report that addresses all major accomplishments under the award.

§ 34.42 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in § 34.42(g).

(c) Copies of original records may be substituted for the original records if authorized by the grants officer.

(d) The grants officer shall request that recipients transfer certain records to DoD Component custody when he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a grants officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DoD Components, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoD Component shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoD Component can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the DoD Component making the award.

(g) Indirect cost proposals, cost allocation plans, and other cost accounting documents (such as documents related to computer usage chargeback rates), along with their supporting records, shall be retained for a 3-year period, as follows:

(1) If a recipient is required to submit an indirect-cost proposal, cost allocation plan, or other computation to the cognizant Federal agency, for purposes of negotiating an indirect cost rate or other rates, the 3-year retention period starts on the date of the submission. This retention requirement also applies to subrecipients submitting similar documents for negotiation to the recipient.

(2) If the recipient or the subrecipient is not required to submit the documents or supporting records for negotiating an indirect cost rate or other rates, the 3-year retention period for the documents and records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients shall retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Recipients shall also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients shall not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 34.50 Purpose of termination and enforcement.

Sections 34.51 through 34.53 set forth uniform procedures for suspension, termination, enforcement, and disputes.

§ 34.51 Termination.

(a) Awards may be terminated in whole or in part only in accordance with one of the following:

(1) By the grants officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the grants officer with the consent of the recipient, 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.

(3) By the recipient upon sending to the grants officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the grants officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 34.61(b), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 34.52 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the grants officer may, in addition to imposing any of the special conditions outlined in § 34.4, 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 recipient or more severe enforcement action by the grants officer and DoD Component.

(2) Disallow (that is, deny both use of funds and any applicable 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. In the case of termination, the recipient will be reimbursed for allowable costs incurred prior to termination, with the possible exception of those for activities and actions described in paragraph (a)(2) of this section.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the grants officer and DoD Component shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved (see § 34.53 and 32 CFR 22.815).

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the grants officer expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient 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) 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 a recipient from being subject to debarment and suspension under 32 CFR part 25.

§ 34.53 Disputes and appeals.

Recipients have the right to appeal certain decisions by grants officers. In resolving such issues, DoD policy is to use Alternative Dispute Resolution (ADR) techniques, to the maximum practicable extent. See 32 CFR 22.815 for standards for DoD Components' dispute resolution and formal, administrative appeal procedures.

Subpart C—After-the-Award Requirements

§ 34.60 Purpose.

Sections 34.61 through 34.63 contain procedures for closeout and for subsequent disallowances and adjustments.

§ 34.61 Closeout procedures.

(a) The cognizant grants officer shall, at least six months prior to the expiration date of the award, contact the recipient to establish:

(1) All steps needed to close out the award, including submission of financial and performance reports, liquidation of obligations, and decisions on property disposition.

(2) A schedule for completing those steps.

(b) The following provisions shall apply to the closeout:

(1) The responsible grants officer and payment office shall expedite completion of steps needed to close out awards and make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(2) The recipient shall promptly refund any unobligated balances of cash that the DoD Component has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. For unreturned amounts that become delinquent debts, see 32 CFR 22.820.

(3) When authorized by the terms and conditions of the award, the grants officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(4) The recipient shall account for any real property and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 34.21 through 34.25.

(5) If a final audit is required and has not been performed prior to the closeout of an award, the DoD Component shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 34.62 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department of Defense to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 34.16.

(4) Property management requirements in §§ 34.21 through 34.25.

(5) Records retention as required in § 34.42.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the grants officer and the recipient, provided the responsibilities of the recipient referred to in § 34.61(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 34.63 Collection of amounts due.

Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. Procedures for issuing the demand for payment and pursuing administrative offset and other remedies are described in 32 CFR 22.820.

Appendix A to Part 34—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), ''Equal Employment Opportunity,'' as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR chapter 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient

shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.

3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement*—Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

5. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

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Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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