13.10 Accommodation of intergovernmental concerns.

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:
   (1) Accepts the recommendation;
   (2) Reaches a mutually agreeable solution with the state process; or
   (3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:
   (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or
   (2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 13.11 Obligations in interstate situations.

(a) The Secretary is responsible for:
   (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
   (2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department’s program or activity;
   (3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department’s program or activity;
   (4) Responding pursuant to §13.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §13.10 if a state process provides a state process recommendation to the Department through a single point of contact.

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

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APPENDIX A TO PART 14—CONTRACT PROVISIONS

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§§14.4, and 14.14 or unless specifically required by Federal statute or executive order. This part applies to grants and agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials. Uniform requirements for State, local, and tribal governments are in 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 14.2 Definitions.

(a) Accrued expenditures means 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.

(b) Accrued income means the sum of:
   (1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and
   (2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) Acquisition cost of equipment means 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.

(d) Advance means a payment made by electronic funds transfer, 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 pre-determined payment schedules.

(e) **Assistant Secretary** means the DoC Chief Financial Officer and Assistant Secretary for Administration who has been delegated by the Secretary of Commerce the responsibility for developing and implementing policies, standards, and procedures for the administration of financial assistance programs of the DoC.

(f) **Award** means 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.

(g) **Cash contributions** means the recipient’s cash outlay, including the outlay of money contributed to the recipient by third parties.

(h) **Closeout** means the process by which the Grants Officer determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the DoC.

(i) **Contract** means a procurement contract under an award or subaward, and a procurement subcontract under a recipient’s or subrecipient’s contract.

(j) **Cost sharing or matching** means that portion of project or program costs not borne by the Federal Government.

(k) **Date of completion** means 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.

(l) **Disallowed costs** means those charges to an award that the Grants Officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) **DoC operating unit** means an organizational unit of the Department that has the authority to fund financial assistance awards.

(n) **Equipment** means tangible non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(o) **Excess property** means property under the control of the DoC that, as determined by the Grants Officer after coordination with the authorized property official, is no longer required for DoC needs or the discharge of its responsibilities.

(p) **Exempt property** means tangible personal property acquired in whole or in part with Federal funds, where the DoC 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.

(q) **Federal awarding agency** means the Federal agency that provides an award to the recipient.

(r) **Federal funds authorized** means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

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

(t) **Funding period** means the period of time when Federal funding is available for obligation by the recipient.

(u) **Grants Officer** means the DoC official with the delegated authority to award, amend, administer, closeout, suspend, and/or terminate grants and cooperative agreements and make related determinations and findings.
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(v) **Intangible property and debt instruments** means, 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.

(w) **Obligations** means 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.

(x) **Outlays or expenditures** means 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 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.

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

(z) **Prior approval** means written approval by an authorized official evidencing prior consent.

(aa) **Program income** means 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 §14.24 (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 DoC 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.

(bb) **Project costs** means 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.

(cc) **Project period** means the period established in the award document during which Federal sponsorship begins and ends.

(dd) **Property** means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(ee) **Real property** means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(H) **Recipient** means an organization receiving financial assistance directly from the DoC 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 nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the DoC. 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.

(gg) **Research and development** means all research activities, both basic and
applied, and all development activities that are supported at universities, colleges, other non-profit, and commercial 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.

(hh) Small awards means a grant or cooperative agreement not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

(ii) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award 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 paragraph (f) of this section.

(jj) Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the DoC.

(kk) Supplies means 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.”

(ll) Suspension means an action taken by the Grants Officer after coordination with the DoC operating unit that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Grants Officer. Suspension of an award is a separate action from suspension under DoC regulations at 15 CFR part 26 implementing E.O.s 12549 and 12689, “Debarment and Suspension.”

(mm) Termination means the cancellation by the Grants Officer of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) Third party in-kind contributions means 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.

(oo) Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) Unobligated balance means the portion of the funds authorized by the DoC that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient’s approved negotiated indirect cost rate.

(rr) Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.
§ 14.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory 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 §14.4.

§ 14.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The Assistant Secretary may apply more restrictive requirements to a class of recipients when approved by OMB. The Assistant Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Assistant Secretary. An exception made on a case-by-case basis will apply to a single award.

§ 14.5 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, other non-profit, or commercial organizations. This part also applies to subrecipients performing work under awards if the subrecipients are foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” (15 CFR part 24).

§ 14.6 Availability of OMB circulars.

OMB circulars cited in this part are available from the Office of Management and Budget (OMB) by writing to the Executive Office of the President, Publications Service, 725 17th Street, NW, Suite 200, Washington DC 20503.

Subpart B—Pre-Award Requirements

§ 14.10 Purpose.

Sections 14.11 through 14.18 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 14.11 Pre-award policies.

(a) Use of grants and cooperative agreements, and contracts. In each instance, the Grants Officer after coordination with the DoC operating unit shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. 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. 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.” Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public notice and priority setting. The DoC operating units shall notify the public of their intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. At a minimum, public notices shall be published in the Federal Register.

§ 14.12 Forms for applying for Federal assistance.

(a) The DoC operating units 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 by the DoC operating units in place of or as a supplement to the Standard Form 424 (SF–424) series.
(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the DoC.
(c) For Federal programs covered by E.O. 12372, “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 DoC 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) DoC operating units that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.
§ 14.13 Debarment and suspension.
The DoC and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, “Debarment and Suspension,” which is implemented by DoC at 15 CFR part 26. 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.
§ 14.14 High risk special award conditions.
If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Grants Officer may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.
§ 14.15 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. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency’s procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The DoC shall follow the provisions of E.O. 12770, “Metric Usage in Federal Government Programs.”
Under RCRA (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, non-profit, and commercial 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.
§ 14.17 Certifications and representations.
Unless prohibited by statute or codified regulation, Grants Officers may
§ 14.18 Taxpayer identification number.

In accordance with the provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701), the taxpayer identifying number will be required from applicants for grants and cooperative agreements funded by the DoC. This number may be used for purposes of collecting and reporting on any delinquent amounts arising from awards made under this part.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

§ 14.20 Purpose of financial and program management.

Sections 14.21 through 14.28 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, conducting audits, determining allowability of cost, and establishing fund availability.

§ 14.21 Standards for financial management systems.

(a) The Grants Officer shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(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 §14.52. If the Grants Officer 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.

(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 shall 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 and the terms and conditions of the award.

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

(c) Where the DoC guarantees or insures the repayment of money borrowed by the recipient, the Grants Officer 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 Grants Officer 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.”

§ 14.22 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 CMIA agreements or default procedures codified at 31 CFR part 205. Federal payments to recipients shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996, unless waived in accordance with the provisions of this Act.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 14.21. Advances of funds 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 advances of funds shall be as close as 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 may be consolidated to cover anticipated cash needs for all awards made by the DoC operating unit to the recipient.

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

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

(3) Recipients may submit requests for advances and reimbursements on a monthly basis.

(d) Requests for advance payment shall be submitted on SF–270, “Request for Advance or Reimbursement,” or other forms as may be authorized by OMB. This form is not to be used when advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special DoC instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Grants Officer may also use this method on any construction agreement, 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 DoC shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit request 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 after coordination with the operating unit has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Grants Officer may authorize payment on a working capital advance basis. Under this procedure, the Grants Officer shall provide for advancing funds to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee’s disbursing cycle. Thereafter, payments shall be provided by 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 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 paragraph (h)(1) or (2) of this section apply.

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

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, “Managing Federal Credit Programs.” 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.

(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, the DoC 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 paragraph (k)(1), (2) or (3) of this section apply.

(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.

(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) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Grants Officer, it waives its right to recover the interest under CMIA.

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

(1) SF-270, Request for Advance or Reimbursement. DoC has adopted the SF-270 as a standard form for all non-construction programs when predeter- mined advance methods are not used. The Grants Officer, however, may waive the requirement to use the SF-270 for requesting funds under grants and cooperative agreements. Grants Officers have the option of using this form for construction programs in lieu of the SF-271, “Outlay Report and Request for Reimbursement for Construction Programs.”

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. DoC has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, the Grants Officer may substitute the SF-270 when the Grants Officer determines
that the SF–270 provides adequate information to meet Federal needs.

§ 14.23 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.
7. Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Grants Officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If DoC authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2).

1. The certified value of the remaining life of the property recorded in the recipient’s accounting records at the time of donation.
2. 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.

(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 expendable equipment, 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 paragraph (g) (1) or (2) of this section applies.

1. If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.
2. If the purpose of the award is to 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 Grants Officer has approved the charges.

(h) The value of donated property shall be determined in accordance with
§ 14.24 Program income.

(a) The standards set forth in this section shall apply 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 DoC regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the DoC and recipient and used to further eligible project objectives.

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

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

(c) When an agency authorizes the disposition of program income as described in paragraph (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 the DoC does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(1) of this section shall apply automatically to all projects or programs.

(e) Unless DoC 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) 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 §§ 14.30 through 14.37).

(h) Unless DoC regulations or the terms and conditions 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. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 14.25 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 Federal and non-Federal share, or only the Federal share, depending upon DoC 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 Grants Officer for one or more of the following program or budget related reasons. Approvals will be provided in writing by the Grants Officer.

(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 DoC.


(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.

(d) For nonconstruction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Grants Officer may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Grants Officer after coordination with the DoC operating unit. All pre-award costs are incurred at the recipient’s risk (i.e., the DoC 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, function and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Grants Officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the DoC provides otherwise in the award or in the DoC regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The recipient may not transfer funds among direct cost categories or programs, functions and activities for awards in which the Federal share of

(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 Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b) State and local governments 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) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements as stipulated in the award document.

(d) Commercial and other organizations not covered by paragraph (a), (b), or (c) of this section shall be subject to the audit requirements as stipulated in the award document or the prime recipient as stipulated in the sub-award document.

§ 14.27 Allowable costs.

For each kind of recipient, 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. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those 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.

§ 14.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Grants Officer.

PROPERTY STANDARDS

§ 14.30 Purpose of property standards.

Sections 14.31 through 14.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The DoC 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 §§14.31 through 14.37.

§ 14.31 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.

§ 14.32 Real property.

The DoC award shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. 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, provided that, in lieu of title, with the approval of the Grants Officer, the recipient may hold a leasehold or other interest in the property appropriate to the project purpose. The recipient shall not dispose of or encumber the property or any interest therein without approval of the Grants Officer.

(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 DoC.

(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 DoC or its successor Federal awarding 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 if 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 Grants Officer 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.

§ 14.33 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 DoC operating unit. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the DoC operating unit for further Federal agency utilization.

(2) If the DoC operating unit has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the DoC has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(i)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, “Improving Mathematics and Science Education in Support of the National Education Goals.”) Appropriate instructions shall be issued to the recipient by the Grants Officer.

(b) Exempt property. When statutory authority exists, the DoC has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoC considers appropriate. Such property is “exempt property.” Should the DoC not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 14.34 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 DoC. 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) Activities sponsored by the DoC operating unit which funded the original project;
(2) Activities sponsored by other DoC operating units; then
(3) Activities sponsored by other Federal awarding 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 DoC operating unit that financed the equipment; second
preference shall be given to projects or programs sponsored by other DoC operating units, and third preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Grants Officer after coordination with the DoC operating unit. 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 Grants Officer after coordination with the DoC operating unit.

(f) The recipient’s property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

   (i) A description of the equipment.
   (ii) Manufacturer’s serial number, model number, Federal stock number, national stock number, or other identification number.
   (iii) Source of the equipment, including the award number.
   (iv) Whether title vests in the recipient or the Federal Government.
   (v) Acquisition date (or date received, if the equipment 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 equipment furnished by the Federal Government).
   (vii) Location and condition of the equipment 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 DoC for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment 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.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Grants Officer.

(5) Adequate maintenance procedures shall be implemented to keep the equipment 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. Equipment with a current per-unit fair market value of less than $5000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided compensation is made to the DoC operating unit 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. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Grants Officer. The Grants Officer shall determine whether the equipment can be used to meet the agency’s requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the
§ 14.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of supplies exceeding $5000 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.

§ 14.36 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. The DoC reserves 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 government-wide regulations issued by the DoC at 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

(c) The Federal Government has the right to:

1. Obtain, reproduce, publish or otherwise use the data first produced under an award; and
(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DoC shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DoC obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) **Research data** is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples).

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) **Published** is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) **Used by the Federal Government in developing an agency action that has the force and effect of law** is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an 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 written approval from the Grants Officer. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of §14.34(g).


§ 14.37 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.

The Grants Officer 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**

§ 14.40 Purpose of procurement standards.

Sections 14.41 through 14.48 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. No additional procurement standards or requirements shall be imposed by the DoC upon recipients,
§ 14.41 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 DoC, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements provided 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.

§ 14.42 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.

§ 14.43 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.

§ 14.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, 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 for the Federal Government; 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 DoC’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 agencies’ implementation of E.O.s 12549 and 12689, “Debarment and Suspension,” as implemented by DoC regulations at 15 CFR part 26.

(e) Recipients shall, on request, make available for the Grants Officer, preaward review and 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.

§ 14.45 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
§ 14.46 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.

§ 14.47 Contract administration.

A system for contract administration shall be maintained to ensure contract 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.

§ 14.48 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 DoC 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 this part, 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 DoC, 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 small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

REPORTS AND RECORDS

§ 14.50 Purpose of reports and records.

Sections 14.51 through 14.53 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.

§ 14.51 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 sub-recipients have met the audit requirements as delineated in §14.26.

(b) The Grants Officer after coordination with the DoC operating unit 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 grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Grants Officer 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.

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 DoC operating unit 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) The DoC may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 14.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(i) SF–269 or SF–269A, Financial Status Report.

(ii) Each DoC award shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. The DoC, however, has the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at
§ 14.53  Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The DoC 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 or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the DoC. 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 DoC, the 3-year retention requirement is not applicable to the recipient.

4. Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the DoC.

(d) The Grants Officer after coordination with the DoC operating unit or Grants Officer shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a DoC operating unit or Grants Officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The DoC, 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 DoC operating unit shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoC operating unit 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 DoC operating unit.

(g) 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 the recipient submits to the Federal awarding agency responsible for negotiating the recipient’s indirect cost rate or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

2. If the recipient is not required to submit to the cognizant Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, 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.

TERMINATION AND ENFORCEMENT

§ 14.60 Purpose of termination and enforcement.

Sections 14.61 and 14.62 set forth uniform suspension, termination and enforcement procedures.
§ 14.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) apply.

(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. However, if the Grants Officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §14.71(a), 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.

§ 14.62 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 §14.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold payments of funds pending correction of the deficiency by the recipient or more severe enforcement action by the Grants Officer after coordination with the DoC operating unit.

(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 awarding agency 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.

(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 awarding agency 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 paragraphs (c)(1) and (2) of this section apply.

(1) The costs 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.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the DoC implementing regulations (see §14.13) at 15 CFR part 26.

Subpart D—After-the-Award Requirements

§ 14.70 Purpose.

Sections 14.71 through 14.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.
§ 14.71 Closeout procedures.
(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as 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 Grants Officer shall authorize and the DoC shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.
(d) The recipient shall promptly refund any balances of unobligated funds that the DoC has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.
(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 §§14.31 through 14.37.
(g) In the event a final audit has not been performed prior to the closeout of an award, the DoC shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 14.72 Subsequent adjustments and continuing responsibilities.
(a) The closeout of an award does not affect any of the following:
(1) The right of the DoC 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.
(4) Property management requirements in §§14.31 through 14.37.
(5) Records retention as required in §14.53.
(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 DoC and the recipient, provided the responsibilities of the recipient referred to in §14.72(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 14.73 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. If not paid within a reasonable period after the demand for payment, the Grants Officer may reduce the debt by:
(1) Making an administrative offset against other requests for reimbursements;
(2) Withholding advance payments otherwise due to the recipient; or
(3) Taking other action permitted by statute.
(b) Except as otherwise provided by law, the DoC shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

APPENDIX A TO PART 14—CONTRACT PROVISIONS
All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:
repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 674), as supplemented by Department of Labor regulations (29 CFR part 3, "Contracts and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States") that 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 DoC operating unit.

3. *Davis-Bacon Act, as amended* (40 U.S.C. 276a to a–7)—When required by Federal program agreements, all construction contracts awarded by the recipients and subrecipients of more than $2000 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 one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. 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 or Agreement—Contracts or 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," and any implementing regulations issued by the awarding agency.

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 subgrants 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 DoC operating unit and the Regional Office of the Environmental Protection Agency (EPA).


8. *Debarment and Suspension (E.O.s 12549 and 12689)—* No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" as implemented by DoC regulations at 15 CFR part 26. 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 principal employees.


PART 15—LEGAL PROCEEDINGS

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§ 15.2

Subpart A—Service of Process


§ 15.1 Scope and purpose.

(a) This subpart sets forth the procedures to be followed when a summons or complaint is served on the Department, a component, or the Secretary or a Department employee in his or her official capacity.

(b) This subpart is intended to ensure the orderly execution of the affairs of the Department and not to impede any legal proceeding.

(c) This subpart does not apply to subpoenas. The procedures to be followed with respect to subpoenas are set out in subpart B.

(d) This subpart does not apply to service of process made on a Department employee personally on matters not related to official business of the Department or to the official responsibilities of the Department employee.


§ 15.2 Definitions.

For the purpose of this subpart:

(a) General Counsel means the General Counsel of the United States Department of Commerce or other Department employee to whom the General Counsel has delegated authority to act under this subpart, or the chief legal officer (or designee) of the Department of Commerce component concerned.

(b) Component means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1–1.

(c) Department means the Department of Commerce.

(d) Department employee means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

(e) Legal proceeding means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, or an administrative law judge or hearing officer.