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Bulletin

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This Bulletin establishes REE policy for award and administration of non-assistance cooperative agreements executed under the authority of Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318 (b)). This Bulletin remains in effect until Departmental clearances approving it as a Proposed Rule are complete.

Purpose:

This Bulletin is issued to establish uniform policy within the Research, Education, and Economics mission area on the use, award, and administration of cooperative agreements awarded under 7 U.S.C. 3318(b) authority.

Background:

Section 1424 of the Food Security Act of 1985, Public Law No. 99-198, amended Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) to authorize the Secretary to "use a cooperative agreement as a legal instrument reflecting a relationship between the Secretary and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal or private agency or organization, individual, or any other party, if the Secretary determines (a) the objectives of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, and teaching activities, including statistical reporting; and (b) all parties will contribute resources to the accomplishment of those objectives."

The cooperative agreement authorized by 7 U.S.C. 3318(b) is neither procurement nor assistance in nature and, therefore, not subject to the provisions of Federal Grant and Cooperative Agreement Act of 1977. Furthermore, these cooperative agreements are exempt from Department of Agriculture rules and regulations promulgated at 7 CFR 3015 through 3020. The agreements covered by this Bulletin are characterized by mutual interest and benefit to both parties, and reflects the unique cooperative relationship that exists between the REE agencies and the various public and private organizations engaged in the conduct of agricultural research, extension, and teaching activities.

Policy:

This Bulletin establishes policy relative to cooperative agreements awarded under authority of 7 U.S. C. 3318(b), and is not intended to address agency specific procedural requirements. Agencies are to continue to reference existing Policy and Procedures or Manuals for instruction and guidance on the use and completion of forms and other related processes. Where conflict in policy may exist, the policy contained herein supercedes any previous issuance.

CURTIS WILBURN, JR.
Director, Extramural Agreements Division

Enclosure

General Administrative Policy for Non-Assistance Cooperative Agreements Effective January 24, 2005

INDEX

SUBPART A - GENERAL

Page Number

1.	Purpose and scope.	5
2.	Definitions.	5
3.	Applicability.	11
4.	Eligibility.	11
5.	Competition.	11
6.	Duration.	11
7.	Exceptions.	12
8.	Conflicting policies and deviations.	12
9.	Other applicable regulations.	12
10.	Fiscal and budgetary guidance.	13
11.	Bona fide Needs Rule.	13
12.	Fiscal year chargeable.	13
13.	Severability.	14
14.	Non-severability.	14
15.	Special award conditions.	14
16.	Program reporting requirements - Federal Assistance Awards Data System (FAADS).	15
17.	Paperwork reduction/forms.	15
18.	Prohibited uses.	15

SUBPART B - PRE-AWARD

19.	Purpose.	15
20.	Statutory authorization required - Federal Awarding Agency.	16
21.	Mutuality of interest.	16
22.	Indirect costs/tuition remission.	16
23.	Resource contribution.	17
24.	Negotiation.	19
25.	Peer review.	20
26.	Assurances/certifications.	20

SUBPART C - POST-AWARD

Financial Management

27. Purpose of financial and program management. 22
28. Standards for financial management systems. 22
29. Funding period. 23
30. Payment. 23
31. Program income. 26
32. Non-Federal audits. 27
33. Allowable costs. 27

Program Management

34. Prior approvals. 28
35. Acknowledgment of support on publications and audiovisuals. 29
36. Press Releases. 30
37. Advertising. 30
38. Questionnaires and survey plans. 31
39. Project supervision. 31
40. Administrative supervision. 31

Insurance and Liability

41. Equipment replacement insurance. 31
42. . **(Rescinded effective January 24, 2005)** 31
43. . **(Rescinded effective January 24, 2005)** 32
44. Scientific misconduct. 32
45. Rules of the workplace. 32

Property Standards

46. Purpose of property standards. 33
47. Title to equipment. 33
48. Equipment. 33
49. Supplies and other expendable property. 36
50. Federally owned property. 36
51. Intangible property (Patents, Intellectual Property Right). 37

Procurement Standards

52. Purpose of procurement standards. 39
53. Cooperator responsibilities. 39

54. Codes of conduct. 40
55. Competition. 40
56. Procurement procedures. 40
57. Cost and price analysis. 43
58. Procurement records. 43
59. Contract administration. 43
60. Contract provisions. 43

Reports and Records

61. Purpose of reports and records. 45
62. Project data. 45
63. Monitoring and reporting program performance. 45
64. Financial reporting. 46
65. Invention disclosure and utilization reporting. 48
66. Retention and access requirements for records. 48

Termination and Enforcement

67. Purpose of termination and enforcement. 50
68. Termination. 50
69. Enforcement. 51

SUBPART D - CLOSE OUT

70. Purpose. 52
71. Closeout procedures. 52
72. Subsequent adjustments and continuing responsibilities. 53
73. Collection of amounts due. 53

SUBPART A - GENERAL

1. Purpose and scope.

This Part establishes Research, Education, and Economics (REE) - wide standards of USDA's award and administration of non-assistance cooperative agreements executed under the authority of Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. (7 U.S.C 3318(b)). These agreements are neither procurement nor assistance in nature, and therefore, are not subject to the Federal Grant and Cooperative Agreements Act of 1977. Accordingly, proper use of these cooperative agreements will promote and facilitate partnerships between the Federal Awarding Agency and the Cooperator in support of research, extension and education projects of mutual benefit to each party.

2. Definitions.

a. Accrued expenditures means the charges incurred by the Cooperator 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 (i) services performed by the Cooperator, and (ii) goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the Cooperator for which no current services or performance is required by the Cooperator.

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 Cooperator's regular accounting practices.

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

e. Authorized Departmental Officer (ADO) means the Federal Awarding Agency's official authorized to negotiate, award, administer, suspend, and terminate non-assistance cooperative agreements.

f Authorized Departmental Officer's Designated Representative (ADODR) means the Federal Awarding Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of a cooperative agreement's objectives and monitoring and evaluating the Cooperator's performance.

g. Award means Federal support of mutually beneficial research project(s) in the form of money or in-kind services or property in lieu of money, to an eligible Cooperator. The term does not include: financial assistance awards in the form of grants, cooperative agreements, 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.

h. Cash contributions means the Cooperator's cash outlay, including the outlay of money contributed to the Cooperator by third parties.

i. CFR means the Code of Federal Regulations.

j. Closeout means the process by which a Federal Awarding Agency determines that all applicable administrative actions and all required work of the award have been completed by the Cooperator and Federal Awarding Agency.

k. Contract means a procurement contract under an award or subaward, and a procurement subcontract under a Cooperator's or subrecipient's contract.

l. Cooperator means the party(ies) receiving an award from the Federal Government in support of mutually beneficial research projects/programs. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) that are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal Awarding Agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally funded research and development centers.

m. 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.

n. Disallowed costs means those charges to an award that the Federal Awarding Agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

o. Electronic Funds Transfer (EFT) means electronic payment methods used to transfer funds to a Cooperator's bank account. (Including HHS/PMS)

p. Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with Cooperator policy, lower limits may be established.

q. Excess property means property under the control of any Federal Awarding Agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

r. Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal Awarding Agency has statutory authority to vest title in the Cooperator 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.

s. FAADS means Federal Assistance Awards Data System.

t. FAR means the Federal Acquisition Regulations.

u. Federal Awarding Agency means the Federal Agency that provides an award to the Cooperator.

v. Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the Cooperator. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by Agency regulations or Agency implementing instructions.

w. Federal share of property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

x. Funding period means the period of time when Federal funding is available for obligation by the Cooperator.

y. HHS- PMS means the Department of Health and Human Services'/Payment Management System (also see EFT).

z. i-Edison (Interagency Edison) is a database, which provides Federal grantee/Cooperator organizations and participating Federal agencies with the technology to electronically manage extramural invention portfolios in compliance with federal reporting requirements.

aa. 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.

bb. 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 Cooperator during the same or a future period.

cc. OMB means the Office of Management and Budget.

dd. 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 value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the Cooperator 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.

ee. 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.

ff. Principal Investigator (PI) means the Cooperator's technical representative or Project Director who is responsible for participating with the ADODR to accomplish the objectives of a non-assistance cooperative agreement.

gg. Prior approval means written approval by an authorized official evidencing prior consent.

hh. Program income means gross income earned by the Cooperator that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal Awarding Agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

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

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

kk. Property means, unless otherwise stated, personal property, equipment, intangible property and debt instruments.

ll. Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

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

nn. State Cooperative Institutions are defined in statute as institutions designated or receiving funds pursuant to:

(1) The First Morrill Act - The Land Grant Institutions
(2) The Second Morrill Act - The 1890 Institutions.
(3) The Hatch Act of 1887 - The State Agricultural Experiment Stations.
(4) The Smith-Lever Act - The State Extension Services
(5) The McIntire-Stennis Act of 1962 - The Cooperating Forestry Schools

(6) Public Law 95-113, Section 1430 - A college or university having an accredited college of veterinary medicine or a department of veterinary science or animalpathology or similar unit conducting animal health and disease research in a State Agricultural Experiment Station
(7) Public Law 97-98, Section 1475b - Colleges, universities, and Federal laboratories having a demonstrated capacity in aquaculture research
(8) Public Law 97-98, Section 1480 - Colleges, universities, and Federal laboratories having a demonstrated capacity of rangeland research
(9) Executive Order 13230 - Hispanic Serving Institutions
(10) Executive Order 13021 - Tribal Colleges and Universities

oo. Subaward means an award in the form of money or in-kind services or property in lieu of money, made under an award by a Cooperator 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 (g).

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

qq. 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."

rr. Suspension means an action by a Federal Awarding Agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the Cooperator or pending a decision to terminate the award by the Federal Awarding Agency. Suspension of an award is a separate action from suspension under Federal Agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

ss. Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

tt. A third party in-kind contribution 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.

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

vv. Unobligated balance means the portion of the funds authorized by the Federal Awarding Agency that has not been obligated by the Cooperator and is determined by deducting the cumulative obligations from the cumulative funds authorized.

ww. Unrecovered indirect cost means the difference between the amount awarded and the amount, which could have been awarded under the Cooperator's approved negotiated indirect cost rate.

xx. U.S.C. means the United States Code.

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

3. Applicability.

This Part applies to all REE non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

4. Eligibility.

REE agencies may enter into non-assistance cooperative agreements with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other contractor or recipient, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences. (7 U.S.C. 3318(c)).

5. Competition.

REE agencies may enter into non-assistance cooperative agreements, as authorized by this Part, without regard to any requirements for competition. (7 U.S.C. 3318(e)).

6. Duration.

REE may enter into non-assistance cooperative agreements for a period not to exceed five years. (7 U.S.C. 3318(c)).

7. Exceptions.

This Part does not apply to:

USDA Federal Financial Assistance agreements subject to 7 CFR 3019; 3016;

Procurement contracts or other agreements subject to the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AgAR);

Agreements providing loans or insurance directly to an individual; or

Agreements with International organizations.

8. Conflicting policies and deviations.

This Part supersedes and takes precedence over any individual REE regulations and directives dealing with the award and administration of non-assistance cooperative agreements entered into under the delegated authority of 7 U.S.C. 3318(b). This Part may only be superseded, in whole or in part, by either a specifically worded statutory provision or a waiver authorized by the Department of Agriculture (USDA) -REE-Administrative and Financial Management (AFM) or any successor organization. Responsibility for developing, interpreting, and updating this Part is assigned to the USDA-REE-AFM-Extramural Agreements Division (EAD) or any successor organization.

9. Other applicable regulations.

Related issuances are in other parts of the CFR and the U.S.C. as follows:

a. 7 CFR Part 3018 "New Restrictions on Lobbying";

b. 7 CFR Part 3052 " Audits of States, Local Governments, and Nonprofit Organizations";

c. 7 CFR 3015.175 (b) "Copyrights"

d. 41CFR 401.14 "Patents and Inventions"

e. 15 U.S.C. 205 - "The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act"

f. 42 U.S.C. 6962 "Resource Conservation and Recovery Act (RCRA)"

10. Fiscal and budgetary guidance.

Except as may be provided elsewhere in this Part, or until superceded in whole or in part, the most recent Edition of the principle of “Federal Appropriations Law” issued by the U.S. General Accounting Office (GAO) shall be the primary fiscal and budgetary guidance document for matters relating to availability and use of Federal funds obligated by USDA non-assistance cooperative agreements.

11. Bona fide needs rule.

This rule applies to all Federal Government funding activities, regardless of whether the funding mechanism is a contract, grant or cooperative agreement. Under this rule, the balance of an appropriation or fund limited for obligation to a definite period (e.g. annually appropriated funds) is available only for payment of expenses properly incurred during the period of availability or to complete agreements properly made within that period of availability and properly obligated by the Cooperator.

12. Fiscal year chargeable.

Specifically, a cooperative agreement or grant project can be funded only to address a bona fide need in the fiscal year for which the funds were appropriated. A written obligation must be signed by both parties no later than September 30 for the obligation to be valid in that fiscal year. An Agency with single year appropriations meets the requirement of a bona fide need rule when the Agency recognizes a need for the project in that fiscal year and offers an award, thereby obligating its funds to meet a "public need." Contingency funds for projects that do not need to begin immediately upon signature of an agreement would not meet the requirements of a bona fide need rule. For example, funding a project that cannot begin until spring of the next fiscal year due to the growing season or funding a symposium held in December of the next fiscal year could not be signed in September (of the current fiscal year) and obligated with current year funds.

The funding period will begin on the date of final signature and continue for the project period. Funding will be obligated from the fiscal year as indicated on the award document, which must be signed by September 30 to be obligated from that year's appropriation. Any funds not committed for use by a Cooperator within the agreement-funding period must be returned to the awarding Agency.

Conversely, if REE has agreed to a three year funding period for a proposed project at $50,000 per fiscal year, the ADODR may not change the funding period or amount of the award without documenting the reason for the change.

13. Severability.

A task is severable if it can be separated into components, each of which can be independently performed to meet a separate need of the Government. The bona fide need rule generally precludes an Agency from obligating a time-limited appropriation to meet the needs of a subsequent period. If a task is severable, the separate components that comprise it must be funded by the appropriation for the period in which the need for each component arises.

A Cooperative Agreement based on a fiscal year performance period for severable work activities or service expenses (e.g., management, operation and maintenance of a facility), must be obligated by the Cooperator prior to the end of the fiscal year funding availability. Funds cannot be carried over by the Cooperator to a subsequent fiscal year since the work activities or services covered by the cooperative agreement are severable into fiscal year segments for funding purposes. In this situation, unused funds must be deobligated at the end of each fiscal year and returned to the awarding Agency.

14. Non-severability.

A non-severable task involves work, which cannot be separated into components, but instead must be performed as a single task to meet a need of the Government. The bona fide need rule does not preclude using time-limited funds for work performed in the next fiscal year in connection with a non-severable task because it is viewed as an inseparable continuation of work to fulfill a need that arose during the appropriation's period of availability.

An example of non-severable work activities and services includes cooperative agreements awarded to conduct a collaborative research project that is fully funded for the project period. In this situation, funds may be obligated in a current fiscal year for non-severable work activities and services that will not be performed until a subsequent fiscal year(s). When funds are added incrementally to an existing agreement, under the bona fide need rule, the ADO must make a determination that work to be performed in a subsequent fiscal year is within the scope of the original agreement based on the clearly written objectives or intentions that were contemplated by representatives of the awarding Agency and the Cooperator at the time of execution of the original agreement. It is not appropriate to describe a long-range project or program that will be funded in increments over a number of fiscal years unless it is Congressional intent to incrementally fund the project in phases.

15. Special award conditions.

Federal awarding Agencies may impose additional requirements as needed, provided that the Cooperator 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 if a Cooperator:

a. has a history of poor performance,

b. is not financially stable,

c. has a management system that does not meet the standards prescribed in this Part,

d. has not conformed to the terms and conditions of a previous award, or

e. is not otherwise responsible.

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

16. Program reporting requirements for Federal Assistance Awards Data System (FAADS).

All REE non-assistance cooperative agreements shall be reported in FAADS.

17. Paperwork reduction/forms.

a. Federal awarding agencies 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 Federal Awarding Agency.

b. Cooperators shall use forms and instructions prescribed by the REE awarding Agency.

18. Prohibited uses.

A non-assistance cooperative agreement shall not be used to avoid established Federal procurement, property, or personnel procedures. A non-assistance cooperative agreement shall not be used to acquire, use, or dispose of real property; for construction, construction modifications, alterations, or capital improvements of a Federal or Cooperator-owned facility; or for architectural and engineering services.

SUBPART B - PRE - AWARD

19. Purpose.

Sections 20 through 26 prescribe instructions and other pre-award matters to be used in establishing a non-assistance cooperative agreement.

20. Statutory authorization required (Federal Awarding Agency).

Federal awarding Agencies must have programmatic statutory authority for the project prior to entering into any non-assistance cooperative agreement.

21. Mutuality of interest.

The Federal Awarding Agency shall document both parties' interest in the project. Mutual interest exists when both parties benefit in the same qualitative way from the objectives of the agreement. If one party to the agreement would independently have an interest in the project, which is shared by the other party, and both parties' pool resources to obtain the end result of the project, mutual interest exists.

22. Indirect cost/tuition remission.

a. Indirect Cost:

(1) State Cooperative Institutions.

Payment of indirect costs to State Cooperative Institutions in connection with USDA non-assistance cooperative agreements awarded under the authority of 7 U.S.C 3318(b) is <u>prohibited</u>. (7 U.S.C. 3319)

(2) Non-Profit Organizations:

Payment of indirect costs to non-profit institutions in connection with USDA cooperative agreement is limited to 10 percent of the total direct cost of the project. (Annual Appropriations Bill for Agriculture and Related agencies, General Provisions)

(3) All other cooperating organizations:

With the exception of the prohibitions and limitations above payment of indirect costs is allowable in connection with REE non-assistance cooperative agreements. Reimbursement of indirect costs is limited to the percentage(s) established in the Cooperator's negotiated indirect cost rate schedule.

(4) In any case, the Federal Awarding Agency shall not reimburse indirect costs prior to receipt of the Cooperator's negotiated indirect cost rate schedule.

b. Tuition Remission.

(1) State Cooperative Institutions.

Reimbursement of tuition expenses to State Cooperative Institutions in connection with REE non-assistance cooperative agreements is prohibited. (7 U.S.C 3319)

(2) All other cooperating organizations:

Except for Section 22 b. (1), tuition remission is an allowable expense as determined in accordance with the cost principles applicable to the Cooperator. The Federal Awarding Agency shall negotiate and approve such payments as related to the scope and objectives of the cooperative agreement.

23. Resource contribution.

Each party must contribute resources towards the successful completion of the project. Contributions must be more than nominal.

a. Awarding Agency's Contribution

(1) The awarding Agency's contribution shall be identified as the funded amount of the agreement and its' in-house costs incurred for performance of its' portion of the project.

b. Cooperator's Contribution

(1) The Cooperator's contribution must be no less than 20% of the funded amount of the agreement. Resource contributions of the Cooperator shall consist of a sufficient amount of itemized direct costs to substantiate a true stake in the project as determined by the ADO. The Cooperators contribution must be maintained at 20% of Federal funding throughout the life of the cooperative agreement.

(2) Cooperators share of contributions may consist of "in-kind" contributions and may also include unrecoverable indirect costs. Such costs may be accepted as part of the Cooperator's resource contribution when all of the following criteria are met.

(a) Are verifiable from the Cooperator's records.

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

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

(d) Are allowable under the applicable cost principles.

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

(f) Conform to other provisions of this Part, as applicable.

(3) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as resource contributions 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 Cooperator's organization. In those instances in which the required skills are not found in the Cooperator organization, rates shall be consistent with those paid for similar work in the labor market in which the Cooperator competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) When an employer other than the Cooperator 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.

(5) 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.

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

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

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

(c) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of

comparable space and facilities in a privately owned building in the same locality.

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

(e) The following requirements pertain to the Cooperator's supporting records for in-kind contributions from third parties.

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

(ii) The basis for determining the valuation for personal service, material, equipment, buildings, and land shall be documented.

24. Negotiation.

The Cooperator's PI and the Federal Awarding Agency's ADODR shall cooperate in the development of the following documentation:

a. Work plan. A detailed statement to include the following:

(1) Project Title
(2) Project Description
(3) Experimental Plan
(4) Lists of Available Facilities and Equipment
(5) Collaborations
(6) References
(7) Identification of Key Personnel
(8) Vitae and Applicable Publications of Key Personnel
(9) Budget

b. Statement of Work - A detailed statement of work shall be jointly planned, developed and prepared by the Cooperator's PI and the awarding Agency's ADODR consisting of the following:

(1) Objective
(2) Approach
(3) Statement of Mutual Interest
(4) Performance Responsibilities
(5) Special Award Conditions.

c. Budget - A three-part form outlining resource contributions as follows:

(1) Total amount to be reimbursed by the Federal Awarding Agency to the Cooperator. (Direct and Indirect Costs)
(2) Total in-house costs to the Federal Awarding Agency. (Direct and indirect costs)
(3) Total in-house costs to the Cooperator. (Direct and indirect costs)

25. Peer review.

The awarding Agency may require that the cooperative project undergo a peer review to determine science quality.

26. Assurances/certifications.

a. Government wide Debarment and Suspension (Non procurement);

b. Government wide requirements for Drug-Free Workplace;

c. Non-discrimination. The Cooperator assures compliance with the following requirement: No person in the United States shall, on the ground of race, color, national origin, sex, age, religion, political beliefs, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Cooperator receives Federal funding.

d. Air Transportation. The Cooperator assures compliance with the International Air Transportation Fair Competitive Practices Act of 1975, Section 5 (49 U.S.C. 1517). Costs for foreign travel and related transportation of property are allowable only to the extent that United States flag air carriers are used.

e. Protection of Human Subjects Requirements: The Cooperator assures compliance with the following provisions regarding the rights and welfare of human subjects:

(1) The Cooperator is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this Agreement. The Cooperator may conduct research involving human subjects only as prescribed in the statement of work and as approved by the Cooperator's Cognizant Institutional Review Board. Prior to conducting such research, the Cooperator shall obtain and document a legally sufficient informed consent from each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waiver, or to appear to waiver, any of his or her legal rights, including any release of the Cooperator or its agents from liability for negligence.

(2) The Cooperator agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR Part 46 (as amended).

(3) It will comply with REE policy, which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(4) Selection of subject or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

f. Animal Welfare Act Requirements: The Cooperator assures compliance with the Animal Welfare Act, as amended, 7 U.S.C. 2131, et seq., and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. The Cooperator may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

g. Recombinant DNA Research Requirements: The Cooperator assures that it will assume primary responsibility for implementing proper conduct on recombinant DNA research and it will comply with the National Institute of Health Guidelines for Recombinant DNA Research, as revised.

(1) If the Cooperator wishes to send or receive registered recombinant DNA material which is subject to quarantine laws, permits to transfer this material into the U.S. or across state lines may be obtained by contacting USDA/APHIS/PPQ, Scientific Services-Biotechnology Permits, 4700 River Road, Unit 133, Riverdale, Maryland 20737. In the event that the Cooperator has not established the necessary biosafety committee, a request for guidance or assistance may be made to the USDA Recombinant DNA Research Officer.

h. Agriculture Bioterrorism Protection Act (7 CFR 331 and 9 CFR 121, December 13, 2002).

SUBPART C – POST - AWARD (Management of Agreements)

Financial and Program Management

27. Purpose of financial and program management.

Sections 28 through 33 prescribe standards for financial management systems, methods for making payments and rules for: satisfying resource contribution requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, acknowledgment of support on publications and audiovisuals, advertising, questionnaires and survey plans, project supervision, administrative supervision, insurance and liability requirements.

28. Standards for financial management systems.

a. Federal awarding agencies shall require Cooperators to relate financial data to performance data and develop unit cost information whenever practical.

b. Cooperators' 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 Section 64. If a Federal Awarding Agency requires reporting on an accrual basis from a Cooperator that maintains its records on other than an accrual basis, the Cooperator shall not be required to establish an accrual accounting system. These Cooperators 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. Cooperators 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 Cooperator from the U.S. Treasury and the issuance or redemption of a check, warrant or payment by other means for program purposes by the Cooperator. 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 Federal Government guarantees or insures the repayment of money borrowed by the Cooperator, the Federal Awarding Agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the Cooperator are not deemed adequate to protect the interest of the Federal Government.

d. The Federal Awarding Agency may require adequate fidelity bond coverage where the Cooperator 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."

29. Funding period.

The funding period will begin on the date of final signature, unless otherwise stated on the agreement, and continue for the project period specified on the cover page of the cooperative agreement.

30. Payment.

a. Payment methods shall minimize the time elapsing between the transfer of funds from the U. S Treasury and the issuance or redemption of a check, warrant, or payment by other means by the Cooperators. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR Part 205.

b. Reimbursement is the preferred method of payment. All payments to the Cooperator shall be made via EFT.

(1) When the reimbursement method is used, the Federal Awarding Agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Cooperators shall be authorized to submit request for payment not more than quarterly.

(3) Content of Invoice .

At a minimum, the Cooperator's invoice shall state the following:

(a) The name and address of the Cooperator.
(b) The name and address of the PI.
(c) The name and address of the financial officer to whom payments shall be sent.
(d) A reference to the cooperative agreement.
(e) The invoice date.
(f) The time period covered by the invoice.
(g) Total dollar amount itemized by budget categories (labor, direct costs, and indirect costs, etc).

(4) To facilitate the EFT process, the Cooperator shall provide the following information:

(a) The name, addresses, and telephone number of the financial institution receiving payment.
(b) The routing transit number of the financial institution receiving payment.
(c) The account to which funds are to be deposited.
(d) The type of depositor account (checking or savings).

c. If the Federal Awarding Agency has determined that reimbursement is not feasible because the Cooperator lacks sufficient working capital, the Federal Awarding Agency may provide cash on a working capital advance basis provided the Cooperator maintains or demonstrates the willingness to maintain: (1) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Cooperator, and (2) financial management systems that meet the standards for fund control and accountability as established in Section 28. Under this procedure, the Federal Awarding Agency shall advance cash to the Cooperator to cover its estimated disbursement needs for an initial period. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the Cooperator organization for direct program or project costs and the proportionate share of any allowable indirect costs.

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

(2) Advance payment mechanisms are subject to the requirements of 31 CFR Part 205.

(3) Requests for advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as authorized by OMB. This form is not to be used when advance payments are made to the Cooperator automatically through the use of a predetermined payment schedule or if precluded by special Federal Awarding Agency instructions for electronic funds transfer.

(4) Cooperators shall maintain advances of Federal funds in interest bearing accounts, unless a., b., or c. applies.

(a) The Cooperator receives less than $120,000 in Federal awards per year.

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

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

(5) 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. The Cooperator for administrative expense may retain interest amounts up to $250 per year. 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 Federal Awarding Agency, it waives its right to recover the interest under CMIA. Thereafter, the Federal Awarding Agency shall reimburse the Cooperator for its actual cash disbursements.

(6) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal Awarding Agency to the Cooperator. The working capital advance method of payment shall not be used for Cooperators unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

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

e. Unless otherwise required by statute, Federal-awarding agencies shall not withhold payments for proper charges made by Cooperators at any time during the project period unless (1) or (2) apply.

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

(2) The Cooperator 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 Federal Awarding Agency may, upon reasonable notice, inform the Cooperator 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.

f. Standards governing the use of banks and other institutions as depositories of funds advanced or reimbursed under awards are as follows.

(1) Except for situations described in section f. (2), Federal-awarding agencies shall not require separate depository accounts for funds provided to a Cooperator or establish any eligibility requirements for depositories for funds provided to a Cooperator. However, Cooperators 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.

g. Except as noted elsewhere in this Part, only the SF-270, Request for Advance or Reimbursement shall be authorized for the Cooperators in requesting advances. Federal agencies shall not require more than an original and two copies of this form.

31. Program income.

a. Federal awarding agencies shall apply the standards set forth in this section in requiring Cooperator organizations to account for program income related to projects financed in whole or in part with Federal funds.

b. Except as provided in section 31.f., program income earned during the project period shall be retained by the Cooperator and, in accordance with Federal Awarding Agency regulations or the terms and conditions of the award, shall be added to funds committed

to the project by the Federal Awarding Agency and Cooperator and used to further eligible project or program objectives.

c. Unless Federal Awarding Agency regulations or the terms and conditions of the award provide otherwise, Cooperators shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

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

e. Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See Sections 46 through 51).

f. Unless Federal Awarding Agency regulations or the terms and condition of the award provide otherwise, Cooperators 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.

32. Non-Federal audits.

a. Cooperators 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 of the Federal awarding agencies.

d. Commercial organizations shall be subject to the audit requirements of the Federal Awarding Agency or the prime recipient as incorporated into the award document.

33. Allowable costs.

For each kind of Cooperator, 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 institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." 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.

Program Management

34. Prior approvals.

a. The budget 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 Federal Awarding Agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

b. Cooperators 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. Cooperators shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Incur pre-award costs up to 90 days prior to award date. All pre-award costs are incurred at the Cooperator's risk (i.e., the Federal Awarding Agency is under no obligation to reimburse such costs if for any reason the Cooperator does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

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

(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) Extensions of time, within statutory limitations, to complete project objectives. This extension may not be requested merely for the purpose of using unobligated balances. The Cooperator shall request the extension in writing with supporting reasons.

(6) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal Awarding Agency.

(7) The inclusion, unless waived by the Federal Awarding Agency, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR Part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR Part 31, "Contract Cost Principles and Procedures," as applicable.

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

(9) Unless described in the agreement 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. When requesting approval for budget revisions, Cooperators shall use the budget form used in the award document unless the Federal Awarding Agency indicates a letter of request suffices.

e. Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the Cooperator whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, the Federal Awarding Agency shall inform the Cooperator in writing of the date when the Cooperator may expect the decision.

35. Acknowledgment of support on publications and audiovisuals.

a. Publications. Cooperators shall acknowledge awarding Agency support, whether cash or in-kind, in any publications written or published with Federal support and, if feasible, on any publication reporting the results of, or describing, a Federally supported activity as follows:

“This material is based upon work supported by the U.S. Department of Agriculture, under Agreement No. (Cooperator should enter the applicable agreement number here).”

All such materials, must also contain the following disclaimer unless the publication is formally cleared by USDA:

"Any opinions, findings, conclusion, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture."

Any public or technical information related to work carried out under a non-assistance cooperative agreement shall be submitted by the developing party to the other for advice and comment. Information released to the public shall describe the contributions of both parties to the work effort. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

b. Audiovisuals. Cooperators shall acknowledge awarding Agency support in any audiovisual produced with Federal support that has a direct production cost to the Cooperator of over $5,000. Unless the terms of the Federal award provide otherwise, this requirement does not apply to:

(1) Audiovisuals produced under mandatory or formula grants or under sub awards.

(2) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the general public.

36. Press Releases.

Press or other public notification will not be made without the prior consent of the Awarding Agency.

The awarding Agency will be given the opportunity to review, in advance, all written press releases and any other written information to be released to the public by (Cooperator), and require changes as deemed necessary, if the material mentions by name the Awarding Agency or the U.S. Department of Agriculture, or any USDA employee or research unit or location.

37. Advertising.

The Cooperator will not refer in any manner to the Federal Government or agencies thereof in connection with the use of the results of this research without prior specific written authorization by the awarding Agency. Unless otherwise provided herein, information obtained as a result of this project will be made available to the public in printed or other forms by the awarding Agency at its discretion. The Cooperator will be given due credit for its cooperation in the project.

38. Questionnaires and survey plans.

The Cooperator is required to submit to the Federal Awarding Agency copies of questionnaires and other forms for clearance in accordance with the Paperwork Reduction Act of 1980 and 5 CFR 1320.

39. Project supervision.

The Cooperator's PI shall be responsible for project supervision working in collaboration with the Federal Awarding Agency's ADODR who shall have technical oversight and project responsibility on behalf of the Federal Awarding Agency.

40. Administrative supervision.

a. The Cooperator is solely responsible for the administrative supervision of its' employees. The Federal Awarding Agency shall not intervene in the employer-employee relationship between the Cooperator and its' employees, or otherwise engage in the following activities:

(1) Selecting Cooperator's employees
(2) Establishing employment agreements
(3) Establishing wage levels
(4) Administering payrolls (including certifying employees' time and attendance)
(5) Administering awards, discipline, or adverse actions
(6) Directly approving or disapproving leave for Cooperator's employees
(7) Evaluating Cooperator's employees' performance
(8) Administering Cooperator's employees' benefits program.

Insurance and Liability

41. Equipment replacement insurance.

If required by the terms and conditions of the award, the Cooperator shall provide adequate insurance coverage for replacement of equipment acquired with Federal funds in the event of loss or damage to such equipment.

Rescinded effective January 24, 2005

Rescinded effective January 24, 2005

44. Scientific misconduct.

Agencies and research institutions are partners who share responsibility for the research process. Federal agencies have ultimate oversight authority for federally funded research, but research institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

45. Rules of the workplace.

Cooperator employees, while engaged in work at the Agency's facilities, will abide by the Agency's standard operating procedures regarding the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, hours of work, conduct, and other incidental matters stated in the rules and regulations of the Agency.

Equipment/Property Standards

46. Purpose of equipment/property standards.

Sections 47 through 50 set forth uniform standards governing management and disposition of property furnished by the Federal Government or acquired by the Cooperator with funds provided by the Federal Government. The Cooperator may use its own property management standards and procedures provided it observes the provisions of Sections 47 through 50.

47. Title to equipment.

As authorized by 7 U.S.C. 3318(d), title to expendable and nonexpendable equipment, supplies, and other tangible personal property purchased with Federal funding in connection with a non assistance cooperative agreement shall vest in the Cooperator from date of acquisition unless otherwise stated in the cooperative agreement, subject to conditions of this section.

48. Equipment.

a. The Cooperator 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.

b. The Cooperator 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 Federal Awarding Agency. When no longer needed for the original project or program, the Cooperator shall use the equipment in connection with its' other federally-sponsored activities, in the following order of priority: (i) Activities sponsored by the Federal Awarding Agency which funded the original project, then (ii) activities sponsored by other Federal awarding agencies.

c. During the time that equipment is used on the project or program for which it was acquired, the Cooperator 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 Federal Awarding Agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal Awarding Agency. User charges shall be treated as program income.

d. When acquiring replacement equipment, the Cooperator 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 Federal Awarding Agency.

e. The Cooperator'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.

(a) A description of the equipment.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Source of the equipment, including the award number.

(d) Whether title vests in the Cooperator or the Federal Government.

(e) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(f) 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).

(g) Location and condition of the equipment and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Cooperator compensates the Federal Awarding Agency 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 Cooperator 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 Federal Government owns the equipment, the Cooperator shall promptly notify the Federal Awarding Agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the Cooperator 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.

f. When the Cooperator no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the Cooperator may retain the equipment for other uses provided that compensation is made to the original Federal Awarding Agency 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 Cooperator has no need for the equipment, the Cooperator shall request disposition instructions from the Federal

Awarding Agency. The Federal Awarding Agency 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 General Services Administration by the Federal Awarding Agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal Awarding Agency shall issue instructions to the Cooperator no later than 120 calendar days after the Cooperator's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Cooperator's request, the Cooperator shall sell the equipment and reimburse the Federal Awarding Agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Cooperator shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the Cooperator's selling and handling expenses.

(2) If the Cooperator is instructed to ship the equipment elsewhere, the Cooperator shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the Cooperator's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Cooperator is instructed to otherwise dispose of the equipment, the Cooperator shall be reimbursed by the Federal Awarding Agency for such costs incurred in its disposition.

(4) The Federal Awarding Agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(a) The equipment shall be appropriately identified in the award or otherwise made known to the Cooperator in writing.

(b) The Federal Awarding Agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally owned equipment. If the Federal Awarding Agency fails to issue disposition instructions within the 120 calendar days, the Cooperator shall apply the standards of this section, as appropriate.

(c) When the Federal Awarding Agency exercises its right to take title, the equipment shall be subject to the provisions for federally owned equipment.

49. Supplies and other expendable property.

a. Title to supplies and other expendable property shall vest in the Cooperator upon acquisition. If there is a residual inventory of unused 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 Cooperator 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 Cooperator 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.

50. Federally-owned property.

Title to federally-owned property remains vested in the Federal Government. Cooperators shall submit annually an inventory listing of federally-owned property in their custody to the Federal Awarding Agency. Upon completion of the award or when the property is no longer needed, the Cooperator shall report the property to the Federal Awarding Agency for further Federal Agency utilization.

If the Federal Awarding Agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal Awarding Agency 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 Cooperator by the Federal Awarding Agency.

51. Intangible property. (Patents/Intellectual Property Rights)

a. The Cooperator may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal Awarding Agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so for Federal purposes.

b. Cooperators are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

c. Unless waived by the Federal Awarding Agency, 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 Federal Awarding Agency shall request, and the Cooperator 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 Federal Awarding Agency 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 Cooperator, 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 paragraph (d) of this section:

(a) 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). Research data also do not include:

(i) 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

(ii) 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.

(b) Published is defined as either when:

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

(ii) 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 Cooperator. The Cooperator shall use that property for the originally authorized purpose, and the Cooperator shall not encumber the property without approval of the Federal Awarding Agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of Section 51 f.

f. Equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the Cooperator as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require Cooperators to record appropriate notices of record to indicate that personal property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

g. All rights, title, and interest in any Subject Invention made solely by employee(s) of awarding Agency shall be owned by the awarding Agency. All rights, title, and interest in any Subject Invention made solely by at least one (1) employee of the awarding Agency and at least one (1) employee of the Cooperator shall be jointly owned by the awarding Agency and the Cooperator.

Procurement Standards

52. Purpose of procurement standards.

Sections 53 through 60 set forth standards for use by Cooperators in establishing procedures for the procurement of supplies and other expendable property, equipment 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 Federal awarding agencies upon Cooperators, unless specifically required by Federal statute or executive order or approved by OMB.

53. Cooperator responsibilities.

The standards contained in this section do not relieve the Cooperator of the contractual responsibilities arising under its' contract(s). The Cooperator is the responsible authority, without recourse to the Federal Awarding Agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, award protests, 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.

54. Codes of conduct.

The Cooperator 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 Cooperator shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Cooperators 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 Cooperator.

55. Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Cooperator 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 Cooperator, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offer or shall fulfill in order for the bid or offer to be evaluated by the Cooperator. Any and all bids or offers may be rejected when it is in the Cooperator's interest to do so.

56. Procurement procedures.

a. All Cooperators shall establish written procurement procedures. These procedures shall include the following requirements:

(1) Cooperators 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.

(3) Solicitations for goods and services shall include the following requirements:

(a) 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 that unduly restrict competition.

(b) Requirements which the bidder/offer or must fulfill and all other factors to be used in evaluating bids or proposals.

(c) 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.

(d) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(e) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(f) 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 Cooperators to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority- owned firms and women's business enterprises.

c. The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

d. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

e. Recipients shall, on request, make available for the Federal Awarding Agency, pre-award 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 the Federal Awarding Agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) 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 small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase 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 small purchase threshold.

57. Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

58. Procurement records.

Procurement records and files for purchases in excess of the small purchase 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.

59. Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

60. 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 small purchase 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 small purchase 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 Federal Awarding Agency may accept the bonding policy and requirements of the recipient, provided the Federal Awarding Agency 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 herein, 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 small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal Awarding Agency, 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 Circular, as applicable.

Reports and Records

61. Purpose of reports and records.

Sections 62 through 66 set forth the procedures for monitoring and reporting on the Cooperator's financial and program performance and the necessary reporting format. They also set forth record retention requirements.

62. Project data.

Data that is collected, compiled, and evaluated under a cooperative agreement shall be shared and mutually interchanged by the Cooperator and the awarding Agency, with the final results of the project made available to both parties.

63. Monitoring and reporting program performance.

a. The Federal Awarding Agency shall prescribe the frequency with which the performance reports shall be submitted. 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 Federal Awarding Agency 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.

b. 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.

c. Cooperators shall not be required to submit more than the original and two copies of performance reports.

d. Cooperators shall immediately notify the Federal Awarding Agency 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.

e. Federal awarding agencies may make site visits, as needed.

64. Financial reporting.

a. Financial Status Report.

(1) Each Federal Awarding Agency shall require Cooperators to report the status of funds as approved in the budget for the cooperative agreement. A financial status report shall consist of the following information:

(a) The name and address of the Cooperator.
(b) The name and address of the PI.
(c) The name, address, and signature of the financial officer submitting the report.
(d) A reference to the cooperative agreement.
(e) Period covered by the report.

(f) An itemization of actual dollar amounts expended on the project during the reporting period (in line with the approved budget) and cumulative totals expended for each budget category from the starting date of the cooperative agreement.

(2) The Federal Awarding Agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal Awarding Agency requires accrual information and the Cooperator's accounting records are not normally kept on the accrual basis, the Cooperator shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(3) The Federal Awarding Agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(4) The Federal Awarding Agency shall require Cooperators to submit the financial status report (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal Awarding Agency upon request of the Cooperator.

b. SF-272, Report of Federal Cash Transactions.

(1) When funds are advanced to Cooperators the Federal Awarding Agency shall require each Cooperator to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal Awarding Agency shall use this report to monitor cash advanced to Cooperators and to obtain disbursement information for each agreement with the Cooperators.

(2) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(3) When practical and deemed necessary, Federal awarding agencies may require Cooperators to report in the "Remarks" section the amount of cash advances received in excess of three days. Cooperators shall provide short narrative explanations of actions taken to reduce the excess balances.

(4) Cooperators shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Federal

awarding agencies may require a monthly report from those Cooperators receiving advances totaling $1 million or more per year.

(5) Federal awarding agencies may waive the requirement for submission of the SF-272 for any one of the following reasons:

(a) When monthly advances do not exceed $25,000 per Cooperator, provided that such advances are monitored through other forms contained in this section;

(b) If, in the Federal Awarding Agency's opinion, the Cooperator's accounting controls are adequate to minimize excessive Federal advances; or,

(c) When the electronic payment mechanisms provide adequate data.

(6) When the Federal Awarding Agency needs additional information or more frequent reports, the following shall be observed.

(a) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require Cooperators to submit such information under the "Remarks" section of the reports.

(b) When a Federal Awarding Agency determines that a Cooperator's accounting system does not meet the standards in Section 28, additional pertinent information to further monitor awards may be obtained upon written notice to the Cooperator until such time as the system is brought up to standard. The Federal Awarding Agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR Part 1320.

(c) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(d) Federal awarding agencies may accept the identical information from the Cooperators in machine-readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(e) Federal awarding agencies may provide computer or electronic outputs to Cooperators when such expedites or contributes to the accuracy of reporting.

65. Invention disclosure and utilization reporting.

a. The Cooperator shall report Invention Disclosures and Utilization information electronically via i-Edison Web Interface at: www.iedison.gov.

b. If access to InterAgency Edison is unavailable, the invention disclosure should be sent directly to:

DEITR, National Institutes of Health
6701 Rockledge Drive, Room 3175, MSC 7750
Bethesda, Maryland 20892-7750

66. Retention and access requirements for records.

a. REE Agency's Records

Retention of REE Agency's agreements records shall be in accordance with REE Policy & Procedure 251.8, "Records Management."

b. Cooperator's Records

(1) This section sets forth requirements for record retention and access to records for awards to Cooperators. Federal awarding agencies shall not impose any other record retention or access requirements upon Cooperators.

(2) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of 3 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 Federal Awarding Agency. The only exceptions are the following.

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.

(3) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(4) When records are transferred to or maintained by the Federal Awarding Agency, the 3-year retention requirement is not applicable to the Cooperator.

(5) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph b. (10) of this section

(6) Copies of original records may be substituted for the original records if authorized by the Federal Awarding Agency.

(7) The Federal Awarding Agency shall request transfer of certain records to its custody from Cooperators when it determines that the records possess long-term retention value. However, in order to avoid duplicate record keeping, a Federal Awarding Agency may make arrangements for Cooperators to retain any records that are continuously needed for joint use.

(8) The Federal Awarding Agency, 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 Cooperators 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 Cooperator'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.

(9) Unless required by statute, no Federal Awarding Agency shall place restrictions on Cooperators that limit public access to the records of Cooperators that are pertinent to an award, except when the Federal Awarding Agency 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 Federal Awarding Agency.

(10) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (10)(a) and (10)(b) 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 charge back rates or composite fringe benefit rates).

a. If submitted for negotiation. If the Cooperator submits to the Federal Awarding Agency or the subrecipient submits to the Cooperator 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.

b. If not submitted for negotiation. If the Cooperator is not required to submit to the Federal Awarding Agency or the subrecipient is not required to submit to the Cooperator the proposal, plan, or other computation for

negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

67. Purpose of termination and enforcement.

Sections 68 through 69 set forth uniform suspension, termination and enforcement procedures.

68. Termination.

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

(1) The Federal Awarding Agency may terminate the award, if a Cooperator materially fails to comply with the terms and conditions of an award.

(2) The Federal Awarding Agency with the consent of the Cooperator, 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.

b. If costs are allowed under an award, the responsibilities of the Cooperator referred to in Section 71, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the Cooperator after termination, as appropriate.

69. Enforcement.

a. Remedies for noncompliance. If a Cooperator 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 Federal Awarding Agency may, in addition to imposing any of the special conditions outlined in Section 15, take one or more of the following actions.

(1) Temporarily withhold cash payments pending correction of the deficiency by the Cooperator or more severe enforcement action by the Federal Awarding Agency.

(2) Disallow 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. Effects of suspension and termination. Costs of a Cooperator resulting from obligations incurred by the Cooperator 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 thereafter. Other Cooperator costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if (1) and (2) apply.

(1) The costs result from obligations which were properly incurred by the Cooperator 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.

c. Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a Cooperator from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal Awarding Agency's implementing regulations.

SUBPART D - CLOSE OUT

70. Purpose.

Sections 71 through 73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

71. Closeout procedures.

a. Cooperators 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 Federal Awarding Agency may approve extensions to the reporting period when requested by the Cooperator.

b. Unless the Federal Awarding Agency authorizes an extension, a Cooperator 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 Federal Awarding Agency shall make prompt payments to a Cooperator for allowable reimbursable costs under the award being closed out.

d. The Cooperator shall promptly refund any balance of unobligated cash advanced or paid by the Federal Awarding Agency that it is not authorized to retain 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 Federal Awarding Agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

f. The Cooperator shall account for any personal property acquired with Federal funds or received from the Federal Government in accordance with Sections 46 through 50.

g. In the event a final audit has not been performed prior to the closeout of an award, the Federal Awarding Agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

72. Subsequent adjustments and continuing responsibilities.

a. The closeout of an award does not affect any of the following.

(1) The right of the Federal Awarding Agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the Cooperator to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in Section 32.

(4) Property management requirements in Sections 46 through 50.

(5) Records retention as required in Section 66.

73. Collection of amounts due.

a. Any funds paid to a Cooperator in excess of the amount to which the Cooperator 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 Federal Awarding Agency may reduce the debt by (1), (2) or (3).

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the Cooperator.

(3) Taking other action permitted by statute.

b. Except as otherwise provided by law, the Federal Awarding Agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."