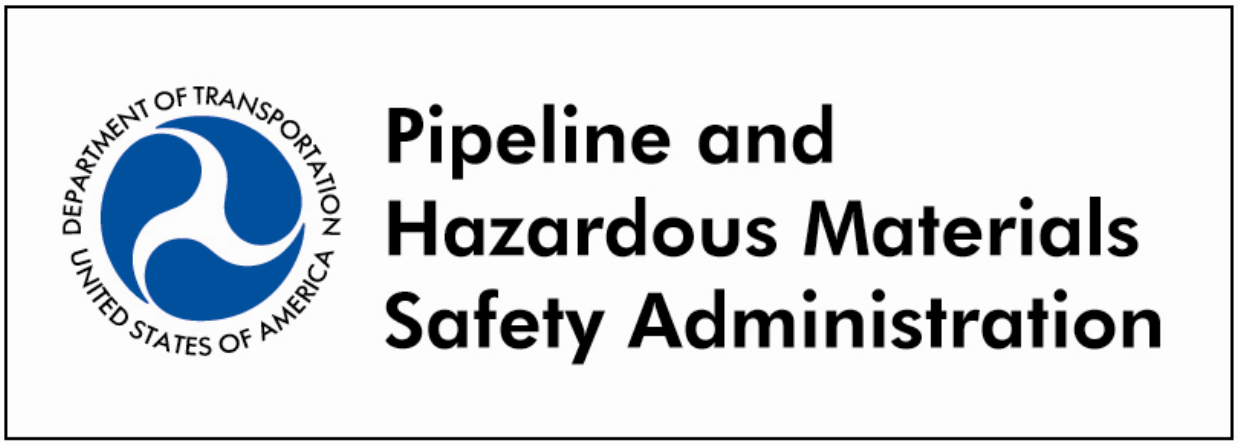
Guidelines for States Participating in the Underground Natural Gas Storage Safety Program



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GLOSSARY

Act — See Chapter 601, Title 49 of the U.S. Code (2016 version)

Agency — See **State Agency**

Agreement — The State Agency assumes inspection responsibility for facilities and reports probable violations to PHMSA for compliance action.

Certification — The State Agency assumes safety responsibility with respect to intrastate facilities over which it has jurisdiction under State law conducting inspections and taking compliance actions.

Certification Regarding Lobbying — Each grantee who receives a Federal grant exceeding $100,000 must submit a certification form.

CFDA — Catalog of Federal Domestic Assistance. A reference compilation of all grant programs sponsored by the Federal government. PHMSA's CFDA number is 20.725 for the Underground Natural Gas Storage Grant Program.

Chapter 601, Title 49 of the U.S. Code (2016) — Throughout this manual, Sections 60101 – 60140 refer to Chapter 601, Title 49 of the United States Code (2016). Chapter 601 is the recodification of the Natural Gas Pipeline Safety Act of 1968, as amended (49 USC app 1671 *er seq.*), and the Hazardous Liquids Pipeline Safety Act of 1979, as amended (49 USC app 2001 *er seq).*

Code of Federal Regulations, Title 49 (49 CFR)- Underground Natural Gas Storage Safety

Part 40	Procedures for Transportation Workplace Drug and Alcohol Testing Programs
Part 190	Federal Pipeline Safety Enforcement and Regulatory Procedures
Part 191	Transportation of Natural and Other Gas by Pipeline: Annual Reports Incident Reports, and Safety-Related Condition Reports
Part 192	Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards
Part 198	Regulations for Grants to Aid State Pipeline Safety Programs
Part 199	Drug and Alcohol Testing

Compliance Action	An action or series of actions taken to enforce Federal underground natural gas storage regulations. These actions may take the form of a warning letter, an administratively imposed monetary sanction or order directing compliance with the regulations, an order directing corrective action under hazardous conditions, a show cause order, a criminal sanction, a court injunction, or a similar formal action taken to achieve compliance with the underground natural gas storage regulations. Federal Compliance Actions are outlined in Part 190.
Department of Transportation ("DOT")	Reference may include any or all of the following: U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety.
Federal State Tracking and Reporting ("FedSTAR")	This is the computer application available over the internet which is used by State Underground Natural Gas Storage Safety Programs to enter the required federal documentation and information for participating in the PHMSA Underground Natural Gas Storage Safety Program and Grant.
Grant	Funds or aid in kind to carry out specified programs, services, or activities.
Grant Agreement	All provisions and requirements of the PHMSA Underground Natural Gas Storage Grant Program, including those specified in the Grant Application, Payment Agreement (Notice of Grant Award), these Guidelines, and any instructions or directives issued by the PHMSA, DOT, or other Federal agency relative to the management of Federal grant programs.
Grant Application	This form is to provide PHMSA with information concerning the State Agency's need for Federal financial support for its Underground Natural Gas Storage Safety Program.
Grantee	The department or agency of State government which is responsible for the administration of the PHMSA underground natural gas storage safety grant. Also referred to as "recipient" or "State Agency."
Grant Period	The grant period extends from the effective date of the Payment Agreement (Notice of Grant Award), January 1, to the expiration date, December 31, unless otherwise arranged. Also referred to as the "program year."
Grants.gov	Grants.gov is a central storehouse for information on federal grants.
Grant Program	Those activities and operations of the State Agency which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee. This technical usage of the phrase should not be confused with the Underground natural gas storage Grant Program (sometimes shortened to

	"Grant Program"), which is the Federal assistance program in support of the State Agency's underground natural gas storage safety program.
Inspection (Standard)	An on-site evaluation of an inspection unit for compliance with all applicable Federal or State standards. This includes a thorough compliance review of the operator's plans, procedures, programs, records, physical plant, and work in progress. See Chapter 5 for guidance.
Inspection Assistant (IA)	PHMSA software application required for documenting UNGS inspections.
Inspection Person-Day	All or part of a day spent by State Agency staff – Supervisor(s) and/or Inspector(s)/Investigator(s) (including travel) in on-site evaluation of an operator's system to determine compliance with Federal or State underground natural gas storage safety regulations; or in on-site investigation of an underground natural gas storage incident; or in job-site training of an operator. (See section 5.1 for description of inspection types) Time counted for such activities should be reported as a maximum of one inspection person-day for each day devoted to safety issues, regardless of the number of operators visited during that day. (e.g. You may evaluate two operators in the same day and record each inspection visit as 0.5 person-day, or actual fraction of a day, for each operator provided the total does not exceed 1.0 person-day) On a limited basis, the inspector may count in-office inspection time to review operator written: plans, procedures, programs and records in order to effectively use on-site inspection time, as approved by the Program Manager and as noted in the annual Progress Report. In-office inspection time must be adequately documented and made part of the state program's inspection records.
Inspection Unit	All or part of an operator's natural gas underground storage field including records and procedures ensuring uniform design, construction, operation, and maintenance of the field. A underground natural gas storage field may be one Inspection Unit encompassing all wells or multiple Inspection Units with designated wells for each Inspection Unit. Generally, all inspection activities for completing a standard inspection including review of records, procedures, and field observations should be completed for all wells in an Inspection Unit in less than a month. The application of the Inspection Unit concept will ensure complete inspection coverage of an operator's entire underground natural gas storage field(s) and enhance Federal/State management of work load and PHMSA Program Evaluation. Where unique situations exist, good logic and judgment must be exercised when identifying the parameters of the Inspection Unit.

Mid-year Request for Reimbursement

If a State Agency desires a mid-year payment, it may return one copy of a completed OMB Standard Form 270 to PHMSA requesting a mid-year payment. PHMSA will alert State Agencies when a mid-year payment is available and facilitate the State Agency Reimbursement through FedSTAR.

Modifications to Payment Agreement (Notice of Grant Award)

Used to amend the Federal grant amount in the Payment Agreement (Notice of Grant Award).

National Response Center (NRC) (1-800-424-8802)

The federal government's national communications center, which is staffed 24 hours a day by U.S. Coast Guard officers and marine science technicians. The NRC receives all reports of releases involving natural gas and hazardous liquids that trigger the federal notification requirements under several laws. This "telephonic" report data is shared with PHMSA via an information system.

National Transportation Safety Board (NTSB)

This Federal agency was created by Congress in the Department of Transportation Act of 1966. Although NTSB's authority is limited to transportation failure investigations, its mission relating to underground natural gas storage safety is to:

1. Investigate significant failures and report the circumstances relating to each failure and its probable cause.

2. Make recommendations to the Secretary, the underground natural gas storage operators, manufacturers, associations, and interested parties in order to minimize the possibility of recurrence of similar failures.

3. Release reports deemed to be in the public interest.

4. Conduct special studies and investigations on matters regarding safety in pipeline transportation and failure prevention.

Noncompliance

A violation or probable violation of any section or any subsection of Federal or State underground natural gas storage safety regulations.

Office of Pipeline Safety (OPS)

For the purpose of this manual, OPS is the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety.

OMB Standard Form 270-Request for

Submitted by a State Agency for Mid-Year Request for Reimbursement or Year-end Request for Reimbursement.

Advance or Reimbursement	
Payment Agreement (Notice of Grant Award)	The formal document that allocates a specific amount of Federal funds to a State Agency for the reimbursement of not more than 80 percent of the expenses of an underground natural gas storage safety program.
Performance Criteria	Criteria used in assigning points for allocation of grant funds.
Personal Property	Property of any kind except real property. It may be tangible (having physical existence), or intangible (having no physical existence), such as patents, inventions, and copyrights, both having a useful life of more than 1 year and an acquisition cost of at least $5,000.
Pipeline and Hazardous Materials Safety Administration (PHMSA)	Pipeline and Hazardous Materials Safety Administration is the agency under the U.S. Department of Transportation responsible for pipelines, liquified natural gas, and underground natural gas storage safety oversight.
PHMSA Training and Qualifications Division (TQ)	The safety training organization operated by PHMSA in Oklahoma City, OK, for pipeline and underground natural gas storage inspectors.
Program Cost Summary	This form compares estimated budget figures with final expenses incurred for the program, and is submitted by a State Agency with the Year-end Request for Reimbursement.
Probable Violation	A probable violation is a potential noncompliance with any of the minimum federal regulations.
Program	The planned undertaking of the State Agency's underground natural gas storage safety activities as stated in the Grant Application.
Program Budget	A schedule of proposed expenditures that is allowable, necessary, and reasonable for proper and efficient execution of the underground natural gas storage safety program.
Program Costs	All allowable costs (as set forth in 2 CFR 200) incurred by a State Agency in accomplishing the objectives of the Underground Natural Gas Safety Grant Program during the Grant Period.
Program Manager	The person designated by the State Agency as responsible for all activities of the underground natural gas safety program

Program Year	See "Grant Period."
Real Property	Land, land improvements, structures, and appurtenances thereto, Excluding movable machinery and equipment.
Recipient	See "Grantee."
Region Director (RD)	The individual responsible for all activities of the designated PHMSA region
Region Office	One of five offices delegated the authority to carry out the field activities for PHMSA
Special Initiatives	Initiatives occasionally issued by PHMSA for a limited purpose.
State Agency	The division of each State, including the District of Columbia and Puerto Rico, authorized through a Certification or Agreement with the Department of Transportation (DOT) to administer a underground natural gas storage safety program. Also referred to as "grantee" or "recipient."
State Program Personnel	The PHMSA headquarters staff person (i.e. State Liaison) who provides technical assistance, support and evaluates State Agency programs.
Supervisor	Individual in a State Agency supervising underground natural gas storage safety inspectors/investigators and so designated in Attachment 7 of the annual Progress Report.
Work Management System (WMS)	PHMSA Work Management System for tracking assigned task such as Safety Related Condition Reports or Operator Unit Management.
Year-End Request for Reimbursement	One copy of a completed OMB Standard Form 270 is completed by a State Agency to submit total program costs for the previous year to PHMSA. PHMSA will alert State Agencies when a Year-End Request for Reimbursement is available and facilitate the State Agency Reimbursement through FedSTAR.

ACRONYMS

AID	Accident Investigation Division
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
DOT	U.S. Department of Transportation
FedSTAR	Federal State Tracking and Reporting
IA	Inspection Assistant
MOU	Memorandum of Understanding
NRC	National Response Center
NTSB	National Transportation Safety Board
O & M	Operation and Maintenance
OMB	Office of Management and Budget
PHMSA	Pipeline and Hazardous Materials Safety Administration
PHP-50	PHMSA State Programs Division
PY	Person-Year
RD	Region Director
SUDS	State Uploaded Document System (within FedSTAR)
TQ	PHMSA Training and Qualifications Division
USC	United States Code
WMS	Work Management System

1 The Federal/State Partnership

1.1 Congressional Intent

49 U.S.C. Chapter 601 provides the statutory basis for the underground natural gas storage safety program, establishes a framework for promoting safety through exclusive Federal authority for the regulation of underground natural gas storage facilities, and provides for Federal delegation to the States for all or part of the responsibility for intrastate underground natural gas storage facilities under annual Certification or Agreement. 49 U.S.C. Chapter 601 authorizes Federal grants-in-aid of not more than 80 percent of a State Agency's personnel, equipment, activities and other allowable costs for its underground natural gas storage safety program. The resulting Federal/State partnership is the cornerstone for ensuring uniform implementation of the underground natural gas storage safety program nationwide. 49 U.S.C. Chapter 601 can be found in Appendix A.

1.2 Federal Role and Organizational Structure

The PHMSA mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. To do this, the agency establishes national policy, sets and enforces standards, educates, and conducts research to prevent incidents. We also prepare the public and first responders to reduce consequences if an incident does occur. The agency's goals are:

- **Promote continuous improvement in safety performance**, including establishment of a framework and approach for implementing Safety Management Systems (SMS);
- **Invest in safety innovation to become more proactive and forward-looking** by building PHMSA's innovation and analytics capabilities and through partnerships;
- **Build stakeholder and public trust** through proactive and targeted outreach, engagement, responsiveness, and transparency;
- **Cultivate organizational excellence and safety culture** by investing in employees and key capabilities;
- **Pursue operational excellence** through consistent and efficient business processes and by transforming how PHMSA leverages data to drive decision-making.

Under delegation from the Secretary of the Department of Transportation (DOT), PHMSA directly administers the underground natural gas storage safety program and enforces minimum safety regulations for interstate and intrastate underground natural gas storage facilities. These regulations are written to ensure safety in the design, construction, testing, operation, and maintenance of underground natural gas storage facilities. PHMSA ensures compliance with regulations through operator inspections, enforcement actions, and accident investigations. In addition, the PHMSA Training and Qualifications Division (TQ) conducts training in application of the regulations. PHMSA also administers grant-in-aid funding to States, conducts research, and collects and analyzes safety data.

PHMSA Headquarters is located in Washington D.C. and through their State Programs Division administers the grant-in-aid program to support State Agencies' Underground Natural Gas Storage Safety Programs. The PHMSA State Programs Division is the focal point for supporting State Agencies participating in PHMSA's Underground Natural Gas Storage Program.

The PHMSA Region Offices serve as the focal point for interstate compliance activities and intrastate facilities where a state does not have a Certification or Agreement with PHMSA. The PHMSA Region staff through the PHMSA State Programs Division provides technical assistance and support to State Agency programs for inspection and compliance issues. PHMSA Headquarters supports the work of the five PHMSA Region Offices. State Agencies are encouraged to contact their State Liaison or Director of State Programs if they have any questions about technical or other inspection issues.

1.3 State Role and Organizational Structure

A State legislature delegates responsibility (regulatory authority) for underground natural gas storage safety to a State Agency. The State Agency may be a State Oil and Gas Commission, State Department of Natural Resources, Public Utility Commission, a State Fire Marshal, a State Public Service Commission, or other State office. To enter into a 60105 Certification or 60106 Agreement with PHMSA, State Agencies must under State law have regulatory authority over underground natural gas storage facilities within the State. State Agency duties normally consist of operator inspections, compliance/enforcement actions, safety programs, incident investigations, natural gas well permitting, and record maintenance and reporting.

1.4 Invitational Travel

In support of various underground natural gas storage initiatives, PHMSA may provide invitational travel (100% funding) for the following:

- State Agency representatives with subject matter expertise to participate in various underground natural gas storage working groups or other events at the discretion of the Director of State Programs.

Each committee or working group representative that has not traveled under federal invitational travel orders will need to complete an E-2 User Profile Request form. The form will need to be completed prior to submitting the PHP Travel Request Form. All travel requests will need to be submitted at least one month prior to each tentative meeting. All Travel Requests and Travel Vouchers are submitted using the following e-mail address: PHMSAStateInvitationalTravel@dot.gov . State Agencies can obtain a form in the PHMSA Common Forms section of FedSTAR or by contacting the PHMSA State Liaison. Once PHMSA has reviewed and concurs with the request, each committee member will be provided additional details on travel arrangements. Requests may be denied if not submitted within the time frame mentioned above or if a prior travel reimbursement voucher has not been submitted by the representative to PHMSA Headquarters for process.

In general, PHMSA will provide airline tickets for the committee task team member and reimburse the traveler (not the State Agency) for other expenses at the standard government per diem rates. The federal lodging and per diem rates are located at: http://www.gsa.gov/portal/category/21287 and Airline City Pairs at: http://cpsearch/search.do?method=enter

To ensure invitational travel voucher requests are processed in a proper and timely manner, committee members need to submit the PHP Invitational Voucher Form as soon as they return from the meeting. The individual traveler, or group/committee designee, shall also submit a written summary of the meeting events within 30 days after the meeting to the PHMSA Director of State Programs. The written summary is not required if a PHMSA representative was in attendance at the meeting(s).

2 State Participation Requirements

State Agency participation in the underground natural gas storage safety program is based on voluntary submission of a Certification pursuant to Section 60105 of 49 U.S.C. Chapter 601 or of an Agreement pursuant to Section 60106 of 49 U.S.C. Chapter 601.

Under a *Certification*, the State Agency assumes inspection and enforcement responsibility with respect to intrastate facilities over which it has jurisdiction under State law. With a Certification, the State Agency may adopt additional or more stringent standards for intrastate facilities provided such standards are compatible (more stringent) than Federal regulations.

Under an *Agreement* the State Agency assumes inspection responsibility for facilities and reports probable violations to PHMSA for compliance action (See Section 5.1.9).

Under a Certification or Agreement, the State Agency may not subcontract underground natural gas storage safety-related work activities without prior approval from the Director of State Programs. If the State Agency does not apply for a Certification or Agreement, for a given year, the intrastate facilities within the state remain the responsibility of PHMSA to inspect and enforce the minimum federal regulations.

2.1 Section 60105 Certification

To qualify for Section 60105 of 49 U.S.C. Chapter 601 Underground Natural Gas Storage Certification the State Agency must meet the following requirements:

1. State entity has regulatory jurisdiction over the standards and practices for underground natural gas storage facilities;

2. The State Agency must have adopted each Federal safety standard applicable to underground natural gas storage facilities under its jurisdiction as of the date of the Certification. When a Federal standard is established within 120 days before the date of Certification, the State Agency must be taking steps pursuant to State law to adopt the standard.

3. The State Agency will inspect and enforce the minimum Federal regulations for underground storage that include inspections conducted by State employees meeting the qualifications established by PHMSA;

4. The State Agency must encourage and promote the establishment of a program designed to prevent damage by demolition, excavation,

tunneling, or construction activity to the underground natural gas storage facilities to which the Certification applies that subjects persons who violate the applicable requirements of that program to civil penalties and other enforcement actions, and addresses the elements in 49 U.S.C. Section 60134(b).

5. State Agency has the authority to conduct inspections and investigations and may require underground natural gas storage operators to provide records and reports.

6. State Agency may require underground natural gas storage operators to submit operations and maintenance plans and require plan amendments as necessary.

7. State Agency may provide for the enforcement of the safety standards by injunctive and monetary sanctions that are substantially the same as those provided by Sections 60120 (Enforcement) and 60122 (Civil penalties) of 49 U.S.C. Chapter 601. At a minimum, each state must have civil penalty amounts of $200,000 per day up to a maximum of $2,000,000 for a related series of violations as set out under 190.223 Maximum Penalties.

2.2 Section 60106 Agreement

By mutual agreement between PHMSA and the State Agency, a Section 60106 of 49 U.S.C. Chapter 601 Agreement permits the State Agency to undertake safety activities concerning intrastate underground natural gas storage facilities when the State Agency does not qualify for Section 60105 of 49 U.S.C. Chapter 601 Certification.

A State Agency conducting an underground natural gas storage safety program under a Section 60106 of 49 U.S.C. Chapter 601 Agreement inspects intrastate operators for compliance with safety standards. Under such an Agreement, the State Agency will conduct all underground natural gas storage safety program activities that the State Agency is allowed to conduct under Section 60105 of 49 U.S.C. Chapter 601 Certification except that, in the event of a probable violation(s) of the underground natural gas storage safety standards, the State Agency must notify PHMSA of the probable violation(s) and provide evidence in support of PHMSA's enforcement action against the operator. If a State Agency has an Agreement, PHMSA remains the responsible authority for all compliance actions (See Section 5.1.9).

To qualify for a Section 60106 of 49 U.S.C. Chapter 601 Agreement, the State Agency must:

1. Establish an adequate program for record maintenance, reporting, and inspection of underground natural gas storage facilities.

2. Establish procedures for the review of underground natural gas storage operation and maintenance procedures and plans that are substantially the same as required under Section 60108 of 49 U.S.C. Chapter 601. The State Agency review of procedures shall consider--

   A) relevant available underground natural gas storage safety information;

   (B) the appropriateness of the plan for underground natural gas storage;

   (C) the reasonableness of the plan; and

   (D) the extent to which the plan will contribute to public safety and the protection of the environment.

2.3 PHMSA's procedures to monitor, evaluate and reject a State Program's Certification.

PHMSA will conduct Program Evaluations and review Progress Reports to determine if a State Agency is meeting the Certification/Agreement requirements. If a State Agency is determined not to be meeting the Certification/Agreement requirements PHMSA may act to decertify a State Agency and assume inspection and enforcement over the intrastate facilities covered under the Certification/Agreement. Procedures to decertify a State Agency are described in Appendix P.

2.4 Project Specific Time Defined Agreement

PHMSA may request the State Agency assist in performing a variety of duties on an ad hoc basis for interstate facilities when mutually agreed upon by PHMSA and the State Agency. This assistance may include inspection of specific operators, inspection of construction, witness to repairs or testing, or investigation of incidents.

In some cases, PHMSA's request may involve immediate deployment of State Agency staff. To expedite the process, the Region Director or State Programs Director will call the State Agency's Program Manager to request that the State Agency act on behalf of PHMSA. If the State agrees to support PHMSA, the call will be followed by a letter formalizing the details of the Project Specific Time Defined Agreement (See Appendix B).

2.5 Joint Inspection of an Interstate Operator

At the request of a State Agency, PHMSA shall allow for a State Agency under a 60105 Certification to participate in the inspection of an interstate underground natural gas storage facility. Guidelines for the State Agency participation is as follows:

The State must have a 60105(a) Certification –

- The State must make a formal request to the Director State Programs at the following email address: zach.barrett@dot.gov. The state should list the Interstate Operator(s) which the state wants to participate in the inspection(s) with PHMSA.

- When the interstate operator is scheduled for inspection the PHMSA Lead Inspector will contact the State Program Manager to coordinate the State Participation – If the State cannot make the inspection dates PHMSA does not have to reschedule the inspection to accommodate the State.

- The Lead Inspector will communicate with the State Program Manager when communicating to the other inspection team members regarding the inspection dates.

- The State must have accomplished all required minimum inspection days for the previous Calendar Year.

- No inspection person–days are counted for these inspections.

- No travel or inspection time will be covered by the State Base Grant for these inspections.

- State Inspectors must take direction from PHMSA Lead Inspector.

- State may use the Inspection Assistant (IA) program to participate in the inspection or follow along with federal inspector using IA for the inspection.

- State may not retain inspection documents due to State Laws requiring documents to be made public which may be pre-decisional.

2.6 Certification/Agreement Forms

In September of each year, PHMSA makes available Certification/Agreement forms to each State Agency, which is included with the annual grant program application. These forms are provided electronically on the Federal State

Tracking and Reporting system (FedSTAR) (See Chapter 10). The electronic application is available over the internet to approved state personnel in direct support of that State Agency's Underground Natural Gas Storage Safety Program. Certification and Agreement forms will be completed online in FedSTAR, hardcopy documents printed from the FedSTAR system, signed by the appropriate State official and then mailed to PHMSA Headquarters at:

ATTN: Angela Sung
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Pipeline Safety PHP-50
1200 New Jersey Avenue, SE Second Floor E22-321
Washington, D.C. 20590

2.7 Progress Report

In February of each year, the State Agency must submit a completed Progress Report with attachments for the underground natural gas storage program for the previous calendar year activities. This report must be submitted to PHMSA headquarters at the address provided under 2.6 above. The attachments to the Progress Report are used in assessing State Agency program performance in conjunction with the results of the PHMSA annual Program Evaluation. A brief description of the Underground Natural Gas Storage Progress Report Attachments follows:

2.7.1 Attachment #1: State Jurisdiction and Agent Status

This attachment requires the State Agency to indicate those underground natural gas storage operator types and inspection units over which the State Agency has jurisdiction under existing state law.

2.7.2 Attachment #2: Total State Field Inspection Activity

This attachment requires the State Agency to indicate by operator type (Salt Cavern, Depleted Hydrocarbon Reservoir, or Aquifer) and inspection type as outlined in Section 5.1, the number of inspection person-days spent during the previous calendar year. Time counted for such activities (only for underground natural gas storage facilities subject to Part 192 regulations and performed by an individual listed as Inspector/Investigator on Attachment 7) should be reported as a maximum of one inspection person-day for each day devoted to safety issues, regardless of the number of operators visited during that day. (e.g. you may evaluate two operators in the same day and record each inspection visit as 0.5 person-day, or actual fraction of a day, for each operator

provided the total does not exceed 1.0 person-day). If the State Agency participated in a temporary Agreement for interstate facilities during the calendar year inspection person-days for those activities should be included for the appropriate inspection or investigation type.

2.7.3 Attachment #3: Facilities Subject to State Safety Jurisdiction

This attachment requires the business name and address of each underground natural gas storage operator subject to State Agency's jurisdiction as of December 31st of the previous year. The operators and inspection units listed should only include those as defined by federal underground natural gas storage regulations and should not include extended jurisdiction by state regulation.

2.7.4 Attachment #4: Underground natural gas storage Incidents/Accidents

This attachment requires a summary or report of incidents investigated by or reported to the State Agency meeting the federal reporting requirement as defined in 49 CFR Part 191. (PHMSA may collect data in different format – not included in CY2019 Progress Report)

2.7.5 Attachment #5: State Compliance Actions

This attachment provides a summary of probable violations of underground natural gas storage safety regulations, compliance actions and civil penalties initiated by the State Agency during the previous calendar year. The summary should not include counts for probable violations, compliance actions and civil penalties of State damage prevention laws/regulations.

2.7.6 Attachment #6: State Record Maintenance and Reporting

This attachment requires a list of records and reports maintained and required by the State Agency.

2.7.7 Attachment #7: State Employees Directly Involved in the Underground Natural Gas Storage Safety Program

This attachment requires a list by name, title, percent of time, months in program and qualification category of each inspector or supervisor directly involved in the underground natural gas storage safety program during the prior year. Furthermore, it requires a summary of the number of all staff (managers/supervisors, inspectors/investigators, technical and administrative) working on the underground natural gas storage safety program and the

person-years devoted to the program during the prior year. If a person listed as a Supervisor in Attachment 7 conducts inspection duties for which inspection person-days are included in Attachment 2, time spent as a Supervisor and Inspector/Investigator should be apportioned accordingly in Attachment 7. Individuals with no time spent in the program should not be listed. (See table 4.1 for State Inspector Qualification Categories)

2.7.8 Attachment #8: State Compliance with Federal Requirements

This attachment requires the State Agency to indicate whether it has adopted or is in the process of adopting the applicable Federal underground natural gas storage safety requirements. It also requests that the State Agency indicate the frequency its Legislature meets in general session. This information is used by PHMSA to determine whether applicable Federal regulations have been adopted within 24 months of the effective date or two general sessions of the State Legislature, whichever is longer.

2.7.9 Attachment #9 [RESERVED]

2.7.10 Attachment #10: Performance

This attachment asks each State Agency to outline any planned performance goals for the coming year and any accomplishments of past stated goals.

2.8 Responsibility To Assist PHMSA in the Work Management System

PHMSA utilizes the Work Management System (WMS) to generate tasks to create, update and process certain operator data and to manage intrastate inspection units. The operator data includes both interstate and intrastate UNGS facilities. PHMSA is dependent on state UNGS safety programs to manage the required tasks for intrastate UNGS facilities.

State UNGS Programs can access WMS through PHMSA's Off-Network Portal at https://portal.phmsa.dot.gov/PHMSAPortal2. When using the Off-`Network Portal, a Network/Portal UserName and Password must be entered.

2.9 Responsibility to use Inspection Assistant for Inspections

PHMSA utilizes the Inspection Assistant (IA) Software to document the inspections of UNGS inspection units. PHMSA requires State Agenies participating in the UNGS safety program to also utilize IA to document

intrastate UNGS inspections. States can obtain the IA software by contacting Dave Lykken at david.lykken@dot.gov to obtain an User Request Form necessary to establish an IA user account. One user request form is required for each prospective user. Email the completed User Request Form(s) to UserAccessRequest@napsr.net. The email must come from the State UNGS Safety Program Manager for internal control purposes. IA Support staff will confirm the employee's access via email and provided a link to the IA install page. The State Agency will likely require assistance from their IT department to install the IA application on employee computer devices. Once installed contact David Lykken to assist you with getting started and getting user training information.

3 State Regulatory Responsibility

3.1 Adoption of Federal Regulations and Requirements

A State Agency participating in the underground natural gas storage program under a Certification is required to adopt the Federal underground natural gas storage safety regulations and adopt future amendments or take steps to adopt such amendments into state regulations. Adoption of applicable Federal regulations and amendments may be automatic, require State rulemaking actions, or necessitate State legislative action. Amendments to the Federal regulations should be adopted into state regulations within 24 months of the effective date of the amendment or two general sessions of the State Legislature, whichever is longer. In addition, a State Agency may issue additional or more stringent standards concerning intrastate underground natural gas storage facilities if they are compatible (more stringent) than the Federal regulations. Federal pipeline safety regulations may incorporate Industry Standards by reference. Standards can be accessed by contacting Carrie Winslow – carrie.winslow@dot.gov. Only PHMSA may issue an interpretation of the minimum Federal regulations adopted by the State Agency. Request for interpretations of the minimum Federal regulations should be directed to the PHMSA Director of Standards and Regulations at:

Mr. John A. Gale
Director of Standards and Rulemaking
Office of Pipeline Safety
Room 24-310
1200 New Jersey Ave, SE
Washington DC 20590

3.2 Waiver of Federal Regulations

3.2.1 Interstate Underground Natural Gas Storage Facilities

Waivers of Federal regulations concerning interstate facilities may be considered only by PHMSA and must be published in the federal register.

3.2.2 Intrastate Underground Natural Gas Storage Facilities

An operator may request a waiver of the minimum federal UNGS regulations in accordance with 49 USC Section 60118. A State Agency may consider a waiver of underground natural gas storage safety requirements subject to PHMSA concurrence. A waiver may be granted when it is not practical for an

operator to comply with a regulation of general applicability. The information found in 49 CFR 190.341(c) provides basic information that should be included in the waiver request. The State Agency is encouraged to consult with PHMSA on the appropriateness of granting a waiver before formal action is taken. The State Agency should send the proposed waiver request and the contact information for the State technical expert assigned to the waiver review to the following group email: PHMSAOPSStateWaivers@dot.gov. PHMSA will assign a technical point of contact to work with the State Agency's technical expert throughout the State Agency's waiver review process. PHMSA may require additional considerations or conditions to be included in the State Agency's approval of the waiver. The inclusion of these considerations or conditions in the State Agency's written approval could avoid PHMSA's objection to the waiver during PHMSA's 60-day deliberative process.

If a State Agency finds a waiver request is consistent with underground natural gas storage safety and is justified, it may issue written approval under such terms and conditions as are appropriate. Written approval should include a statement of reasons for granting the waiver.

If a State Agency finds a waiver request is not consistent with underground natural gas storage safety or is not otherwise justified, it must issue written denial of the request. Written denial should include a statement of reasons for not granting the waiver.

A State Agency must notify PHMSA in writing by registered or certified mail of each waiver granted by the State. Each notice must provide the following information:

1. The name, address, and telephone number of the applicant

2. The safety regulation involved

3. A description of the underground natural gas storage facilities involved

4. The justification for approving the waiver, including the reasons why the regulations are not appropriate and why the waiver is consistent with underground natural gas storage safety

5. A copy of the State Agency's order or letter to the applicant

6. All correspondence concerning waivers should be addressed to:

   Mr. John A. Gale
   Director of Standards and Rulemaking
   Office of Pipeline Safety, Room 24-310

1200 New Jersey Ave, SE
Washington DC 20590

PHMSA will acknowledge receipt of each notice and consider each in the order it was received. PHMSA may provide further opportunity for public comment.

If PHMSA does not object to the waiver, it will so notify the State Agency. The waiver is effective upon approval by PHMSA or no action by PHMSA 60 days after the receipt of waiver from the State Agency. If, before a waiver is to become effective, PHMSA notifies the State Agency that it objects to the waiver, the action granting the waiver will be stayed. PHMSA will then allow the State Agency an opportunity to present its arguments with opportunity for a hearing. Thereafter, PHMSA will make the final determination whether the waiver may be granted and will notify the State Agency of its decision.

In the event of an emergency waiver, the PHMSA written notice and hearing requirements may be omitted if the State Agency finds that notice is impracticable, unnecessary, or not in the public interest. However, the State Agency must immediately notify PHMSA's Director, State Programs of its decision to grant the emergency waiver and follow up with written notification to the Director within 48 hours. After granting the emergency waiver, the State Agency must investigate the circumstances causing the specific emergency and require the operator to take action to prevent its reoccurrence in the future. Each State Agency should follow the emergency waiver methods prescribed in section 60118(c) (2) of the Pipeline Safety Act (See Appendix A). For all waivers in effect, State Agencies are required to verify that the conditions of those waivers are being met. Where appropriate, State Agencies must terminate a waiver if it is no longer valid. For all waivers that are no longer in effect (e.g. project is completed, time frame has expired, State Agency termination, code change), State Agencies must notify PHMSA Standards and Regulations Division that the waiver is no longer in effect.

4 Personnel

4.1 State Agency Minimum Required Inspection Activity

To meet the State Agency's commitment to underground natural gas storage safety, each State Agency must maintain an adequate, base-level number of underground natural gas storage safety inspection activity days. The inspection activity level is arrived at by each state program conducting an operator by operator analysis. The basis of the inspection activities will include the following inspection types, as applicable.

- Standard Inspections – Procedures, Records, Field
- Specialized Inspections
- Design, testing and construction Inspections
- Investigating Incidents and Accidents
- Compliance Follow-up
- Drug and Alcohol Inspections

The inspection activity level derived pertains only to the minimum level of underground natural gas storage safety inspection activity. The level does not include supervisory or clerical personnel, nor does it include staff requirements for inspection of underground natural gas storage facilities that are not covered by 49 U.S.C. Chapter 601.

The inspection activity needed for each operator will be developed by analyzing each applicable type of inspection and applying the following criteria:

- Determination of inspection duration and frequency based on experience with the operator.
- Determining the number of inspection days needed to complete each inspection activity.
- Establishing the optimum intended inspection interval based on the need and past experience. This interval will consider any known risks and any other relevant factors.

- Inspection activity should include all the individuals necessary for performing the inspection (e.g. if you send 2 inspectors for 5 days of inspection each, the total would be 10 inspection person-days).

- Each State Agency will also consider any unique considerations valid to the operator which may not be risk related. (Such as travel distance to conduct inspections, etc.)

The minimum number of required Inspection Days will be determined and communicated to each State Agency after PHMSA's Underground Natural Gas Storage Safety Program matures and development of inspection protocols and other necessary information to determine a minimum inspection effort is completed.

4.2 Allocation of Effort

Each full-time underground natural gas storage safety inspector must devote a minimum of 85 inspection person-days (see definition) to underground natural gas storage safety compliance activities each calendar year. Staff that devotes only a portion of their time to compliance activities should produce a corresponding percentage of inspection person-days. The level of inspection effort reported by the State Agency will be reviewed by PHMSA during the annual Program Evaluation of the State Agency's Underground Natural Gas Storage Safety Program.

4.3 Training

The PHMSA Division of Inspector Training and Qualifications (TQ) provides nationwide training and technical assistance in support of assuring safety in the transportation of gas and hazardous liquids in the nation's pipelines and UNGS facilities. TQ develops and delivers many training courses that are directly related to the enforcement of the minimum federal safety regulations. Instructors for these courses are permanent TQ employees as well as federal, state, and contract associate staff.

TQ's pipeline safety training is performance-oriented and consists of lectures, written material, group discussion, and video presentations. Each course offered focuses on a specific area of the minimum federal safety regulations. Students apply classroom instruction to practical scenarios by participating in group and individual "hands-on" lab exercises.

4.3.1 Required Training

A TQ course listing and table of required training is found in Appendix C. To ensure each inspector has required knowledge of all applicable federal UNGS safety regulations, student inspectors must attend all program specific courses within a 3-year period. The 3-year time-to-completion period may be extended to 5-years if students are required to retake courses to successfully meet academic standards. The time-to-completion period begins upon the student's successful completion of the first course in their respective safety program. The first required course should be scheduled as soon as practical after employment of the inspector. In the event a required course is not scheduled by TQ within the 3-year completion period, an inspector will not be deemed unqualified if they are registered or waitlisted for the course(s) by TQ. (for failure and retesting see 4.3.2).

Desired learning outcomes and course design criteria often require that foundational Instructor-led (IL) and/or Distance Learning (DL) courses are developed and included as prerequisites to another IL or DL course.

In such cases, all course prerequisites **must** be completed successfully before a student can attend training classes. However, if an IL or DL course prerequisite is established after a student has completed the training class before the new prerequisite requirement was established, they will not be required to complete the new IL and/or DL courses. TQ strongly recommends that those students take the new courses to enhance their knowledge and earn credit for continuing education.

4.3.2 Course Re-Testing

If a student fails a course, TQ recommends they retake the course in its entirety and will automatically waitlist the student for the subject course.

However, TQ will consider allowing a student who failed a course to retake the course written exam in lieu of repeating the course if the following conditions are met:

1. The student's initial overall score was within ten percent of mastery level (the minimum passing score outlined in the course syllabus).
2. Achievement of a higher retest score will raise the overall grade to the required minimum passing score.
3. The student's program manager (PM) emails a request for re-testing to the Director of PHMSA Training and Qualifications.

If one or more of the above conditions are not met, the student is required to reenroll and complete the failed course in its entirety.

If a PM retest request is approved, the retest must be taken within sixty days of the failure and be proctored online by ProctorU. TQ will schedule and pay the ProctorU expenses.

4.3.3 Waivers from Training

PHMSA will consider granting a waiver from the recommended 3-year training period or from initial attendance at individual TQ courses on a case-by-case basis. Descriptions of extension of time and permanent waivers follow.

4.3.4 Extension Of Time Training Waiver

A State Agency may request an extension of time waiver if an inspector cannot complete a required course within the 3-year period because of serious illness, maternity leave, or uncontrollable workload demands (e.g., involvement in accident investigation). If an inspector cannot complete a required course within the 3-year period because class slots are not available, the State Agency must include TQ verification of the class status and the date of the State Agency's registration submittal.

4.3.5 Permanent Training Waiver

A State Agency may request a permanent waiver if an inspector has had previous training, education, or on-the-job experience that provides an equivalent level of knowledge presented in the course. The State Agency must clearly demonstrate that the inspector's training is equivalent to the required TQ training. Additionally, a clear case must be made why taking the required training would result in an undue burden to the State Agency. If an inspector takes a similar job in another State Agency's underground natural gas storage safety program, TQ training credits will be transferred to the new State Agency.

4.3.6 Procedures For Requesting A Training Waiver

The Program Manager petitions the Director of State Programs requesting waiver of the requirements. This request includes justification and must specify whether it is for an extension of time or permanent waiver. An extension of time waiver should not be requested sooner than the calendar year within which the 3-year grace period ends. An extension of time waiver request should include the proposed date to which the training requirement would be extended.

The Director of State Programs Division reviews the package, with concurrence of the Director of Training and Qualification Division, and decides on whether to grant the waiver. Written approval or denial is sent to the requesting State Agency. A copy of this response is sent to TQ. If denied an

appeal may be submitted to the PHMSA Associate Administrator of Pipeline Safety for further consideration.

4.4 Continuing Education and State Inspector Mentoring Program

In addition to the required TQ underground natural gas storage safety courses, the State Agency is encouraged to continue to send its safety inspectors to TQ classes, industry-sponsored seminars, and other underground natural gas storage safety courses. Such a continuing education program will provide for a well-rounded, technically up-to-date training experience.

In coordination between PHMSA and State Agencies participating in PHMSA's Underground Natural Gas Storage Safety Program, a mentoring program for state inspectors is established to provide additional training opportunities. The program is described in Appendix H. The program described in Appendix H allows for an individual to customize the additional training to meet their development needs. To initiate the process, the application in Appendix H can be completed by the requesting training through mentoring for an individual(s) and submitted to PHMSA's Director of State Programs for approval.

4.5 State Program Personnel Changes and Qualifications

Any official change in the Program Manager shall be communicated immediately to PHMSA Director of State Programs. Any contact information, names of personnel affected and transition plan shall be communicated, if known. This notification shall be in writing and from the head of the State Agency. As a courtesy, written communication or an email should be provided to PHMSA Director of State Programs regarding any change in the head of a State Agency.

In addition, each State Agency shall notify PHMSA TQ and PHMSA Director of State Programs as soon as practical of any changes to their underground natural gas storage inspection staff so training records and database(s) access may be updated accordingly. Training requests for inspectors should be added immediately into the TQ training database so enrollments can be made into required TQ training courses so resources are made available to accommodate the needs of all State Agencies. The PHMSA Director of State Programs will request the appropriate database administrator to remove access for any departed inspection staff member(s). State Agencies can obtain a form in the PHMSA Common Forms section of FedSTAR for requesting the removal of employees from the PHMSA databases.

4.6 Individual Qualifications

Each State Agency should be staffed with qualified personnel who are experienced in underground natural gas storage safety operations and/or have an educational background in engineering or related technical fields. Personnel with less than these minimum qualifications may be hired provided the State Agency takes immediate steps (scheduling TQ classes as available) to provide training opportunities to meet the required level of competency. Staff should not be permitted to conduct independent activities until it is determined that they have demonstrated the ability and proficiency to perform their duties satisfactorily. PHMSA has defined five qualifications categories for program staff. (See Table 4-1)

4.6.1 Personal Qualification Standards (PQS)

The PHMSA TQ Division promotes PQS for all inspectors. Currently these standards are not required but Program Managers may, at their discretion, subscribe to the following PQS process for tracking their inspector's learning while performing job tasks that align with course objectives from courses they have completed.

a. Program Manager submits an enrollment request to TQ for each inspector subscribing to the PQS process

b. TQ will enroll the inspector(s)

c. TQ will upload to the LMS a PQS checklist for each course the inspector has completed

d. Program Manager will plan OJT for the inspector and include all PQS checklists

e. Program Manager (or qualified proxy) will observe the inspector performing the required tasks

f. Program Manager will log into the LMS and mark each task complete for that inspector

g. TQ will report to transcript a PQS completion for each set of tasks

Table 4-1 - Categories and Qualifications for State Agency Inspectors

Category		Qualifications
I		• Has an engineering degree from an accredited engineering school or is a registered professional engineer *and* • Has a minimum of 3 years' experience in underground natural gas storage or the enforcement of underground natural gas storage regulations at the Federal or State level *and* • Has received a completion certificate for all the applicable training at TQ or has received a waiver from PHMSA for applicable training not taken
II	A	• Has an engineering degree from an accredited engineering school *and* • Has received a completion certificate for all the applicable training at TQ or has received a waiver from PHMSA for applicable training not taken
	B	• Is a registered professional engineer *and* • Has received a completion certificate for all the applicable training at TQ or has received a waiver from PHMSA for applicable training not taken
	C	• Has a minimum of 5 years of experience in underground natural gas storage or the enforcement of underground natural gas storage regulations at the Federal or State level *and* • Has received a completion certificate for all the applicable training at TQ or has received a waiver from PHMSA for applicable training not taken
	D	• Has a minimum of 10 years of experience in underground natural gas storage or the enforcement of underground natural gas storage regulations at the Federal or State level *and* • Has received a completion certificate for at least half the applicable training at TQ or has received a waiver from PHMSA for applicable training not taken
III		• Has a college degree or • Has a minimum or 5 years of experience in underground natural gas storage or the enforcement of underground natural gas storage regulations at the Federal or State level
IV		• Has less than 5 years of experience in underground natural gas storage or the enforcement of underground natural gas storage regulations at the Federal or State level
V		• Has less than 1 year of experience in underground natural gas storage or the enforcement of underground natural gas storage regulations at the Federal or State level

4.7 Program Manager Training

Each State Agency shall ensure the Program Manager or Supervisor is knowledgeable of underground natural gas storage safety technology, enforcement applications, and administrative procedures (i.e. PHMSA Grant-in-aid process, etc.). Each Program Manager or Supervisor shall obtain the necessary knowledge by completing the mandatory TQ courses listed below. If Program Managers or Supervisors also perform inspections, they must meet the requirements for inspectors contained in Section 4.3.1. Program Managers or Supervisors will have a period of five years from the latter of January 1, 2019 or the date of their appointment to complete the required training courses. Supervisor means those individuals as defined in the Glossary. If any post test score of a required course is below 60, the individual must reenroll in the next available class for the required course and achieve a post test score of 70 or above (If the post test score is between 60 and 69 a posttest retake may be completed - see 4.3.2). Course prerequisites must also be met before attending the training class.

- **PHMSA-PL-1325** ***Safety Evaluation of Underground Storage Programs***
- **PHMSA-PL3DA** ***Drug and Alcohol Testing for the Pipeline Industry WBT***

Chapter 60124 requires PHMSA to report the qualifications and number of State Agency pipeline safety staff in its bi-annual report to Congress. This information is collected on Attachment #7 of the annual Progress Report.

4.8 New Program Manager Orientation

PHMSA provides an orientation session for newly appointed Program Managers. PHMSA may also conduct an orientation session for existing Program Managers upon request. Requests for orientation sessions must be provided to the PHMSA Director of State Programs. Orientation sessions will be scheduled upon the availability of resources.

5 Inspection and Compliance Program

5.1 Inspection

Inspections of underground natural gas storage operators must be made in a positive, constructive, and comprehensive manner. States may obtain technical support for addressing any inspection related issues by contacting your State Liaison, Region Director, or Director of State Programs. The effectiveness of the State Agency's underground natural gas storage safety efforts depends on information obtained through inspections and evaluation of operator compliance. Each State Agency must, therefore, have a current written plan for its underground natural gas storage safety program. At a minimum, the plan should include the following eight elements:

5.1.1 Operator Data

Each State Agency must maintain a list of the name and mailing address of each jurisdictional operator. The official address for each operator should be the one to which all underground natural gas storage-safety-related correspondence is sent and considered the official notice to the operator. In addition, information about the underground natural gas storage location and/or service areas should be maintained.

5.1.2 Procedures for determining inspection priorities

Each State Agency must develop a risk-based procedure for scheduling when an Inspection Unit is to be evaluated. PHMSA has developed web based training "PHMSA-PL1RA Introduction to Risk Assessment Methods" to provide background material for understanding risk located at tqonline.sabanow.net/Saba/Web/Main under Web-Based Training. Appendix S (Under Development) of this document contains a sample risk prioritization model that can be followed to incorporate a risk based procedure into a written plan. This procedure should provide for the establishment of an inspection priority list and consider the following data-driven criteria:

- The length of time since the last inspection. A State Agency must complete an inspection of each operator's inspection units within a five-year time interval for the following inspection types:

    1. Standard (General Code Compliance)

2. Drug and Alcohol

- The history of the Inspection Unit (leak history, prior noncompliance, accident/incident history, and any other information available from the operator's annual reports, etc.)

- Internal and external events affecting the Inspection Unit (construction, recent changes in operator personnel or operating procedures, etc.)

- PHMSA Risk Ranking of UNGS Facilities

- Extent of Integrity Testing

5.1.3 Written procedures/guidelines for Inspectors covering each type of required inspection.

To ensure the efficient, effective and consistent completion of state conducted inspection activities the State Agency Underground Natural Gas Storage Safety Program must develop detailed written procedures for reviewing operator compliance with the State and Federal underground natural gas storage safety regulations.

The procedures must provide detailed guidance for inspectors conducting each type of inspection and when appropriate cover the following key inspection activities:

Pre-Inspection Planning

Those activities conducted by the inspector prior to conducting a quality in-depth inspection. Pre-Inspection Planning should include: 1) Directions for acquiring the appropriate documents, forms, equipment, and personal protection equipment needed for the type of inspection being conducted; 2) Directions for reviewing the operator's available information in state files and state/federal databases to become familiar with the operator's system and inspection issues; 3) Conduct a review of previous inspection reports including violations cited to identify past inspection issues; the review may require additional follow-up actions; and 4) Directions for providing operator notification of the inspection, coordinating expectations with the operator, and scheduling the inspection visit. At times there is an opportunity for individual State agencies to collectively conduct inspections of operators that have intrastate underground natural gas storage facilities in multiple states. In this situation, PHMSA encourages State agencies to coordinate with other State Agencies to conduct joint inspections of certain operator plans that are consistent for the participating states. A State Agency wanting to conduct a joint inspection with

another State Agency that occurs outside of their home state can contact the regional PHMSA State Programs Liaisons to assist with any coordination activities.

Occasionally there is an opportunity for a State Agency to collectively conduct an inspection with PHMSA when regulated assets are covered under the same operator programs. In this situation, PHMSA encourages State Agencies and PHMSA Regions to coordinate to conduct joint inspections. A State Agency wanting to conduct a joint inspection with PHMSA that occurs within or outside of their home state can contact the regional PHMSA State Programs Liaisons to assist with any coordination activities.

Inspection Activities

Those activities required for conducting a thorough and comprehensive inspection. Inspection Activities should include: 1) Directions for conducting an opening interview with the operators' representatives present at the inspection; 2) Directions for reviewing operator procedures, records, and underground natural gas storage facilities in the field; 3) Directions for completing inspection documentation; 4) Directions for conducting an exit interview with the operator's representatives; 5) Instructions for documenting the potential enforcement issues found during the inspection and discussion with the operator's representatives on the findings, and; 6) Directions on access to operator's records, underground natural gas storage facilities or requesting from the operator clarification on documentation.

Post-Inspection Activities

Those activities required after an inspection is completed. Post Inspection Activities should include: 1) Verification all required data points are uploaded or entered into the proper state and federal data bases within 60 days; 2) Instructions for the gathering and updating new information concerning the operator; 3) Detailed instructions for completion and filing all necessary paperwork as a result of the inspection, including time limits for processing probable compliance/enforcement action; 4) Detailed instructions for the retention of inspection records and documents including date of destruction if required.

5.1.4 Written procedures that provide for methodical, systematic, comprehensive, and consistent inspections.

To properly conduct an inspection of an operator's facilities, an inspector shall utilize an inspection form or checklist referenced to the applicable Federal and/or State regulations. Federal Inspection forms will be updated at times

when PHMSA issues regulatory changes. The most recent inspection form revision can be accessed in the PHMSA Common Forms section of FedSTAR. At a minimum, an inspection plan should cover the following types of inspections:

- Standard (General Code Compliance) – a comprehensive and thorough review of an operator's compliance records, operation and maintenance plans/procedures, emergency procedures, drug and alcohol programs, and underground natural gas storage facilities.

- Specialized – inspections targeting specific code requirements

- Construction – this includes construction activities, evaluation of design and the integrity testing of new or replacement facilities.

- Investigating Incidents – this would include any Incident investigation activities including any pertinent follow-up investigative activities.

- Compliance Follow-up – inspections or evaluations to determine if an operator has completed actions from a previous inspection or compliance action.

5.1.5 Procedures for notifying an operator when noncompliance is identified.

Upon completion of an inspection, the State Agency shall— (1) within 30 days, conduct a post-inspection briefing with the owner or operator of the underground natural gas storage facility inspected outlining any concerns; and (2) within 90 days, to the extent practicable, provide the owner or operator with written preliminary findings of the inspection (Inspection findings are defined as being the conclusions reached after the inspectionn is complete). An inspection, where a noncompliance is found, is considered complete as soon as practical after all data or necessary information is reviewed and/or gathered to substantiate whether nor not compliance requirements have been met. This may be prior to the completion of the review of all compliance requirements of an operator and the State Agency should ensure findings are issued promptly after the review of any individual items is complete. In the event there are no findings associated with an operator inspection, the State Agency should refer to its procedure on inspection closure. State Agencies will be required to report the number of days they have exceeded the 30 day or 90 requirements for an individual operator when requested by PHMSA. The written notice shall be to a company officer if the operator is a private

corporation or to the chief executive officer of a locality (e.g. – mayor of a municipality, chairman of the board of a quasi-governmental unit such as a utility district). The written notice should also include applicable civil penalties in which the operator may be subject to for failure to comply with regulations. The operator shall be notified immediately of any hazardous or unsafe situation discovered during the inspection. The State Agency compliance procedures must include that the operator provide a written response within a specified time period for correcting probable violations. The procedures shall include the types of enforcement proceeding available to the State. Examples of enforcement proceedings may be Warning Letters, Notice of Probable Violation, and Compliance Orders. Each enforcement proceeding will have a brief description of the process and when it should be used.

5.1.6 Procedures for follow-up activities to ensure that proper corrective action has been taken by the operator within a specific time frame after notification of noncompliance.

Depending on the seriousness of the noncompliance and the circumstances involved, a written response from the operator documenting the corrective actions taken may be sufficient. The State Agency must conduct follow-up actions when noncompliance is discovered during an inspection. The determination of the appropriate procedure for ensuring that all noncompliance is corrected is the responsibility of the State Agency. However, the State Agency must maintain a complete record of each noncompliance found and have a review procedure that will ensure that proper and timely follow-up activity has been completed for each noncompliance. Procedures should outline when the program considers probable violations are closed. This information will be reported on Attachment 5 of the Progress Report. Probable violations still pending at end of each calendar year will be reported as carryover probable violations on the Progress Report Attachment 5.

5.1.7 Recordkeeping procedures to document the results of inspection, follow-up, and compliance actions taken.

The State Agency must keep records of all underground natural gas storage safety inspections and follow-up activities. Inspection records should include the inspection dates, the operator/inspection unit, the name of the inspector, the location and type of facilities inspected, the names and titles of operator staff contacted at the inspection unit, the regulation sections checked for compliance, and the resulting evaluation conclusions. Follow-up records should include all correspondence or other contact between the State Agency

and the operator, the results of follow-up inspections, and other information necessary to demonstrate that the noncompliance has been corrected.

An important aspect of any State Agency's compliance program involves the gathering of the necessary evidence for documenting noncompliance. After each inspection, the findings should be documented and include an account of the situations encountered during the inspection and a copy of the inspection checklist. The documentation must identify and describe each regulation with which the operator is believed to be in noncompliance. Copies of relevant operator records, statements from operator personnel, photographs, calculations, and all other data pertaining to each issue of noncompliance should be made a part of the documentation.

5.1.8 Procedures for State Agencies with a Section 60105 Certification

When formal compliance action is not deemed appropriate, the State Agency may take informal action such as notification letters or reports detailing noncompliance discovered. The notification letters should contain a statement of the State Agency's enforcement authority and authorized civil penalty amounts provided by state statute. In informal actions, the operator should be provided an opportunity to respond to the allegations. Because of the wide variation in State laws and administrative procedures, each State Agency must summarize its formal compliance process in the State Agency's written program procedures.

5.1.9 Procedures for State Agencies with a Section 60106 Agreement

A State Agency operating under the authority of an Agreement of 49 U.S.C. Chapter 601 is a limited representative of PHMSA. A copy of the inspection documentation identifying a probable non-compliance along with associated evidence, in a format acceptable to the PHMSA UNGS Team, must be submitted within 60 days of the end of the field inspection to Catherine Washabaugh, PHMSA at: catherine.washabaugh@dot.gov or mailing address below. The State Agency should also advise the operator that there is a reason to believe that a possible noncompliance exists and that this issue has been referred to PHMSA for further action.

Catherine Washabaugh
Department of Transportation - PHMSA
Office of Pipeline Safety - Eastern Region
840 Bear Tavern Road, Suite 300
West Trenton, NJ 08628

If, after reviewing the available information, PHMSA determines that a noncompliance does exist, PHMSA will notify the operator in writing and proceed with appropriate compliance action. The State Agency will be sent a copy of the notice letter and will be kept informed of the case progress and resolution.

5.2 PHMSA Orders to Operators

If PHMSA decides that an underground natural gas storage facility is hazardous, PHMSA will order the operator to take necessary action. On occasion, PHMSA will waive the requirements for notice and a hearing, and will immediately issue a Corrective Action Order. This action is taken when PHMSA decides that failure to issue an order expeditiously would result in serious harm to life, property, and/or the environment. After the order is issued, the operator will have an opportunity for a hearing. If the issues affect several operators PHMSA may issue an Emergency Order requiring corrective actions to be taken to protect life, property, and the environment.

6 Failure Investigation and Safety-Related Conditions

6.1 Investigation of Underground Natural Gas Storage Failures

Pursuant to Federal/State regulations, a State Agency shall conduct an investigation of each significant or reportable incident involving jurisdictional underground natural gas storage facilities. The primary objective of the investigation activities is to identify the probably casuse of the incident and minimize the possibility of recurrence for the operator and other operators under the state's jurisdiction and to institute enforcement action where noncompliance with the safety standards has occurred.

PHMSA will notify the State Agency when it receives a National Response Center (NRC) report of an incident involving an underground natural gas storage facility in that State. PHMSA's Accident Investigation Division (AID) National Pipeline Incident Coordinator (NPIC) will relate all details of the failure provided to PHMSA. The NPIC's goal is to initiate the investigation within 15 minutes after receipt of a NRC incident report. If the State Agency cannot be reached promptly, the NPIC will contact the operator directly. For less time-sensitive incidents, if the State Agency cannot be reached, the NPIC will wait one hour before directly contacting the operator. The NPIC may call the operator directly when the Federal/State jurisdiction is uncertain. Upon notification of a reportable incident from the operator, the State Agency may make an immediate e-mail statement to the NPIC at PHMSAAccidentInvestigationDivision@dot.gov that they have received the report, are deploying or not deploying to the incident site to investigate, and are working to gain additional information to provide to the NPIC. During the telephonic investigation phase, the State validates preliminary information, obtains additional information, evaluates the severity of the incident and the underground natural gas storage operator's response, and disseminates the information to the NPIC.

The State Agency and AID staff should maintain close contact until the investigation is completed. The State Agency should communicate its plans for investigating the incident to the AID at **(888) 719-9033** and provide updates as directed by the AID.

Because Federal and State authority varies and because the PHMSA and the National Transportation Safety Board (NTSB), have authority regarding

underground natural gas storage failure investigations, attention must be focused on the jurisdictional responsibilities during investigations.

On-scene investigations:

For intrastate underground natural gas storage incidents where the State is the lead regulator, PHMSA typically only participates in the on-scene investigation if an event results in a fatality or significant evacuation of the population, if the State requests assistance, or if the NTSB or other federal agency deploys.

For interstate underground natural gas storage incidents where the State is an interstate agent, the AID Director will decide whether AID or the State will lead the on-scene investigation, but the State will always have the option to participate.

A State Agency may investigate a failure on an underground natural gas storage incident subject to regulation by PHMSA if the AID Director establishes a Time Defined Project Specific Agreement with the State.

Irrespective of the team composition, the chain of command and communication channels remain the same for PHMSA staff. The PHMSA Lead On-scene Investigator reports to the AID Director for all issues related to the incident. All communications to and from the field are channeled through the NPIC. When the State is the lead regulator, they report up through State chain of command and provide the NPIC with updates.

On-scene team members' roles and responsibilities are provided in Table 1: Responsibilities Matrix for On-Scene Investigations. The responsibilities for team members depends on who is the lead regulator and the composition of the on-scene team.

- State jurisdiction (under 49 USC 60105 Certification)
- State jurisdiction (under 49 USC 60106 Agreements)
- PHMSA jurisdiction
- NTSB deploys

Table 1 - Responsibilities Matrix for On-scene Deployments

Responsibilities Matrix for Personnel at On-scene Investigations	Lead Investigation	Support Investigation	Write Failure Investigation Report*	Complete CAO Data Report*	Complete Violation Report*	Inspect for Compliance	Lead Oversight of RCFA	Oversight of Enforcement Actions Including Return-to-Service Plan
State jurisdiction (under 60105 certifications)								
State Pipeline Safety Agency Only	State	NA	NA	NA	NA	State	State	State
State and AID	State	AID	NA	NA	NA	State	State	State
State and Region	State	Region	NA	NA	NA	State	State	State
State, AID, and Region	State	Both, AID Lead for PHMSA	NA	NA	NA	State	State	State
State jurisdiction (under 60106 agreements)								
State Pipeline Safety Agency Only	State	NA	State	Region	Region	State	State	Region
State and AID	Event Specific	Event Specific	AID	AID	AID	State	State	Region
State and Region	Event Specific	Event Specific	Region	Region	Region	State	State	Region
State, AID, and Region	Event Specific	Event Specific	AID	Region/ AID	Region/ AID	State	State	Region
OPS jurisdiction								
AID Only	AID	NA	AID	AID	AID	Region	AID	Region
Region Only	Region	NA	Region	Region	Region	Region	Region	Region
AID and Region	AID	Region	AID	Region/ AID	Region/ AID	Region	AID	Region
NTSB deploys								
State (60105) and AID	NTSB	State	NA	AID	AID	State	NTSB	State
State (Interstate Agent) and AID and/or Region	NTSB	Both, AID Lead for PHMSA	NA	Region and/or AID	Region and/or AID	State	NTSB	Region
AID	NTSB	AID	NA	AID	AID	Region	NTSB	Region
AID and Region	NTSB	Both, AID Lead for PHMSA	NA	Region/ AID	Region/ AID	Region	NTSB	Region

*Or State's equivalent form. **NTSB leads the investigation and has priority over others' investigation. They coordinate resources and prepare the written investigation report. PHMSA may obtain information directly from parties involved in, and witnesses to, the failure, provided they do not interfere with the NTSB's investigation. PHMSA does not write a report when NTSB deploys.

NTSB will also investigate intrastate underground natural gas storage incidents under their safety authority, so State Agency staff should cooperate in their investigation and be aware of the NTSB's responsibilities and authorities. In those investigations of intrastate facilities where a State Agency and the NTSB participate, the NTSB and State Agency authority is concurrent. The State may choose to be a Party to the NTSB investigation, but should also conduct its own independent investigation of the incident to identify violaitons of the federal and state regulations. The State Agency should execute its enforcement responsibilities regardless of NTSB involvement. PHMSA's Accident Investigation Policy (AIP) which provides further documentation of Federal/State cooperation resides in Appendix E.

NTSB Authority:

The National Transportation Safety Board is an independent Federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation – railroad, highway, marine and pipeline. The NTSB determines the probable cause of the accidents and issues safety recommendations aimed at preventing future accidents. In addition, the NTSB carries out special studies concerning transportation safety and coordinates the resources of the Federal Government and other organizations to provide assistance to victims and their family members impacted by major transportation disasters.

The NTSB designates other organizations or corporations as parties to the investigation. The NTSB has complete discretion over which organizations it designates as parties to the investigation. Only those organizations or corporations that can provide expertise to the investigation are granted party status and only those persons who can provide the Board with needed technical or specialized expertise are permitted to serve on the investigation; persons in legal or litigation positions are not allowed to be assigned to the investigation. All party members report to the NTSB. Eventually, each investigative group chairman prepares a factual report and each of the parties in the group is asked to verify the accuracy of the report. The factual reports are placed in the public docket.

Safety recommendations are the most important part of the Safety Board's mandate. The Board must address safety deficiencies immediately, and therefore often issues recommendations before the completion of investigations.

6.2 Basic Investigative Procedures

To conduct an effective incident investigation, State Agency staff must be familiar with basic investigative procedures. An investigation requires a thorough knowledge of the design, construction, operation, and maintenance factors involved in underground natural gas storage safety. State Agencies may request technical support from PHMSA for conducting incident investigations by contacting the State Liaison or Director of State Programs.

6.3 Incident Investigation Procedures

Each State Agency should keep adequate records of notifications of all incidents received. If an onsite investigation of an incident was not made, the state should obtain sufficient information by other means to determine the facts and support the decision not to go on-site. Each State Agency should also have a mechanism for receiving and responding to after-hours notifications as necessary.

Investigations shall be thorough with conclusions and recommendations documented in an acceptable manner. In addition, Certified State Agencies should initiate any applicable enforcement action for violations found during incident investigation(s). Each State Agency with an Agreement should assist PHMSA in gathering evidence necessary to support enforcement actions. State Agencies should be taking appropriate follow-up actions related to the operator incident reports to ensure accuracy and that the operator's final report has been received by PHMSA.

6.4 Safety-Related Conditions

An underground natural gas storage operator is required to file a Safety-Related Condition Report (SRCR) with PHMSA under 191.23 and 191.25 whenever a condition exists that cannot be corrected within 5 working days after the operator determines that a condition exists but not later than 10 working days after the operator discovers the condition.

The State Agency will receive new SRCR alert e-mails from the Work Management System (WMS) and will review the SRCR the same business day to identify reports that warrant immediate investigation by the State Agency. The State Agency should make contact with the operator and create the first Note within 10 business days of the SRCR being sent to the State Agency

7 State Agency Program Performance

PHMSA uses two means to assess a State Agency's overall performance in the underground natural gas storage safety program - an annual Program Evaluation, and a review of information attached by the State Agency to its annual Progress Report. The evaluation is used primarily to determine performance (e.g., operating practices, quality of State Agency inspections, investigations, compliance actions and adequacy of recordkeeping). The Progress Report attachments are used primarily to determine the State Agency's compliance with program requirements (e.g., extent of jurisdiction, inspector qualifications, number of inspectors, number of inspection person-days, adoption of applicable Federal regulations and attendance at Federal/State meetings). A State Agency's performance is the major factor considered in allocating grant-in-aid funds each year.

7.1 Annual Program Evaluation

The PHMSA annual Program Evaluation is a review of the State Agency's underground natural gas storage safety program. It includes an examination of State Agency policies, plans, procedures, and records of the previous calendar year as well as the observation of the field inspection of an underground natural gas storage operator.

PHMSA communicates changes to the Program Evaluation form with the Program Managers prior to the beginning of each calendar year. PHMSA will make available a copy of the final form to each State Agency in the PHMSA Common Forms section of FedSTAR. PHMSA PHP-50 personnel should notify the State Agency in advance of the schedule for the annual Program Evaluation to ensure that the State Agency has adequate lead-time to prepare.

The State Agency's underground natural gas storage safety program will be evaluated for conformance with the procedures in this manual as well as any other specific policies and procedures PHMSA provides to the State Agency. The Program Evaluation will include the following:

7.1.1 Verification of Progress Report attachments

PHMSA PHP-50 personnel will review for completeness and accuracy the information provided by the State Agency in the attachments to its most current Progress Report.

7.1.2 Record review

PHMSA PHP-50 personnel will review the administration of the program and associated records to support program activities. PHMSA PHP-50 staff will

also evaluate the State Agency's financial/budget information submitted in support of the grant-in-aid funding.

7.1.3 Field inspection

PHMSA PHP-50 personnel will observe the State Agency's inspection of at least one intrastate Inspection Unit. If possible, a different inspector, operator, and geographic area should be observed each year.

7.1.4 Communication of Findings to State Program

PHMSA PHP-50 will conclude the Program Evaluation with a verbal performance review addressing major strengths and weaknesses of the program. Within 60 days after the on-site review, the Director of State Programs should send a letter to the State Agency's Chairperson (or equivalent) with a copy to the Program Manager detailing the program's effectiveness in meeting the terms in the State Agency's Certification/Agreement and any policy problems (e.g., overall program performance, jurisdiction status over intrastate operators, staffing level, equipment to carry out program functions, major budgetary or travel restrictions, initiative in seeking necessary legislation or adopting required regulations). Where appropriate, the letter will include recommendations for program improvement. If required, the State Agency's Chairperson will be requested to respond in writing within 60 days and describe actions the State Agency proposes to take to address program deficiencies. The Director of State Programs, when appropriate, will include in the letter the contributions and participation in various committees and work groups of the Program Manager and State Agency underground natural gas storage safety staff. ***Failure to respond in writing within the required timeframe will result in a loss of performance points in the following year's evaluation.***

PHMSA PHP-50 will also send a copy of the evaluation report and a letter to the Program Manager addressing programmatic problems (e.g., average number of inspection person-days less than 85 for each full-time inspector, insufficient documentation of inspection forms and records, incorrect completion of Progress Report attachments, inadequate administrative enforcement procedures, or poor staff communication).

7.2 Compliance with Program Requirements

PHMSA PHP-50 personnel annually review each State Agency's program performance using the PHMSA Program Evaluation Form. As part of the annual review, the evaluator validates information submitted on the Annual Progress Report. A State Agency must respond to questions regarding its compliance with various Federal requirements. If a requirement is not applicable, the State Agency indicates it is not applicable on the Progress Report and the PHMSA Evaluator notes it where applicable on the PHMSA Program Evaluation Form.

If a Federal regulation has been adopted, the State Agency indicates the date adopted on the Progress Report. If a Federal regulation has not been adopted, the State Agency must either describe on the Progress Report the steps it is taking toward adoption or explain why it is not taking steps toward adoption.

The annual Progress Report validated during the State Evaluation also requests data on the civil penalty levels in effect in the State as of December 31st of the evaluation year, and the frequency of the general legislative session. Information on the general legislative session is taken into account when determining if applicable Federal regulations have been adopted within 24 months of the effective date or within two general sessions of the State Legislature.

For a State Agency to be given credit for taking steps to adopt a regulation, the regulatory action, bill in committee or docket before agency, must be verifiable and in process prior to the end of the first 24 months or two legislative sessions after the applicable regulation becomes in effect. Any regulations not meeting this requirement will not be considered adopted until actual legislation is signed into state law.

7.3 Recordkeeping

Recordkeeping is vital to the operation of an underground natural gas storage safety program. State Agency program files shall be well organized and accessible (this includes electronic files) At a minimum, the following records should be maintained by the State Agency for a period of at least three years from the annual grant closeout date, which is receipt of the Year-End (Final) Payment Request, or as long as the respective State Agency requires. (See 2 CFR 200.333))

1. Written program procedures (see Chapter 5)
2. Inspection reports
3. Compliance actions
4. Incident/accident reports
5. Copies of past Progress Report records
6. Copies of past grant-in-aid funding
7. Staff training
8. Correspondence

9. Safety-Related Condition Reports
10. Information notices sent to operators

8 DOT Grant-in-Aid Program

This chapter describes the application and submission procedures and grant management requirements a State Agency must follow to receive the benefits of the underground natural gas storage safety grant program. It is intended to assist State Agencies in applying for and administering Federal grant funds authorized by Chapter 601 Title 49 of the United States Code.

8.1 Scope of Grant

The scope of the grant is to support up to 80 percent of the cost of personnel, equipment and activities reasonably required to carry out inspection and enforcement activities of intrastate underground natural gas storage facilities under a Certification or Agreement with PHMSA. The activities covered are those specifically for the inspection of underground natural gas storage facilities to ensure compliance and enforcement as necessary of applicable chapters of Title 49 of the Code of Federal Regulations (CFR).

8.2 Address

Unless directed otherwise by the Director of State Programs, all correspondence concerning the grant program should be addressed to:

ATTN: Angela Sung
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Pipeline Safety PHP-50
1200 New Jersey Avenue, SE Second Floor E22-321
Washington, D.C. 20590
Telephone Number: (202) 366-4595

To avoid damage from DOT's package threat scanning process, all correspondence should be shipped through non US Postal Service shippers such as FedEx, UPS, etc. A PDF of all Grant correspondence should also be sent to the Director of State Programs.

8.3 Eligibility

To qualify for Federal grant funds under Section 60107 of Chapter 601, a State Agency must participate in the underground natural gas storage safety program either under Certification in accordance with Section 60105 or under an Agreement in accordance with Section 60106 of Chapter 601 Title 49 of the United States Code.

8.4 General Obligations

The State Agency assumes responsibility for the administration of the grant program through the application of sound management practices and for seeing that program funds have been expended and accounted for in accordance with program objectives, the *Payment Agreement (Notice of Grant Award)*, these *Guidelines*, 2 CFR 200 and any other applicable Federal rules and regulations.

In recognizing its own unique combination of staff, facilities and expertise, each participating State Agency has the primary responsibility for employing the organization and management techniques necessary to assure proper and efficient administration of the program.

8.5 Application

The purpose of the *Grant Application* is to provide PHMSA with information concerning the State Agency's need for Federal financial support for its underground natural gas storage safety program. PHMSA will make an application available to each State Agency in August of each year. The deadline for filing this application is September 30th. (**Note: This is a non-negotiable deadline established in Chapter 601 Title 49 of the United States Code. Failure to return the application by this date may result in the loss of grant funds**.) To assist PHMSA in determining the funding needs of all State programs, those State Agencies that decide NOT to apply for grant funds are also requested to notify PHMSA by September 30th. If PHMSA determines that an application is incomplete or insufficient to qualify, PHMSA will advise the State Agency of the reason for the disapproval. The State Agency must then take appropriate corrective action prior to reapplying.

The Grant Application, which is made available in FedSTAR (https://fedstar.phmsa.dot.gov/FedSTAR/default.aspx), is furnished to each State Agency by PHMSA contains multiple sections. These include:

8.5.1 Attachment #1: Description of State Underground Natural Gas Storage Safety Program.

This attachment requires a description of all ongoing and planned underground natural gas storage safety program activities for which grant reimbursement is requested. This summary must clearly indicate the types of actions to be performed and contain sufficient details to justify the proposed budget. This should include but is not limited to the applicable items from the following list:

- Program Description
  - Number of Storage Fields
  - Number of Total Wells

  - Type of Storage (Salt Cavern, Depleted Hydrocarbon Reservoir, and Aquifer)
  - Number of Inspection Units
  - Number of Operators
  - Maximum Inspection Frequency
- Expected number of inspection days during upcoming calendar year
  - Summary of Inspection Work Plan
  - Number of Inspections Planned
  - Notations should be made of any special projects, etc.
- Notable program activities to be conducted during upcoming calendar year
  - Major construction projects
  - Major enforcement cases that are expected to take large amounts of resources

- Any legislative proposed, current, or pending activities

- Listing of Underground natural gas storage Program Staff (Supervisors and Inspectors)– this should include the following
  - Individual Names and titles (enough information should be provided to describe their job duties)
  - If less than 100% what is estimated time to be spent in program
  - Listing of vacancies
  - Listing of hiring expectations
- List of other Administrative Staff
  - Individual Names and titles or functions (enough information should be provided to describe their job duties)
  - Estimated time spent in support of underground natural gas storage program
  - This should include any individuals/positions who will have their salary and benefits submitted as a direct cost applied to the grant reimbursement.
- Listing of projected equipment purchases (this should directly correlate with estimated program budget submitted)
  - This should include automobiles and estimated cost of each
  - Other intended equipment purchases (i.e. printers, computers or related items)
- Any expected contracts for outside services
  - All contracts must be preapproved and will not be reimbursed without prior approval and copies must be submitted to PHMSA State Programs
- Other relevant program information

8.5.2 Attachment #2: Underground Natural Gas Storage Safety Program Estimated Budget.

This attachment requires an estimate of the total expenses related to the State Agency's underground natural gas storage safety program. It should include all costs directly relating to underground natural gas storage safety that the State Agency plans for the next calendar year regardless of the funding source. The estimate should be presented so that the costs for each item are readily identifiable as to the budget categories established on the form. All cost estimates should be as realistic as possible. Accurate estimates will reduce the amount of reallocation necessary at the end of the program year and permit PHMSA to more realistically allocate available funds to all State Agencies. The State Agency must receive pre-approval from PHMSA State Programs in advance of executing any contract (See Professional Service Costs in 9.16.1) or if there is a substantial change to the scope of the underground natural gas storage safety program affecting the approved budget. Copies of any approved final contract should be forwarded to PHMSA State Programs within 30 days of execution.

8.6 Annual Funding Level

After funds have been appropriated by Congress, PHMSA will process the applications and allocate available funds to those State Agencies meeting the program qualifications. Chapter 601 Title 49 of the United States Code limits the Federal contribution to State underground natural gas storage safety programs to not more than 80 percent of total program costs. If Congressional appropriations are insufficient to fund all programs at the 80 percent level, the amount allocated to each State will be determined by PHMSA to distribute available funds equitably as prescribed in 49 CFR Part 198.

8.7 Grant Allocation and Percentage of Funding

THE SCORING/FUNDING MECHANISMS FOR THE UNDERGROUND NATURAL GAS STORAGE GRANT ARE WAIVED DURING THE FIRST 3 YEARS AND WILL BE IMPLEMENTED AS EVALUATION ELEMENTS ARE DEVELOPED AND COMMUNICATED TO ALL PROGRAMS.

PHMSA will provide to all State Agencies a Grant Allocation Document. This document is provided annually between April and June (subject to federal budget appropriations). The underground natural gas storage safety grant allocation is a targeted amount of funding a state program may receive for

activities during a calendar year providing their actual program expenditures meet the budget estimate submitted in their grant application. Otherwise the State Agency will receive the percentage of funding for actual program expenses which is listed on the annual Grant Allocation Document. The percentage of program funding is determined based on the Grant Allocation Formula (see 8.7.1) and the total amount of appropriated funding provided by PHMSA. The maximum amount of any state program funding is capped at 80 percent as noted in the previous section.

8.7.1 Grant Allocation Formula for Grant Award

Underground Natural Gas Storage Safety Grants are awarded based on the following formula:

Grant Award =

State Budget Amount[1] x State Performance Score[2] x Percent Allocation[3]

$$\boldsymbol{Percent\ Allocation}(\mathbf{80\%}\ \boldsymbol{maximum}) = \frac{\boldsymbol{Total\ Available\ Funding}^{4}}{\sum \boldsymbol{All\ Programs}\ (\boldsymbol{State\ Score\ X\ State\ Budget})^{5}}$$

8.7.2 State Performance Score

A performance score for each State Agency is developed annually which determines the maximum amount of funding that a program will receive in

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[1] State Budget Amount = Calendar Year Budget Estimate Submitted by each State with Grant Application

[2] Annual State Performance Score Outlined in Section 8.7.2

[3] Percent Allocation – This is the maximum percentage of total program costs that can be applied to each grantee. There is an 80% maximum funding limited required by Section 60107 of the Pipeline Safety Act. This formula provides for an equal distribution of available funds in the event appropriated funding is less than required for maximum funding.

[4] Total Available Funding - This is the annual funding provided by congressional appropriation. This would also include any unexpended (carryover) funds available from previous fiscal years.

[5] The combined sum of each State Performance Score multiplied by each State Budget Estimate for all Gas and Hazardous Liquid programs.

each calendar year for which a grant application was submitted. The score can be waived by the Director of State Programs as required to implement program initiatives and improve overall safety program. The formula, outlined in 49 CFR 198.13, is based on state program performance and has a maximum of 100 performance points derived as follows;

1. Fifty points[6] based on information provided in the state's annual Progress Report attachments which document its activities for the past year (TBD); and

2. Fifty points[7] based on the annual state Program Evaluation as described in Section 7.1. A State Agency will have one year from written notification to correct deficiencies found during an annual state Program Evaluation before a reduction is applied to its 50-point maximum. Evaluation forms are included as Appendix I (TBD).

8.7.3 Performance Factors

PHMSA assigns weights to various performance factors reflecting program compliance, safety priorities, and national concerns identified by PHMSA and communicated to each State Agency. At a minimum, PHMSA considers the following performance factors in allocating funds:

1. Adequacy of state operating practices; Quality of state inspections, investigations. and enforcement/compliance actions;

2. Adequacy of state recordkeeping;

3. Extent of state safety regulatory jurisdiction over underground natural gas storage facilities;

4. Qualifications of state inspectors (consideration will be given to qualification results impacted by inspection staff growth);

5. Number of state inspection person-days;

6. State adoption of applicable federal underground natural gas storage safety standards; and,

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[6] First fifty points of allocation are based on PHMSA Headquarters evaluation of information received from progress report documents of the previous calendar year of program activities.

[7] Second fifty points of allocation are based on State Program Evaluation conducted during previous calendar year.

7. Any other factor the Administrator deems necessary to measure performance.

For the first three years an underground natural gas storage safety program exists or for two years when a State Agency reenters the state grant program, the State Agency will be funded at a level typically not over 90 percent of maximum funding. This is due to the inability to accurately judge program performance of the State Agency in determining their evaluation score. In addition, State Agencies will also be subject to point deductions for late submission of the annual Progress Report document. Two points will be deducted on Progress Report score if the document is submitted after the due date, and four points if more than 30 days late.

Grants are limited to the appropriated funds available. If total State Agency requests for grants exceed the funds available, the Administrator prorates each State Agency's allocation. This prorated percentage will serve as the maximum funding level available to each State Agency based on actual expenses.

Exhibit 8-1 – Grant Allocation Funding Example

Natural Gas 2017	CY 2016 Progress Report Score	2015 Modified Program Evaluation Score Conducted in 2015	State Score %	CY 2017 State Estimated Program Costs	Allocation (Payment Agreement - Total Grant Award)	Maximum Allocation Percentage
ALABAMA	50.00	100.00	100.00%	$ 1,608,136.00	$ **951,945.00**	59.20%
ARIZONA	50.00	100.00	100.00%	$ 1,714,436.00	$ **1,014,870.00**	59.20%
ARKANSAS	50.00	100.00	100.00%	$ 897,964.00	$ **531,555.00**	59.20%
CALIFORNIA_PUC	43.00	97.48	91.74%	$ 7,398,477.00	$ **4,017,817.00**	54.31%
COLORADO	50.00	100.00	100.00%	$ 725,130.00	$ **429,245.00**	59.20%
CONNECTICUT	50.00	100.00	100.00%	$ 1,378,690.00	$ **816,123.00**	59.20%
Totals				$ **87,687,512**	$ **50,559,000.00**	**57.66%**

Exhibit 8-2 – Grant Allocation Explanation

Progress Report Score – This is the score of progress report activities as outlined in Appendix Q (TBD).
Modified Program Evaluation Score – This is the state performance score, as outlined in 8.7.2 (2).
State Score % – Total score as outlined in 8.7.2.
Estimated Program Costs – This is the estimated program funding or budget; each state submits with the grant application for the respective calendar year.
Allocation - This is the maximum amount, prorated as necessary, that a state can expect to receive in federal funding if actual program costs are equal to or exceed program budget. The maximum allocation is capped at 80%.
Maximum Allocation Percentage – This is the maximum percentage of actual program costs that a state program can expect to receive. The allocated amount is only received if actual expenditures meet or exceed the original budget estimate. If actual costs of the state program exceed the original estimate, PHMSA will pay additional amounts pending availability of funding (from over estimates of other programs) and the state program adequately explains the budget variance.

8.8 Payment Agreement (Notice of Grant Award)

The purpose of the *Payment Agreement (Notice of Grant Award)* is to notify the State Agency of the allocated amount of the Federal grant for the calendar year. PHMSA will reimburse the State Agency up to the amount specified in this agreement, or up to the state specific maximum percentage of actual program expenses noted in the grant allocation document, whichever is less. Exhibit 8-1 is an actual example of a grant allocation with an explanation of what a State Agency can expect for funding following in Exhibit 8-2. Two original copies of the *Payment Agreement (Notice of Grant Award)*, signed by the Associate Administrator for pipeline safety, will be distributed to the State Agency by PHMSA between April and July of each year (pending appropriation availability). An authorized State official must sign all copies of the agreement. One original copy should be retained by the State Agency. The other original copy must be returned to PHMSA within three weeks of receipt.

The Payment Agreement (Notice of Grant Award) includes a comprehensive listing of "Award Terms and Conditions", which must be reviewed thoroughly and complied with as a condition of receiving financial assistance.

In support of the Payment Agreement (Notice of Grant Award), PHMSA provides the following information to all State Agencies:

1. *Grant Funding Score* – This document is sent to each state which outlines expected funding score used for each calendar year. This document outlines progress report scoring along with specific funding

deductions from the annual evaluations as outlined in 8.7.2 (2) and is sent in advance of Grant Allocation document.

2. *Underground Natural Gas Storage Grant Allocation*. This attachment lists the Underground Natural Gas Storage budget estimates, State points, allocations, and percentages of total program funding. An example of this document is provided in Exhibit 8-1 and is also provided as part of the Payment Agreement.

8.9 Certification Regarding Lobbying and Disclosure of Lobbying Activities

Section 319 of Public Law 101-121 prohibits recipients of Federal grants from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific grant. This section of Public Law also requires each grantee who receives a Federal grant exceeding $100,000 to disclose lobbying activities. **If a State Agency receives grant funding in excess of $100,000**, PHMSA will provide the State Agency with two copies of the *Certification Regarding Lobbying and Disclosure of Lobbying Activities* forms and a copy of the *New Restrictions on Lobbying*; *Interim Final Rule*. One copy of the Certification form must be completed by the State Agency and returned to PHMSA within three weeks of receipt. If applicable, a State Agency must also complete and submit a disclosure form.

8.10 Mid-Year Request for Reimbursement

Federal reimbursement is based on ***actual*** cash expenditures, which can be substantiated with auditable receipts, incurred by the State Agency in support of its underground natural gas storage safety program between January 1 and December 31 of each year. Each June, PHMSA will make available *OMB Standard Form 270 - Request for Advance or Reimbursement* to each State Agency for submission of mid-year reimbursement requests. If a State Agency desires mid-year payment, it may return one copy of the completed form to PHMSA within four weeks of receipt. The form must be signed by an authorized official. Program expenses included on this form may only be for the six-month period between January 1 and June 30. If a State Agency prefers to be reimbursed for expenses only at year-end, it may disregard the mid-year request form and include all program costs on the year-end request.

8.11 Year-end Request for Reimbursement and Cost Summary

In January of each year, PHMSA will make available in FedSTAR *OMB Standard Form 270* - Request for Advance or Reimbursement to each State Agency for submission of total program costs for the previous calendar year. In completing the year-end request, the State Agency should include all costs

incurred in the underground natural gas storage safety program for the entire previous calendar year (January 1 - December 31) regardless of whether a mid-year request was submitted or whether the actual costs exceed the amount specified in the Payment Agreement (Notice of Grant Award). One copy of the completed form must be returned to PHMSA within the established time frame, which is approximately four weeks of the date of receipt. In addition to the year-end Request for Reimbursement, the State Agency is required to submit a Underground Natural Gas Storage Program Cost Summary on forms supplied by PHMSA. This summary includes a comparison of the estimated budget figures submitted with the original Grant Application and final expenses incurred for the program.

Requests for reimbursement submitted by each State Agency are reviewed and approved by PHMSA before being forwarded to the DOT accounting office for payment. Variances of more than 10% or $10,000 in each cost category require a written explanation as to the reasons for the differential. When the request has been paid by the accounting office, PHMSA will electronically notify the State Agency/Program Manager of the amount of the payment and date paid. Payments are made electronically through an automatic clearinghouse. If the State Agency has any questions or problems with receipt of payment, it should contact PHMSA immediately.

It is important to note that PHMSA presumes that the mid-year and year-end reimbursement requests are complete and accurate and include all eligible costs for the entire grant period. All expenses filed with both the mid-year and year-end payment processes must be from auditable receipts and accounted for on a cash basis. *In addition, the year-end reimbursement is considered the grant close-out for the applicable period. Once the final request for reimbursement is received and processed,* ***PHMSA is not obligated to make any additional payments for costs which were incurred by the State Agency but not claimed on the request.***

8.12 Special Initiatives

Occasionally special initiatives are issued by PHMSA. Special initiatives are for a limited purpose and funding is handled separately from the basic annual grant. PHMSA will distribute documents describing the purpose of the initiative and requirements for participation.

8.13 Withholding of Grant Funds - Suspension and/or Termination of Grants

In accordance with Chapter 601 Title 49 of the United States Code, PHMSA may withhold all or part of a grant when it determines that the State Agency is not satisfactorily administering a safety program under a Certification/Agreement. Part or all the grant payment may be withheld or the

grant may be suspended and/or terminated if PHMSA determines that a State Agency has failed to comply with program requirements. These actions will be taken by PHMSA only after notice to and consultation with the affected State Agency. Payments made to State Agencies or recoveries by PHMSA will be in accordance with the legal rights and liabilities of both parties.

PHMSA or the State Agency may also terminate all or part of the *Payment Agreement (Notice of Grant Award)* when both parties agree that the continuation of the project would not be commensurate with the further expenditure of funds. The two parties must agree upon the termination conditions including the effective date and, in all cases of partial termination, the portion to be terminated.

8.14 Deposit of Grant Funds

Underground natural gas storage safety grant funds do not need to be separately accounted for as Federal funds. A State Agency is not required to deposit these funds in a separate bank account apart from other funds administered by the State. Any bank account established for receipt of Federal funds must hold insurance coverage from the Federal Deposit Insurance Corporation (FDIC) and the balance exceeding the FDIC coverage must be collaterally secured.

8.15 Eligibility of Program Costs

State Agency program costs shall clearly relate to the program budget submitted with the grant application. State Agency program costs shall also be consistent with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Care shall be exercised in incurring costs to assure that all expenditures are authorized in accordance with these general standards, and meet the following criteria of eligible costs.

8.15.1 Direct Costs

Direct costs are those that can be identified specifically with the State's underground natural gas storage safety inspection and compliance program. Costs which are shared with other organization programs or other agencies cannot be assigned directly to the underground natural gas storage safety grant program, (i.e. costs calculated on a pro-rata basis) should not be assigned as a direct cost, but may qualify as part of an indirect cost plan. The following direct cost categories are typical to a underground natural gas storage safety program.

- **Compensation, including benefits, of employees for time and effort specifically devoted to the underground natural gas storage safety program (§ 200.430/§ 200.431).**

- Cost for Supervisory personnel shall be for individuals listed on annual Progress Report and costs applied to program should correspond with percentage of time allocated. Any supervisory cost above that of the underground natural gas storage Program Manager can only be included as a direct cost if actual time and work performed is documented toward a program activity and approved by PHMSA OPS Director of State Programs otherwise it can be included as an indirect cost.

- Cost for Inspection/Investigation personnel shall only be for individuals listed on annual Progress Report and costs applied to program should correspond with percentage of time allocated.

- Cost for Damage Prevention/Technical personnel shall be only for individuals listed on annual Progress Report and costs applied to program should correspond with percentage of time allocated. This can include technical support personnel, GIS personnel, and others ***directly*** related to the underground natural gas storage safety program. Cost for personnel devoting time to things other than underground natural gas storage safety such as electric, water or telephone issues should not be applied to the underground natural gas storage safety program.

- Cost for Administrative (clerical) personnel shall be for individuals listed on annual Progress Report and costs applied to program should correspond with percentage of time allocated. If applicable, costs for personnel who might solely supervise administrative personnel should be included in this category.

- In support of salaries and wages, each program must comply with requirements listed in 2 CFR 200. Where direct time of an employee is applied to the underground natural gas storage safety base grant, this must be supported by periodic certification that the employee worked solely in the program. These certifications must be prepared at least semi-annually and will be signed by the employee or supervisory official having firsthand knowledge of the work performed by the employee. When employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports (PARs) or equivalent documentation. A PAR is a timesheet or log maintained by the employee that accounts for 100% of their time and prepared, signed and dated at least monthly.

- Individuals whose direct time is charged to grant should be within program direct line of reporting as outlined in the program organizational chart. Individuals within other reporting lines are likely considered indirect costs.

- **Cost of materials and supplies acquired, consumed or expended specifically for the purpose of the grant. (less than $5000 individual value)**

  - Supplies (**§ 200.453/§ 200.314**) - General office supplies such as paper, file folders and other office organizing items.

  - Safety Clothing (**§ 200.453/§ 200.314**) - Any Personal Protective Equipment (PPE) for conducting field inspections. Eye protection, hard hats, ear

protection, flame retardant clothing for field use, safety boots, rain gear etc. Normal clothing for time spent in office environment should not be included.

- Testing/Inspection Equipment (**§ 200.439**) - Materials such as Flame Ionization (FI) units, Combustible Gas Indicators (CGI's), cameras etc.

- Office Equipment (**§ 200.439**) - Computer equipment (laptops), fax machine, printers, desks, copiers/printers etc. for use by underground natural gas storage safety program **only.** This category would also include any computer software used for underground natural gas storage program. Note – if the programs shares equipment costs with other agency departments for things such as printers, the costs applied must be billed based on actual usage. Any estimated proration of charges would have to be charged as an indirect cost and placed in the indirect cost category. In addition, computer network hardware or software such as servers, data storage units and system software maintenance contracts are inherently indirect costs as they benefit entire agency "networks" and may not be recovered as a direct cost unless preapproved in advance.

- **Equipment and other approved capital expenditures used directly in the underground natural gas storage safety program.**

  Any equipment purchased with a value of over $5,000 shall be itemized and noted on grant application and also itemized on the submitted year-end reimbursement document. The year-end itemization shall include an inventory listing of all equipment purchased in current and prior periods and still in use. All equipment purchases must be accounted for and safeguarded against loss. PHMSA reserves the right to review and accept or reject any equipment purchases not deemed necessary or reasonable.

  - Motor Vehicles (**§ 200.439**) – actual cost of vehicles purchased. Tangible property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5,000. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

  - Any other capital equipment with a value over $5,000 will be included in this category and must have prior approval before purchase.

- **Travel expenses incurred specifically to carry out the award.**

  - Travel (**§ 200.474**) - Travel costs are for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the underground natural gas storage safety program. This would include automobile general maintenance of tires, oil changes and gasoline. This can include insurance costs and costs of automobiles used through state motor pools. Eligible costs also include commercial air fare travel. Charges for any foreign travel costs are allowable only when the travel has been approved by PHMSA (see 2 CFR Part 200).

- **Underground natural gas storage Safety Program Activity Costs**

  - Training and Education (**§ 200.472**) - This would include costs for registration and training materials acquired for underground natural gas storage safety personnel. This is for employee training and development.

  - Rental Cost of Building and Equipment (**§ 200.465**) – Rental costs of office space, equipment, maintenance, insurance, janitorial, utilities, operations and repairs. Rent recovered as a direct cost must be calculated on an "actual" basis, or pro-rated based on actual square footage occupied by the Underground natural gas storage Safety Program staff.

  - Communication (2 CFR 200 Basic Considerations) - Local and long-distance telephone calls, postage, computer transmittal services, internet charges, cell phone charges, emergency phone answering services, etc.

  - Publication and Printing (**§ 200.461**) - Costs of printing, distribution, promotion, mailing and general handling. Newsletters or other articles printed and sent to underground natural gas storage stakeholders

  - Memberships, Subscriptions and professional activities (**§ 200.454**) - Costs for business, technical and professional organization memberships. Costs for subscriptions to business, professional and technical periodicals.

  - Professional Service Costs (i.e. Studies and Research) (**§ 200.459**) – Any costs for professional and consulting services. Any contract for consulting services must be approved by PHMSA in advance or charges may not be allowed to be recovered in underground natural gas storage grant. The State Agency must send an email requesting preapproval to ContractApproval@napsr.net. The proposed contract should be attached to the email and the body of the email must provide an explanation of the reason for the contract and the deliverables expected from the vendor. PHMSA will send a reply email stating its decision of approval or disapproval. The email correspondence will be documented in FedSTAR. Copies of any approved final contract should be forwarded to PHMSA State Programs within 30 days of execution.

  - Maintenance, operations and repairs (**§ 200.452**) – costs of utilities, insurance, security, janitorial services, etc. If agency is unable to directly assign these costs to the underground natural gas storage safety program any cost must be submitted through an indirect method.

  - Other (Specify) – These costs should be detailed and described appropriately.

8.15.2 Indirect Costs

Indirect costs chargeable to the underground natural gas storage safety grant are limited to no more than 20% of direct cost of the program. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically

benefited, without effort disproportionate to the results achieved. See Appendix O for further detailed guidance on indirect costs. The basis for indirect costs is generally the Total Direct Costs less Capital Costs and Office Rental Costs.

Since most State Agencies have several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which are then allocated individually to benefit functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate (IDR).

Indirect costs are normally charged to Federal awards by the use of an IDR. A separate IDR(s) is usually necessary for each department or agency of a governmental unit claiming indirect costs. All State Agencies should refer to 2 CFR 200 for indirect cost plan requirements and it is recommended that a program consult their state grant office, if applicable. In addition, guidelines and illustrations of indirect costs proposals are provided in a brochure published by the Department of Health and Human Services entitled "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government" or ASMB C-10. (See Appendix N)

8.15.3 Standards for Documentation of Personnel Expenses

Charges to the underground natural gas storage safety grant for salaries and wages must be based on records that accurately reflect the work performed. These records must be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable and properly allocated. The records must also be incorporated into the official records of the state program and reasonably reflect the total activity for which the employee is compensated and not exceeding 100% of the compensated activities. (See 200.430 (i))

8.15.4 Unallowable Costs

Any cost specifically outlined in 2 CFR 200 as being unallowable is automatically excluded from the underground natural gas storage safety grant program. PHMSA State Programs also reserves the right to exclude certain costs deemed to be inappropriately applied to underground natural gas storage safety grants. Examples would include the following:

- Certain Damage Prevention Costs (Personnel and other) – These would be all costs for damage prevention activities other than underground natural gas storage safety. (i.e. damage prevention activities for telephone, water, electric, cable or other underground facilities shall not be included but can be applied for under State Damage Prevention (SDP) or One-Call Grant applications)

- Any promotional item such as shirts, hats, visors, water bottles, portfolios and any other item purchased to promote the underground natural gas storage safety program other than an item that may have an educational benefit from its use, are not an allowable cost.

- As described in 2 CFR 200.426, bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also §200.428 Collections of improper payments.

- Sponsorships or fees paid to outside organizations for the purpose of organizing meetings or to offset overall meeting costs are unallowable.

8.16 Underground Natural Gas Storage Safety Grant Program Review

The purpose of the grant program review is to ensure costs submitted to PHMSA for reimbursement are appropriate and conform with all policies as outlined in "Guidelines for States Participating in the Underground natural gas storage Safety Program" and 2 CFR 200 – "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards". This is to promote efficient and effective administration of the State Underground natural gas storage Safety Grant Program and to ensure consistent and fair treatment of all grant applicants to maximize the grant funds available to this program.
At intervals not exceeding three years, PHMSA OPS Office of State Programs may conduct an in depth review of costs applied to the Underground natural gas storage Safety Program Grant. The program review can consist of up to at least the previous three calendar years. This review shall consist of an analysis of the appropriateness of costs applied to the Underground natural gas storage Safety Program and its activities as submitted in the annual Progress Report. One-Call grant expenditures will also be reviewed in conjunction with base grant review.

All programs should be prepared for this grant review with adequate working papers and source documentation in order to substantiate the reimbursed amounts of program expenditures.

8.16.1 Pre-Review

Advance notice will be given in order for the Program Manager to prepare any financial information needed for the grant review. In addition, this should allow time for the necessary state personnel to be available to answer questions that might not be known by state underground natural gas storage safety staff during the on-site review.

8.16.2 Grant Review

A review will be conducted of the underground natural gas storage safety program costs which shall clearly relate to the program budget submitted with the grant application. Program costs shall also be consistent with 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Care shall be exercised in incurring costs to assure that all expenditures are authorized in accordance with these general standards, and meet the criteria of eligible costs. State Agencies should be capable of providing enough source documentation during the grant review to ensure PHMSA that amounts submitted for reimbursement are accurate, necessary and reasonable costs. This may include detailed invoice or billing reviews and enough documentation to insure items submitted for reimbursement were used by the underground natural gas storage safety program and that the items submitted were not used for the benefit any other State Agency program.

8.16.3 Post-Review

Following the review of the State Underground Natural Gas Storage Safety Program costs, PHMSA State Programs will prepare a report with recommendations, if necessary, outlining any areas of concern on cost items believed to be unacceptable, unallowable or any cause for concern as to the reasonableness in being applied to their Underground Natural Gas Storage Safety Grant Program. Notification of findings will be sent to the Program Manager from the PHMSA Director of State Programs.

8.16.4 Adjustments and Penalties

Should any costs submitted in the State Underground Natural Gas Storage Safety Grant be found to be unsubstantiated, unallowable, or unreasonable the State Agency will have those costs deducted from their current year grant reimbursement and be required to adjust their practices accordingly. The program Grant Review may consist of up to the previous three calendar years.

8.16.5 Appeal of Findings

Should the State Agency appeal any decision of PHMSA Director of State Programs to deduct costs previously submitted, it shall be made to the PHMSA Associate Administrator of Pipeline Safety. The Associate Administrator shall have the final word in any decision made on these matters.

8.17 Procurement Standards

Procurement standards must be followed by the State Agency to insure that supplies, equipment, and other services are obtained efficiently and economically. State Agencies shall use their own procurement procedures which reflect applicable State laws and regulations in the underground natural gas storage safety grant program, provided that procurements made with Federal grant funds conform to the applicable Federal laws and regulations. (49 CFR 1201.317)

8.18 Procurement Procedures

The State Agency shall establish procurement procedures that:

- avoid the purchase of unnecessary or duplicative items
- apply analyses to determine the most economical approach
- foster economy and efficiency
- encourage intergovernmental agreements for procurement, or use of common goods and services

8.19 Contracts Management

The State Agency shall maintain a contracts management system that ensures contractors comply with the terms, conditions, and specifications of their contracts or purchase orders.

8.20 Internal Controls

Each State Agency must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the State Agency is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. (See 2 CFR 200.62 and 2 CFR 200.303)

8.21 Real Property

Real Property is defined in 2 CFR 200.85 as land, including land improvements, structures and appurtenances, but excludes moveable machinery and equipment. Real property purchases are not allowed in the underground natural gas storage safety grant.

8.22 Personal Property

The State Agency will retain property acquired with underground natural gas storage safety grant funds as long as there is a need for the property to accomplish the purpose of the grant program, and accurate property records shall be maintained. Personal property shall be available for use on other projects or programs if such other use will not interfere with the work on the underground natural gas storage safety program. When the State Agency no longer needs the property in any of its federally sponsored programs, the State Agency shall request disposition instructions from PHMSA, for all personal property with a current per unit fair market value in excess of $5,000. Personal property is defined in 2 CFR 200.78.

8.23 Code of Conduct

The State Agency shall maintain a written code, or standards of conduct, to govern the performance of its officers, employees, or agents in the award and administration of contracts supported by Federal grant funds. No State employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or implied, would be involved.

8.24 Conflict of Interest and Mandatory Disclosures

Each State Agency must disclose in writing any potential conflict of interest to PHMSA Director of State Programs any instances of conflicts of interest or relevant violations of Federal criminal law. (2 CFR 200.112 and 200.113)

8.25 Audit Requirements (2 CFR 200 Subpart F)

Non-Federal entities that expend $750,000 or more in a year in Federal awards, must arrange for an independent audit to perform a single or program specific audit. All audits are to comply with Federal requirement stated in 2 CFR 200 Subpart F and conducted annually. (See Appendix G) Failure to comply with the single audit requirement may result in loss of federal financial assistance.

In the event there are program-specific audit findings uncovered during this process, a State Agency must contact (as soon as practical) the Director of State Programs and communicate a plan for resolution of these findings. PHMSA State Programs will monitor these findings and work with the affected State Agency until resolution is completed, if applicable.

Note: State governments, in their entirety, are typically considered an "entity" therefore the Underground natural gas storage Safety Program is generally considered a part of that entity. To ensure compliance with this audit requirement, each State Agency must make sure the Underground Natural Gas Storage Safety Grant (Base Grant listed under CFDA 20.700 or 20.721 for One-Call) is included in their state-wide single audit conducted annually in each respective state. Past audit information can be found on-line at the Federal Audit Clearinghouse. (http://harvester.census.gov/sac/)

8.26 PHMSA Office of Civil Rights Review – Title VI

The PHMSA Office of Civil Rights may conduct an on-site review of the State Agency if compliance with Title VI requirements cannot be determined from the assurances alone. It will also conduct regular on-site or desk audit compliance reviews as required by DOT directives. An on-site review will include personal interviews with persons in the State Agency's organization and in the community likely to have relevant information or views. The review will also include the collection of all statistical and documentary materials needed to

determine compliance. A desk audit will include a review of all material and information concerning the State Agency's performance, but will not include a visit to the State Agency. A copy of the written results of the review will be provided to the State Agency.

8.27 Grant-in-Aid Program Calendar of Events

Grant-in-Aid Program CALENDAR OF EVENTS			
Activity	**General Open Dates**	**General Closing Dates**	**Notification**
Grant Application and Certification/Agreement	August	September 30	E-mail sent to states alerting them of opening date for the Grant in FedSTAR
Previous Year End Payment Process	January	March – April	E-mail is sent to the states alerting them of the opening date for the Year End Payment Request in FedSTAR
Progress Report	January	Late February - March	E-mail is sent to states alerting them of opening date in FedSTAR
Allocation	Based on Progress Report Closing Date	Late March to April	Forwarded to states via email after analysis completed by PHMSA and confirmation of total state grant appropriation
Mid-Year Reimbursement Request (optional)	June	Late July to August	E-mail is sent to states alerting them of opening date in FedSTAR
Program Evaluation	Late February - March	Late December	Conducted during annual visit from State Liaison

8.28 Description of Activities

8.28.1 Underground Natural Gas Storage Safety Grant Application

The Base Grant is a grant to which states apply to be reimbursed up to 80% of their state underground natural gas storage safety costs. This grant requires a filing of the intension(s) under 60105 and/or 60106, along with a description of the program and its estimated budget..

8.28.2 Year End Payment Process

The Year End Payment process is a form which reflects the actual expenses incurred by the state's underground natural gas storage safety program(s). This process includes a reimbursement form which triggers a review and payment to the state.

8.28.3 Progress Report

This is a process in which a document is developed to reflect the performance of a state's safety program(s). This performance document has criteria which are used to generate a score. This score is used in the Allocation process.

8.28.4 Allocation

This process is conducted by the PHMSA Director of State Programs. The allocation is a document which displays the aggregated scores from the Progress Report and Program Evaluation, and funding information concerning the allocation of available grant funding.

8.28.5 Payment Agreement – (Notice of Grant Award)

The payment agreement (Notice of Grant Award) binds a grantee to the awarded (allocated) amount identified in the allocation document. The payment agreement (Notice of Grant Award) also contains a lobbying document, if the awarded amount exceeds $100,000. Furthermore the payment agreement (Notice of Grant Award) is signed by both state and federal authorities.

8.28.6 Mid-Year Reimbursement

The Mid-Year Reimbursement is an optional request for reimbursement funding.

8.28.7 Program Evaluation

This is an onsite process which is completed by a PHMSA State Liaison. The document reflects the performance and compliance to requirements spelled out in the Certification/Agreement process. It also covers the compliance with related activities of a state's underground natural gas storage safety program.

9 Federal-State Tracking and Reporting – "FedSTAR"

9.1 Purpose

Federal-State Tracking and Reporting ("FedSTAR") is an internet accessible web application that aids the States in meeting the requirements for participating in and in the preparation of the various forms necessary for participation in the Federal Grant program. FedSTAR collects information and constructs official program documents listed in the guidelines. It also standardizes these various submissions that are required in order to participate in the State Grant Program. FedSTAR is provided by PHMSA to modernize the submission and reporting process for States participating in the State Grant Program.

9.2 Location and Procedures

FedSTAR can be found in the PHMSA Portal at https://portal.phmsa.dot.gov. In order to access the FedSTAR program, the user must be issued a user name as well as a password. Each user has a tailored profile which allows each user access to only those modules required for their job. The user is unable to access any of the features of FedSTAR without obtaining this login information.

The user base for FedSTAR includes not only State employees (inspectors, supervisors, engineers) but also Federal staff in the PHMSA Regions and Headquarters. The process of administering the vast array of users encompasses both proactive and reactive methods. Requests for user creations/modifications are received via email from approved sources. Due to the number of users and offices that make up the user base, typically users are disabled upon rejected email notifications being received by the FedSTAR OM.

A user is created upon a User Access Request form (this form can be found on the NAPSR website or by contacting carrie.winslow@dot.gov) being received by the FedSTAR OM from a State Pipeline Safety PM. The requestor shall indicate in the request the level of access required for the individual.

9.2.1 Modification of user privileges and roles

The modification of user privileges and roles will be done in a similar manner to the initial request to create a user – the request must come from State Pipeline Safety PM, PHMSA Regional Director, State Program Director or any of the State Evaluators (PHP-50).

9.2.2 Disabling of a user

When the State PM, PHMSA Regional Director, State Program Director or any of the State Evaluators (PHP-50) becomes aware that one of the employees

under their organization is to be no longer employed by the State or PHMSA, the FedSTAR OM shall be notified of the date of termination or employment. The FedSTAR OM shall schedule a time to disable the user that coincides with their last day of State or Federal employment, or shall disable the user immediately upon receiving the notification the user has already been terminated. Additionally, if the FedSTAR OM becomes aware of a terminated employee (typically through email rejection notice), the FedSTAR OM will contact the State PM of the employee to determine employment status and then take appropriate action to disable the user.

9.2.3 Quarterly User Account Audit

A quarterly audit of active user accounts shall be performed. A report will be run through a database query to examine all active accounts and the date of last access. Any State user account found to be 365 days from the last login will be disabled.

9.3 Facilitating Various Program Documentation

FedSTAR reduces the time spent filling out the various State Grant Program submittals -- the Base Grant, Progress Report, One Call, One Call Progress Report, and Payment Requests. Each of the programs consists of several steps that the user must work through to successfully complete each document. The first step of each interface asks the user to verify their contact information. This ensures that the FedSTAR database stays up to date which allows PHMSA to better assist each individual State. Currently, even though a signed paper submission is required in addition to the electronic submission, eventually, FedSTAR will allow the States to electronically sign and submit the document online without having to print out the actual document and mailing it in.

9.3.1 Base Grant

This program consists of the steps required to produce a Base Grant application document. The State describes their pipeline safety program, provides an estimated budget and agrees to the general assurances.

9.3.2 Progress Report

This program provides data input screens to complete each of the required nine attachments as listed in Chapter 9.

9.4 Facilitating Grant Financials

9.4.1 Allocation

This document publishes the award information for each State Program. The PHMSA Director of State Programs and his staff review and score the Progress Report submitted by each State Program. The Program Evaluation score is combined with the Progress Report score to produce the overall score for the

State Program. This score is then calculated as a percent of funding, which then determines the State Program's grant funding award for that grant period.

9.4.2 Payment Agreement (Notice of Grant Award)

This is a document that must be submitted by each State Program which indicates they agree to the score they received through the Allocation process, and provides the State Program with a grant award amount. The Payment Agreement (Notice of Grant Award) is signed and scanned into FedSTAR by the State Pipeline Office and then PHMSA electronically signs the agreements and returns the fully executed agreement to the State Program via FedSTAR.

9.4.3 Certification Regarding Lobbying Document

This document applies to States that receive over $100,000.00 in funding from the Federal government. These States must print out the form and sign it, signifying that they agree to use the money for legitimate purposes. The Certification Regarding Lobbying forms are automatically generated with the Payment Agreement (Notice of Grant Award).

9.4.4 Payment Requests

There are two payment request programs – the Mid-Year Payment Request and the Year End Payment Request.

The Mid Year Payment Request is an optional program where the State Program can request reimbursement of their Allocated percentage of actual expenses at the 6-month mark.

The Year-end Payment Request is mandatory for all states who receive funding, and is based on actual expenses for the calendar year.

For the underground natural gas storage program, a series of steps collects the information and then produces the SF-270 for signature. The form is then scanned in and uploaded to the eInvoicing system (iSupplier). Additional fields are then completed and the request is submitted electronically via iSupplier for review and approval by PHMSA. (Note: a separate username/password is required for the iSupplier system).

9.5 Other FedSTAR Functions

9.5.1 Program Evaluations

The state liaisons use this feature of FedSTAR when they fill out their program evaluations for each state. Evaluations from previous years along with associated information will also be available in the SUDS section.

9.5.2 State Uploaded Document System or SUDS

For each state a set of 'completed documents' exists for each program and each year (back to approximately 2005). These completed documents are the .pdf documents for each of the programs completed in FedSTAR.

9.6 PHMSA State Program Management Functions

9.6.1 Allocation

This is a process in which PHMSA State Programs Division calculates the scores for each State Program. The result is the actual allocation or award for each State Program for the upcoming year. The Payment Agreement (Notice of Grant Award) outlines the terms and conditions and amount that PHMSA may reimburse the State Program.

9.6.2 Scoring

This is an algorithm used to calculate the State Program's performance score. It is used in the allocation process. A similar process is also used to generate the State's score for One Call.

9.6.3 Program Scheduling (also known as 'to-do list manager")

This determines when a program will open and close. These dates specify when the program will be placed and removed from FedSTAR.

Appendix Summary

Appendix A: 49 USC Chapter 601 and 49 USC Chapter 61 (One-Call)

Appendix B: Interstate Agreement Guidance Policy

Appendix C: Training Requirements – Mandatory Training for Underground Natural Gas Storage

Appendix D: DOT-NTSB Memorandum of Understanding

Appendix E: Federal/State Cooperation in Case of Accident

Appendix F: State Program Certification/Agreement Status

Appendix G: 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Appendix H: State Inspector Mentoring Program

Appendix I: Program Evaluation Form

Appendix J: - UNGS Inspection Forms

Appendix K: Reserved

Appendix L: UNGS Progress Report

Appendix M: Grant Review Checklist

Appendix N: ASMB C-10 – Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates with the Federal Government

Appendix O: PHMSA State Pipeline Safety Grants Guidance for Indirect Cost Recovery

Appendix P: Procedure to Monitor, Evaluate and Reject State Certification

Appendix Q: Pipeline Safety Grant Progress Report Scoring

Appendix R: Reserved

Appendix S: Examples of State Pipeline Safety Program Plan, Procedures and Risk Based Inspection Prioritization Model

Guidelines for States Participating in the Pipeline Safety Program

Appendix A

The Federal Pipeline Safety Statutes

49 U.S.C. § 60101 et seq.

showing amendments enacted by:

Red: Pipeline Inspection, Protection, Enforcement and Safety Act of 2006
Public Law No: 109-468
Dec. 29, 2006

Green: Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011
Public Law No: 112-90
Jan. 3, 2012

Blue: Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016, Public Law No. 114-183
Jun. 22, 2016

Compiled by
Office of Chief Counsel, PHMSA
June 2016

Federal Pipeline Safety Statutes (49 U.S.C. § 60101 et seq.)

Table of Contents

§ 60101. Definitions

(a) General.--In this chapter--

(1) "existing liquefied natural gas facility"--

(A) means a liquefied natural gas facility for which an application to approve the site, construction, or operation of the facility was filed before March 1, 1978, with--

(i) the Federal Energy Regulatory Commission (or any predecessor); or

(ii) the appropriate State or local authority, if the facility is not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a facility on which construction is begun after November 29, 1979, without the approval;

(2) "gas" means natural gas, flammable gas, or toxic or corrosive gas;

(3) "gas pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation;

(4) "hazardous liquid" means--

(A) petroleum or a petroleum product; ~~and~~

(B) nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; and

~~(B)~~(C) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas);

(5) "hazardous liquid pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid;

~~(6) "interstate gas pipeline facility"--~~

~~(A) means a gas pipeline facility--~~

~~(i) used to transport gas; and~~

~~(ii) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but~~

~~(B) does not include a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption;~~

(6) "interstate gas pipeline facility" means a gas pipeline facility—

(A) used to transport gas; and

(B) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);

(7) "interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce;

(8) "interstate or foreign commerce"--

(A) related to gas, means commerce--

(i) between a place in a State and a place outside that State; or

(ii) that affects any commerce described in subclause (A)(i) of this clause; and

(B) related to hazardous liquid, means commerce between--

(i) a place in a State and a place outside that State; or

(ii) places in the same State through a place outside the State;

~~(9) "intrastate gas pipeline facility" means--~~

~~(A) a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); and~~

~~(B) a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption;~~

(9) "intrastate gas pipeline facility" means a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);

(10) "intrastate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility;

(11) "liquefied natural gas" means natural gas in a liquid or semisolid state;

(12) "liquefied natural gas accident" means a release, burning, or explosion of liquefied natural gas from any cause, except a release, burning, or explosion that, under regulations prescribed by the Secretary, does not pose a threat to public health or safety, property, or the environment;
(13) "liquefied natural gas conversion" means conversion of natural gas into liquefied natural gas or conversion of liquefied natural gas into natural gas;
(14) "liquefied natural gas pipeline facility"--
(A) means a gas pipeline facility used for transporting or storing liquefied natural gas, or for liquefied natural gas conversion, in interstate or foreign commerce; but
(B) does not include any part of a structure or equipment located in navigable waters (as defined in section 3 of the Federal Power Act (16 U.S.C. 796));
(15) "municipality" means a political subdivision of a State;
(16) "new liquefied natural gas pipeline facility" means a liquefied natural gas pipeline facility except an existing liquefied natural gas pipeline facility;
(17) "person", in addition to its meaning under section 1 of title 1 (except as to societies), includes a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person;
(18) "pipeline facility" means a gas pipeline facility and a hazardous liquid pipeline facility;
(19) "pipeline transportation" means transporting gas and transporting hazardous liquid;
(20) "State" means a State of the United States, the District of Columbia, and Puerto Rico;
(21) "transporting gas"--
(A) means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce; but
(B) does not include the gathering of gas, other than gathering through regulated gathering lines, in those rural locations that are located outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area (including a subdivision, business, shopping center, or community development) or any similar populated area that the Secretary of Transportation determines to be a nonrural area, except that the term "transporting gas" includes the movement of gas through regulated gathering lines~~.~~;
(22) "transporting hazardous liquid"--
(A) means the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce; but
(B) does not include moving hazardous liquid through--
(i) gathering lines in a rural area;
(ii) onshore production, refining, or manufacturing facilities; or
(iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities~~.~~;
(23) "risk management" means the systematic application, by the owner or operator of a pipeline facility, of management policies, procedures, finite resources, and practices to the tasks of identifying, analyzing, assessing, reducing, and controlling risk in order to protect employees, the general public, the environment, and pipeline facilities;
(24) "risk management plan" means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management; ~~and~~
(25) "Secretary" means the Secretary of Transportation~~.~~; and
(26) “underground natural gas storage facility” means a gas pipeline facility that stores natural gas in an underground facility, including—
(A) a depleted hydrocarbon reservoir;
(B) an aquifer reservoir; or
(C) a solution-mined salt cavern reservoir.

(b) Gathering lines.--(1)(A) Not later than October 24, 1994, the Secretary shall prescribe standards defining the term "gathering line".
(B) In defining "gathering line" for gas, the Secretary--
(i) shall consider functional and operational characteristics of the lines to be included in the definition; and

(ii) is not bound by a classification the Commission establishes under the Natural Gas Act (15 U.S.C. 717 et seq.).

(2)(A) Not later than October 24, 1995, the Secretary, if appropriate, shall prescribe standards defining the term "regulated gathering line". In defining the term, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.

(B)(i) The Secretary also shall consider diameter when defining "regulated gathering line" for hazardous liquid.

(ii) The definition of "regulated gathering line" for hazardous liquid may not include a crude oil gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage.

§ 60102. Purpose and general authority

(a) Purpose and minimum safety standards.--

(1) Purpose.--The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) Minimum safety standards.--The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards--

(A) apply to ~~owners and operators~~ any or all of the owners and operators of pipeline facilities;

(B) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(C) shall include a requirement that all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities.

(3) Qualifications of pipeline operators.-- The qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.

(b) Practicability and safety needs standards.--

(1) In general.--A standard prescribed under subsection (a) shall be--

(A) practicable; and

(B) designed to meet the need for--

(i) gas pipeline safety, or safely transporting hazardous liquids, as appropriate; and

(ii) protecting the environment.

(2) Factors for consideration.--When prescribing any standard under this section or section 60101(b), 60103, 60108, 60109, 60110, or 60113, the Secretary shall consider--

(A) relevant available--

(i) gas pipeline safety information;

(ii) hazardous liquid pipeline safety information; and

(iii) environmental information;

(B) the appropriateness of the standard for the particular type of pipeline transportation or facility;

(C) the reasonableness of the standard;

(D) based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard;

(E) based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard;

(F) comments and information received from the public; and

(G) the comments and recommendations of the Technical Pipeline Safety Standards

Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.

(3) Risk assessment.--In conducting a risk assessment referred to in subparagraphs (D) and (E) of paragraph (2), the Secretary shall--

(A) identify the regulatory and nonregulatory options that the Secretary considered in prescribing a proposed standard;

(B) identify the costs and benefits associated with the proposed standard;

(C) include--

(i) an explanation of the reasons for the selection of the proposed standard in lieu of the other options identified; and

(ii) with respect to each of those other options, a brief explanation of the reasons that the Secretary did not select the option; and

(D) identify technical data or other information upon which the risk assessment information and proposed standard is based.

(4) Review.--

(A) In general.--The Secretary shall--

(i) submit any risk assessment information prepared under paragraph (3) of this subsection to the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate; and

(ii) make that risk assessment information available to the general public.

(B) Peer review panels.--The committees referred to in subparagraph (A) shall serve as peer review panels to review risk assessment information prepared under this section. Not later than 90 days after receiving risk assessment information for review pursuant to subparagraph (A), each committee that receives that risk assessment information shall prepare and submit to the Secretary a report that includes-

(i) an evaluation of the merit of the data and methods used; and

(ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate.

(C) Review by Secretary.--Not later than 90 days after receiving a report submitted by a committee under subparagraph (B), the Secretary--

(i) shall review the report;

(ii) shall provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report; and

(iii) may revise the risk assessment and the proposed standard before promulgating the final standard.

(5) Secretarial decisionmaking.--Except where otherwise required by statute, the Secretary shall propose or issue a standard under this Chapter only upon a reasoned determination that the benefits of the intended standard justify its costs.

(6) Exceptions from application.--The requirements of subparagraphs (D) and (E) of paragraph (2) do not apply when--

(A) the standard is the product of a negotiated rulemaking, or other rulemaking including the adoption of industry standards that receives no significant adverse comment within 60 days of notice in the Federal Register;

(B) based on a recommendation (in which three-fourths of the members voting concur) by the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as applicable, the Secretary waives the requirements; or

(C) the Secretary finds, pursuant to section 553(b)(3)(B) of title 5, United States Code, that notice and public procedure are not required.

(7) Report.--Not later than March 31, 2000, the Secretary shall transmit to the Congress a report that--

(A) describes the implementation of the risk assessment requirements of this section, including the extent to which those requirements have affected regulatory decisionmaking and pipeline safety; and

(B) includes any recommendations that the Secretary determines would make the risk assessment process conducted pursuant to the requirements under this chapter a more

effective means of assessing the benefits and costs associated with alternative regulatory and nonregulatory options in prescribing standards under the Federal pipeline safety regulatory program under this chapter.

(c) Public safety program requirements.--(1) The Secretary shall include in the standards prescribed under subsection (a) of this section a requirement that an operator of a gas pipeline facility participate in a public safety program that--

(A) notifies an operator of proposed demolition, excavation, tunneling, or construction near or affecting the facility;

(B) requires an operator to identify a pipeline facility that may be affected by the proposed demolition, excavation, tunneling, or construction, to prevent damaging the facility; and

(C) the Secretary decides will protect a facility adequately against a hazard caused by demolition, excavation, tunneling, or construction.

(2) To the extent a public safety program referred to in paragraph (1) of this subsection is not available, the Secretary shall prescribe standards requiring an operator to take action the Secretary prescribes to provide services comparable to services that would be available under a public safety program.

(3) The Secretary may include in the standards prescribed under subsection (a) of this section a requirement that an operator of a hazardous liquid pipeline facility participate in a public safety program meeting the requirements of paragraph (1) of this subsection or maintain and carry out a damage prevention program that provides services comparable to services that would be available under a public safety program.

(4) Promoting public awareness.--

(A) Not later than one year after the date of enactment of the Accountable Pipeline Safety and Accountability Act of 1996, and annually thereafter, the owner or operator of each interstate gas pipeline facility shall provide to the governing body of each municipality in which the interstate gas pipeline facility is located, a map identifying the location of such facility.

(B)(i) Not later than June 1, 1998, the Secretary shall survey and assess the public education programs under section 60116 and the public safety programs under section 60102(c) and determine their effectiveness and applicability as components of a model program. In particular, the survey shall include the methods by which operators notify residents of the location of the facility and its right of way, public information regarding existing One-Call programs, and appropriate procedures to be followed by residents of affected municipalities in the event of accidents involving interstate gas pipeline facilities.

(ii) Not later than one year after the survey and assessment are completed, the Secretary shall institute a rulemaking to determine the most effective public safety and education program components and promulgate if appropriate, standards implementing those components on a nationwide basis. In the event that the Secretary finds that promulgation of such standards are not appropriate, the Secretary shall report to Congress the reasons for that finding.

(d) Facility operation information standards.--The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain, to the extent practicable, information related to operating the facility as required by the standards prescribed under this chapter and, when requested, to make the information available to the Secretary and an appropriate State official as determined by the Secretary. The information shall include--

(1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator;

(2) accurate maps and a supplementary geographic description, including an identification of areas described in regulations prescribed under section 60109 of this title, that show the location in the State of--

(A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and

(B) major hazardous liquid pipeline facilities of the operator;

(3) a description of--

(A) the characteristics of the operator's pipelines in the State; and

(B) products transported through the operator's pipelines in the State;
(4) the manual that governs operating and maintaining pipeline facilities in the State;
(5) an emergency response plan describing the operator's procedures for responding to and containing releases, including--
(A) identifying specific action the operator will take on discovering a release;
(B) liaison procedures with State and local authorities for emergency response; and
(C) communication and alert procedures for immediately notifying State and local officials at the time of a release; and
(6) other information the Secretary considers useful to inform a State of the presence of pipeline facilities and operations in the State.

(e) Pipe inventory standards.--The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain for the Secretary, to the extent practicable, an inventory with appropriate information about the types of pipe used for the transportation of gas or hazardous liquid, as appropriate, in the operator's system and additional information, including the material's history and the leak history of the pipe. The inventory--
(1) for a gas pipeline facility, shall include an identification of each facility passing through an area described in regulations prescribed under section 60109 of this title but shall exclude equipment used with the compression of gas; and
(2) for a hazardous liquid pipeline facility, shall include an identification of each facility and gathering line passing through an area described in regulations prescribed under section 60109 of this title, whether the facility or gathering line otherwise is subject to this chapter, but shall exclude equipment associated only with the pipeline pumps or storage facilities.

(f) Standards as accommodating "smart pigs".--
(1) Minimum safety standards.--The Secretary shall prescribe minimum safety standards requiring that-
(A) the design and construction of new natural gas transmission pipeline or hazardous liquid pipeline facilities, and
(B) when the replacement of existing natural gas transmission pipeline or hazardous liquid pipeline facilities or equipment is required, the replacement of such existing facilities be carried out, to the extent practicable, in a manner so as to accommodate the passage through such natural gas transmission pipeline or hazardous liquid pipeline facilities of instrumented internal inspection devices (commonly referred to as "smart pigs"). The Secretary may extend such standards to require existing natural gas transmission pipeline or hazardous liquid pipeline facilities, whose basic construction would accommodate an instrumented internal inspection device to be modified to permit the inspection of such facilities with instrumented internal inspection devices.
(2) Periodic inspections.--Not later than October 24, 1995, the Secretary shall prescribe, if necessary, additional standards requiring the periodic inspection of each pipeline the operator of the pipeline identifies under section 60109 of this title. The standards shall include any circumstances under which an inspection shall be conducted with an instrumented internal inspection device and, if the device is not required, use of an inspection method that is at least as effective as using the device in providing for the safety of the pipeline.

(g) Effective dates.--A standard prescribed under this section and section 60110 of this title is effective on the 30th day after the Secretary prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(h) Safety condition reports.--(1) The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter) to submit to the Secretary a written report on any--
(A) condition that is a hazard to life, property, or the environment; and
(B) safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility.

(2) The Secretary must receive the report not later than 5 working days after a representative of a person to which this section applies first establishes that the condition exists. Notice of the condition shall be given concurrently to appropriate State authorities.

(i) Carbon dioxide regulation.--

(1) Transportation in liquid state.—The Secretary shall regulate carbon dioxide transported by a hazardous liquid pipeline facility. The Secretary shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.

(2) Transportation in gaseous state.—

(A) Minimum safety standards.—The Secretary shall prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in a gaseous state.

(B) Considerations.—In establishing the standards, the Secretary shall consider whether applying the minimum safety standards in part 195 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this paragraph, for the transportation of carbon dioxide in a liquid state to the transportation of carbon dioxide in a gaseous state would ensure safety.

(3) Limitation of statutory construction.—Nothing in this subsection authorizes the Secretary to regulate piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of carbon dioxide or the preparation of carbon dioxide for transportation by pipeline at production, refining, or manufacturing facilities.

(j) Emergency flow restricting devices.--(1) Not later than October 24, 1994, the Secretary shall survey and assess the effectiveness of emergency flow restricting devices (including remotely controlled valves and check valves) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases from hazardous liquid pipeline facilities.

(2) Not later than 2 years after the survey and assessment are completed, the Secretary shall prescribe standards on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or other procedure, system, or equipment described in paragraph (1) of this subsection on the facility.

~~(3) Remotely controlled valves.--(A) Not later than June 1, 1998, the Secretary shall survey and assess the effectiveness of remotely controlled valves to shut off the flow of natural gas in the event of a rupture of an interstate natural gas pipeline facility and shall make a determination about whether the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility.~~

~~(B) Not later than one year after the survey and assessment are completed, if the Secretary has determined that the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility, the Secretary shall prescribe standards under which an operator of an interstate natural gas pipeline facility must use a remotely controlled valve. These standards shall include, but not be limited to, requirements for high-density population areas.~~

~~(k) Prohibition against low internal stress exception.--The Secretary may not provide an exception to this chapter for a hazardous liquid pipeline facility only because the facility operates at low internal stress.~~

(k) Low-stress hazardous liquid pipelines.—

(1) Minimum standards.—Not later than December 31, 2007, the Secretary shall issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines, except as provided in paragraph (3). The implementation of the applicable standards and regulatory requirements may be phased in. The regulations issued under this paragraph shall not apply to gathering lines.

(2) General prohibition against low internal stress exception.—Except as provided in paragraph (3), the Secretary may not provide an exception to the requirements of this chapter for a hazardous liquid pipeline because the pipeline operates at low internal stress.

(3) Limited exceptions.—The Secretary shall provide or continue in force exceptions to this subsection for low-stress hazardous liquid pipelines that—

(A) are subject to safety regulations of the United States Coast Guard; or

(B) serve refining, manufacturing, or truck, rail, or vessel terminal facilities if the pipeline is less

than 1 mile long (measured outside the facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation,
until regulations issued under paragraph (1) become effective. After such regulations become effective, the Secretary may retain or remove those exceptions as appropriate.

(4) Relationship to other laws.—Nothing in this subsection shall be construed to prohibit or otherwise affect the applicability of any other statutory or regulatory exemption to any hazardous liquid pipeline.

(5) Definition.—For purposes of this subsection, the term 'low-stress hazardous liquid pipeline' means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

(6) Effective date.—The requirements of this subsection shall not take effect as to low-stress hazardous liquid pipeline operators before the effective date of the rules promulgated by the Secretary under this subsection.

(l) Updating standards.--The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulatory program under this chapter.

(m) Inspections by direct assessment.--Not later than 1 year after the date of the enactment of this subsection, the Secretary shall issue regulations prescribing standards for inspection of a pipeline facility by direct assessment.

(n) Automatic and Remote-Controlled Shut-off Valves for New Transmission Pipelines.—

(1) In general.—Not later than 2 years after the date of enactment of this subsection, and after considering the factors specified in subsection (b)(2), the Secretary, if appropriate, shall require by regulation the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible on transmission pipeline facilities constructed or entirely replaced after the date on which the Secretary issues the final rule containing such requirement.

(2) High-consequence area study.—

(A) Study.—The Comptroller General of the United States shall conduct a study on the ability of transmission pipeline facility operators to respond to a hazardous liquid or gas release from a pipeline segment located in a high-consequence area.

(B) Considerations.—In conducting the study, the Comptroller General shall consider the swiftness of leak detection and pipeline shutdown capabilities, the location of the nearest response personnel, and the costs, risks, and benefits of installing automatic and remote-controlled shut-off valves.

(C) Report.—Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

(o) Transportation-Related Oil Flow Lines.—

(1) Data collection.—The Secretary may collect geospatial or technical data on transportation-related oil flow lines, including unregulated transportation-related oil flow lines.

(2) Transportation-related oil flow line defined.—
In this subsection, the term "transportation-related oil flow line" means a pipeline transporting oil off of the grounds of the well where it originated and across areas not owned by the producer, regardless of the extent to which the oil has been processed, if at all.

(3) Limitation.—Nothing in this subsection authorizes the Secretary to prescribe standards for the movement of oil through production, refining, or manufacturing facilities or through oil production flow lines located on the grounds of wells.

(p) Limitation on Incorporation of Documents by Reference.—Beginning ~~1 year~~ 3 years after the date of enactment of this subsection, the Secretary may not issue ~~guidance or~~ a regulation pursuant to this

chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge~~, on an Internet Web site~~.

§ 60103. Standards for liquefied natural gas pipeline facilities

(a) Location standards.--The Secretary of Transportation shall prescribe minimum safety standards for deciding on the location of a new liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider the--

(1) kind and use of the facility;
(2) existing and projected population and demographic characteristics of the location;
(3) existing and proposed land use near the location;
(4) natural physical aspects of the location;
(5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; ~~and~~
(6) need to encourage remote siting.~~;~~ and
(7) national security.

(b) Design, installation, construction, inspection, and testing standards.--The Secretary of Transportation shall prescribe minimum safety standards for designing, installing, constructing, initially inspecting, and initially testing a new liquefied natural gas pipeline facility. When prescribing a standard, the Secretary shall consider--

(1) the characteristics of material to be used in constructing the facility and of alternative material;
(2) design factors;
(3) the characteristics of the liquefied natural gas to be stored or converted at, or transported by, the facility; and
(4) the public safety factors of the design and of alternative designs, particularly the ability to prevent and contain a liquefied natural gas spill.

(c) Nonapplication.--(1) Except as provided in paragraph (2) of this subsection, a design, location, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, does not apply to an existing liquefied natural gas pipeline facility if the standard is to be applied because of authority given--

(A) under this chapter; or
(B) under another law, and the standard is not prescribed at the time the authority is applied.

(2)(A) Any design, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, may provide that the standard applies to any part of a replacement component of a liquefied natural gas pipeline facility if the component or part is placed in service after the standard is prescribed and application of the standard--

(i) does not make the component or part incompatible with other components or parts; or
(ii) is not impracticable otherwise.

(B) Any location standard prescribed under this chapter after March 1, 1978, does not apply to any part of a replacement component of an existing liquefied natural gas pipeline facility.

(3) A design, installation, construction, initial inspection, or initial testing standard does not apply to a liquefied natural gas pipeline facility existing when the standard is adopted.

(d) Operation and maintenance standards.--The Secretary of Transportation shall prescribe minimum operating and maintenance standards for a liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider--

(1) the conditions, features, and type of equipment and structures that make up or are used in connection with the facility;
(2) the fire prevention and containment equipment at the facility;
(3) security measures to prevent an intentional act that could cause a liquefied natural gas accident;
(4) maintenance procedures and equipment;
(5) the training of personnel in matters specified by this subsection; and
(6) other factors and conditions related to the safe handling of liquefied natural gas.

(e) Effective dates.--A standard prescribed under this section is effective on the 30th day after the Secretary of Transportation prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(f) Contingency plans.--A new liquefied natural gas pipeline facility may be operated only after the operator submits an adequate contingency plan that states the action to be taken if a liquefied natural gas accident occurs. The Secretary of Energy or appropriate State or local authority shall decide if the plan is adequate.

(g) Effect on other standards.--This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility) associated with a liquefied natural gas pipeline facility.

§ 60104. Requirements and limitations

(a) Opportunity to present views.--The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) Nonapplication.--A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) Preemption.--A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

(d) Consultation.--(1) When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) Location and routing of facilities.--This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

§ 60105. State pipeline safety program certifications

(a) General requirements and submission.--Except as provided in this section and sections 60114 and 60121 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and

practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation) that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

(b) Contents.--Each certification submitted under subsection (a) of this section shall state that the State authority--

(1) has regulatory jurisdiction over the standards and practices to which the certification applies;

(2) has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;

(3) is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title;

~~(4) is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies;~~

(4) is encouraging and promoting the establishment of a program designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies that subjects persons who violate the applicable requirements of that program to civil penalties and other enforcement actions that are substantially the same as are provided under this chapter, and addresses the elements in section 60134(b);

(5) may require record maintenance, reporting, and inspection substantially the same as provided under section 60117 of this title;

(6) may require that plans for inspection and maintenance under section 60108 (a) and (b) of this title be filed for approval; and

(7) may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections 60120 and 60122(a)(1) and (b)-(f) of this title.

(c) Reports.--(1) Each certification submitted under subsection (a) of this section shall include a report that contains--

(A) the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;

(B) each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than an amount the Secretary establishes (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;

(C) the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and

(D) any other information the Secretary requires.

(2) The report included in the first certification submitted under subsection (a) of this section is only required to state information available at the time of certification.

(d) Application.--A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification until the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) Monitoring.--The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.

(f) Rejections of certification.--If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.

§ 60106. State pipeline safety agreements

(a) Agreements without certification.--If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall--

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

(2) prescribe procedures for approval of plans of inspection and maintenance substantially the same as required under section 60108 (a) and (b) of this title.

(b) Agreements with certification.--

(1) In general.--If the Secretary accepts a certification under section 60105 and makes the determination required under this subsection, the Secretary may make an agreement with a State authority authorizing it to participate in the oversight of interstate pipeline transportation. Each such agreement shall include a plan for the State authority to participate in special investigations involving incidents or new construction and allow the State authority to participate in other activities overseeing interstate pipeline transportation or to assume additional inspection or investigatory duties. Nothing in this section modifies section 60104(c) or authorizes the Secretary to delegate the enforcement of safety standards for interstate pipeline facilities prescribed under this chapter to a State authority.

(2) Determinations required.--The Secretary may not enter into an agreement under this subsection, unless the Secretary determines in writing that--

(A) the agreement allowing participation of the State authority is consistent with the Secretary's program for inspection and consistent with the safety policies and provisions provided under this chapter;

(B) the interstate participation agreement would not adversely affect the oversight responsibilities of intrastate pipeline transportation by the State authority;

(C) the State is carrying out a program demonstrated to promote preparedness and risk prevention activities that enable communities to live safely with pipelines;

(D) the State meets the minimum standards for State one-call notification set forth in chapter 61; and

(E) the actions planned under the agreement would not impede interstate commerce or jeopardize public safety.

(3) Existing agreements.--If requested by the State authority, the Secretary shall authorize a State authority which had an interstate agreement in effect after January 31, 1999, to oversee interstate pipeline transportation pursuant to the terms of that agreement until the Secretary determines that the State meets the requirements of paragraph (2) and executes a new agreement, or until December 31, 2003, whichever is sooner. Nothing in this paragraph shall prevent the Secretary, after affording the State notice, hearing, and an opportunity to correct any alleged deficiencies, from terminating an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002 if--

(A) the State authority fails to comply with the terms of the agreement;

(B) implementation of the agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority; or

(C) continued participation by the State authority in the oversight of interstate pipeline

transportation has had an adverse impact on pipeline safety.

(4) Notice Upon Denial.—If a State authority requests an interstate agreement under this section and the Secretary denies such request, the Secretary shall provide written notification to the State authority of the denial that includes an explanation of the reasons for such denial.

(c) Notification.--

(1) In general.--Each agreement shall require the State authority to notify the Secretary promptly of a violation or probable violation of an applicable safety standard discovered as a result of action taken in carrying out an agreement under this section.

(2) Response by Secretary.--If a State authority notifies the Secretary under paragraph (1) of a violation or probable violation of an applicable safety standard, the Secretary, not later than 60 days after the date of receipt of the notification, shall--

(A) issue an order under section 60118(b) or take other appropriate enforcement actions to ensure compliance with this chapter; or

(B) provide the State authority with a written explanation as to why the Secretary has determined not to take such actions.

(d) Monitoring.--The Secretary may monitor a safety program established under this section to ensure that the program complies with the agreement. A State authority shall cooperate with the Secretary under this subsection.

(e) Ending agreements.--

(1) Permissive termination.--The Secretary may end an agreement under this section when the Secretary finds that the State authority has not complied with any provision of the agreement.

(2) Mandatory termination of agreement.--The Secretary shall end an agreement for the oversight of interstate pipeline transportation if the Secretary finds that--

(A) implementation of such agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority;

(B) the State actions under the agreement have failed to meet the requirements under subsection (b); or

(C) continued participation by the State authority in the oversight of interstate pipeline transportation would not promote pipeline safety.

(3) Procedural requirements.--The Secretary shall give notice and an opportunity for a hearing to a State authority before ending an agreement under this section. The Secretary may provide a State an opportunity to correct any deficiencies before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication unless the Secretary finds that continuation of an agreement poses an imminent hazard.

(f) Joint Inspectors.—At the request of a State authority, the Secretary shall allow for a certified State authority under section 60105 to participate in the inspection of an interstate pipeline facility.

§ 60107. State pipeline safety grants

(a) General authority.--If a State authority files an application not later than September 30 of a calendar year, the Secretary of Transportation shall pay ~~not more than 50 percent~~ not more than 80 percent of the cost of the personnel, equipment, and activities the authority reasonably requires during the next calendar year--

(1) to carry out a safety program under a certification under section 60105 of this title or an agreement under section 60106 of this title; or

(2) to act as an agent of the Secretary on interstate gas pipeline facilities or interstate hazardous liquid pipeline facilities.

~~(b) Payments.--After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety~~

~~program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent –~~

~~(1) for a gas safety program, for the fiscal years that ended June 30, 1967, and June 30, 1968; and~~
~~(2) for a hazardous liquid safety program, for the fiscal years that ended September 30, 1978, and September 30, 1979.~~ ~~spent for gas and hazardous liquid safety programs for the 3 fiscal years prior to the fiscal year in which the Secretary makes the payment, except when the Secretary waives this requirement. For each of fiscal years 2012 and 2013, the Secretary shall grant such a waiver to a State if the State can demonstrate an inability to maintain or increase the required funding share of its safety program at or above the level required by this subsection due to economic hardship in that State. For fiscal year 2014, and each fiscal year thereafter, the Secretary may grant such a waiver to a State if the State can make the demonstration described in the preceding sentence.~~

(b) Payments.—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program, except when the Secretary waives this requirement.

(c) Apportionment and method of payment.--The Secretary shall apportion the amount appropriated to carry out this section among the States. A payment may be made under this section in installments, in advance, or on a reimbursable basis.

(d) Additional authority and considerations.--(1) The Secretary may prescribe--
(A) the form of, and way of filing, an application under this section;
(B) reporting and fiscal procedures the Secretary considers necessary to ensure the proper accounting of money of the Government; and
(C) qualifications for a State to meet to receive a payment under this section, including qualifications for State employees who perform inspection activities under section 60105 or 60106 of this title.
(2) The qualifications prescribed under paragraph (1)(C) of this subsection may--
(A) consider the experience and training of the employee;
(B) order training or other requirements; and
(C) provide for approval of qualifications on a conditional basis until specified requirements are met.

(e) Repurposing of funds.—If a State program's certification is rejected under section 60105(f) or such program is otherwise suspended or interrupted, the Secretary may use any undistributed, deobligated, or recovered funds authorized under this section to carry out pipeline safety activities for that State within the period of availability for such funds.

§ 60108. Inspection and maintenance

(a) Plans.--(1) Each person owning or operating ~~an intrastate~~ a gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person owning or operating a pipeline facility subject to this chapter to file a plan for inspection and maintenance for approval.
(2) If the Secretary or a State authority responsible for enforcing standards prescribed under this chapter decides that a plan required under paragraph (1) of this subsection is inadequate for safe operation, the Secretary or authority shall require the person to revise the plan. Revision may be required only after giving notice and an opportunity for a hearing. A plan required under paragraph (1) must be practicable and designed to meet the need for pipeline safety and must include terms

designed to enhance the ability to discover safety-related conditions described in section 60102(h)(1) of this title. In deciding on the adequacy of a plan, the Secretary or authority shall consider--

(A) relevant available pipeline safety information;

(B) the appropriateness of the plan for the particular kind of pipeline transportation or facility;

(C) the reasonableness of the plan; and

(D) the extent to which the plan will contribute to public safety and the protection of the environment.

(3) A plan required under this subsection shall be made available to the Secretary or State authority on request under section 60117 of this title.

(b) Inspection and testing.--(1) The Secretary shall inspect and require appropriate testing of a pipeline facility subject to this chapter that is not covered by a certification under section 60105 of this title or an agreement under section 60106 of this title. The Secretary shall decide on the frequency and type of inspection and testing under this subsection on a case-by-case basis after considering the following:

(A) the location of the pipeline facility.

(B) the type, size, age, manufacturer, method of construction, and condition of the pipeline facility.

(C) the nature and volume of material transported through the pipeline facility.

(D) the pressure at which that material is transported.

(E) climatic, geologic, and seismic characteristics (including soil characteristics) and conditions of the area in which the pipeline facility is located.

(F) existing and projected population and demographic characteristics of the area in which the pipeline facility is located.

(G) for a hazardous liquid pipeline facility, the proximity of the area in which the facility is located to an area that is unusually sensitive to environmental damage.

(H) the frequency of leaks.

(I) other factors the Secretary decides are relevant to the safety of pipeline facilities.

(2) To the extent and in amounts provided in advance in an appropriation law, the Secretary shall decide on the frequency of inspection under paragraph (1) of this subsection. The Secretary may reduce the frequency of an inspection of a master meter system.

(3) Testing under this subsection shall use the most appropriate technology practicable.

(c) Pipeline facilities offshore and in other waters.--(1) In this subsection--

(A) "abandoned" means permanently removed from service.

(B) "pipeline facility" includes an underwater abandoned pipeline facility.

(C) if a pipeline facility has no operator, the most recent operator of the facility is deemed to be the operator of the facility.

(2)(A) Not later than May 16, 1993, on the basis of experience with the inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section 203(l)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as appropriate, and any other information available to the Secretary, the Secretary shall establish a mandatory, systematic, and, where appropriate, periodic inspection program of--

(i) all offshore pipeline facilities; and

(ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists, if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.

(B) In prescribing standards to carry out subparagraph (A) of this paragraph--

(i) the Secretary shall identify what is a hazard to navigation with respect to an underwater abandoned pipeline facility; and

(ii) for an underwater pipeline facility abandoned after October 24, 1992, the Secretary shall include requirements that will lessen the potential that the facility will pose a hazard to navigation and shall consider the relationship between water depth and navigational safety and factors relevant to the local marine environment.

(3)(A) The Secretary shall establish by regulation a program requiring an operator of a pipeline facility described in paragraph (2) of this subsection to report a potential or existing navigational hazard involving that pipeline facility to the Secretary through the appropriate Coast Guard office.

(B) The operator of a pipeline facility described in paragraph (2) of this subsection that discovers any part of the pipeline facility that is a hazard to navigation shall mark the location of the hazardous part with a Coast-Guard-approved marine buoy or marker and immediately shall notify the Secretary as provided by the Secretary under subparagraph (A) of this paragraph. A marine buoy or marker used under this subparagraph is deemed a pipeline sign or right-of-way marker under section 60123(c) of this title.

(4)(A) The Secretary shall establish a standard that each pipeline facility described in paragraph (2) of this subsection that is a hazard to navigation is buried not later than 6 months after the date the condition of the facility is reported to the Secretary. The Secretary may extend that 6-month period for a reasonable period to ensure compliance with this paragraph.

(B) In prescribing standards for subparagraph (A) of this paragraph for an underwater pipeline facility abandoned after October 24, 1992, the Secretary shall include requirements that will lessen the potential that the facility will pose a hazard to navigation and shall consider the relationship between water depth and navigational safety and factors relevant to the local marine environment.

(5)(A) Not later than October 24, 1994, the Secretary shall establish standards on what is an exposed offshore pipeline facility and what is a hazard to navigation under this subsection.

(B) Not later than 6 months after the Secretary establishes standards under subparagraph (A) of this paragraph, or October 24, 1995, whichever occurs first, the operator of each offshore pipeline facility not described in section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section 203(l)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as appropriate, shall inspect the facility and report to the Secretary on any part of the facility that is exposed or is a hazard to navigation. This subparagraph applies only to a facility that is between the high water mark and the point at which the subsurface is under 15 feet of water, as measured from mean low water. An inspection that occurred after October 3, 1989, may be used for compliance with this subparagraph if the inspection conforms to the requirements of this subparagraph.

(C) The Secretary may extend the time period specified in subparagraph (B) of this paragraph for not more than 6 months if the operator of a facility satisfies the Secretary that the operator has made a good faith effort, with reasonable diligence, but has been unable to comply by the end of that period.

(6)(A) The operator of a pipeline facility abandoned after October 24, 1992, shall report the abandonment to the Secretary in a way that specifies whether the facility has been abandoned properly according to applicable United States Government and State requirements.

(B) Not later than October 24, 1995, the operator of a pipeline facility abandoned before October 24, 1992, shall report to the Secretary reasonably available information related to the facility, including information that a third party possesses. The information shall include the location, size, date, and method of abandonment, whether the facility has been abandoned properly under applicable law, and other relevant information the Secretary may require. Not later than April 24, 1994, the Secretary shall specify how the information shall be reported. The Secretary shall ensure that the Government maintains the information in a way accessible to appropriate Government agencies and State authorities.

(C) The Secretary shall request that a State authority having information on a collision between a vessel and an underwater pipeline facility report the information to the Secretary in a timely way and make a reasonable effort to specify the location, date, and severity of the collision. Chapter 35 of title 44 does not apply to this subparagraph.

(7) The Secretary may not exempt from this chapter an offshore hazardous liquid pipeline facility only because the pipeline facility transfers hazardous liquid in an underwater pipeline between a vessel and an onshore facility.

(8) If, after reviewing existing Federal and State regulations for hazardous liquid gathering lines located offshore in the United States, including within the inlets of the Gulf of Mexico, the Secretary determines it is appropriate, the Secretary shall issue regulations, after notice and an opportunity for a hearing, subjecting offshore hazardous liquid gathering lines and hazardous liquid gathering

lines located within the inlets of the Gulf of Mexico to the same standards and regulations as other hazardous liquid gathering lines. The regulations issued under this paragraph shall not apply to production pipelines or flow lines.

(d) Replacing cast iron gas pipelines.--(1) The Secretary shall publish a notice on the availability of industry guidelines, developed by the Gas Piping Technology Committee, for replacing cast iron pipelines. Not later than 2 years after the guidelines become available, the Secretary shall conduct a survey of gas pipeline operators with cast iron pipe in their systems to establish--

(A) the extent to which each operator has adopted a plan for the safe management and replacement of cast iron;

(B) the elements of the plan, including the anticipated rate of replacement; and

(C) the progress that has been made.

(2) Chapter 35 of title 44 does not apply to the conduct of the survey.

(3) This subsection does not prevent the Secretary from developing Government guidelines or standards for cast iron gas pipelines as the Secretary considers appropriate.

(4) Not later than December 31, 2012, and every 2 years thereafter, the Secretary shall conduct a follow-up survey to measure the progress that owners and operators of pipeline facilities have made in adopting and implementing their plans for the safe management and replacement of cast iron gas pipelines.

(e) In general.—After the completion of a Pipeline and Hazardous Materials Safety Administration pipeline safety inspection, the Administrator of such Administration, or the State authority certified under section 60105 of title 49, United States Code, to conduct such inspection, shall—

(1) within 30 days, conduct a post-inspection briefing with the owner or operator of the gas or hazardous liquid pipeline facility inspected outlining any concerns; and

(2) within 90 days, to the extent practicable, provide the owner or operator with written preliminary findings of the inspection.

§ 60109. High-density population areas and environmentally sensitive areas

(a) Identification requirements.--Not later than October 24, 1994, the Secretary of Transportation shall prescribe standards that--

(1) establish criteria for identifying--

(A) by operators of gas pipeline facilities, each gas pipeline facility (except a natural gas distribution line) located in a high-density population area; and

(B) by operators of hazardous liquid pipeline facilities and gathering lines--

(i) each hazardous liquid pipeline facility, whether otherwise subject to this chapter, that crosses waters where a substantial likelihood of commercial navigation exists or that is located in an area described in the criteria as a high-density population area; and

(ii) each hazardous liquid pipeline facility and gathering line, whether otherwise subject to this chapter, located in an area that the Secretary, in consultation with the Administrator of the Environmental Protection Agency, describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident; and

(2) provide that the identification be carried out through the inventory required under section 60102(e) of this title.

(b) Areas to be included as unusually sensitive.--When describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including--

(1) locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

(2) locations near pipeline rights-of-way that ~~have been identified as~~ are part of the Great Lakes or have been identified as coastal beaches, marine coastal waters, critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and

scenic rivers, or critical habitat areas for threatened and endangered species.

(c) Risk analysis and integrity management programs.--

(1) Requirement.--Each operator of a gas pipeline facility shall conduct an analysis of the risks to each facility of the operator located in an area identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, and shall adopt and implement a written integrity management program for such facility to reduce the risks.

(2) Regulations.--

(A) In general.--Not later than 12 months after the date of enactment of this subsection, the Secretary shall issue regulations prescribing standards to direct an operator's conduct of a risk analysis and adoption and implementation of an integrity management program under this subsection. The regulations shall require an operator to conduct a risk analysis and adopt an integrity management program within a time period prescribed by the Secretary, ending not later than 24 months after such date of enactment. Not later than 18 months after such date of enactment, each operator of a gas pipeline facility shall begin a baseline integrity assessment described in paragraph (3).

(B) Authority to issue regulations.--The Secretary may satisfy the requirements of this paragraph through the issuance of regulations under this paragraph or under other authority of law.

(3) Minimum requirements of integrity management programs.--An integrity management program required under paragraph (1) shall include, at a minimum, the following requirements:

(A) A baseline integrity assessment of each of the operator's facilities in areas identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, by internal inspection device, pressure testing, direct assessment, or an alternative method that the Secretary determines would provide an equal or greater level of safety. The operator shall complete such assessment not later than 10 years after the date of enactment of this subsection. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest risks are given priority for completion and that such assessments will be completed not later than 5 years after such date of enactment.

~~(B) Subject to paragraph (5), periodic reassessment of the facility, at a minimum of once every 7 years, using methods described in subparagraph (A).~~

(B) Subject to paragraph (5), periodic reassessments of the facility, at a minimum of once every 7 calendar years, using methods described in subparagraph (A). The Secretary may extend such deadline for an additional 6 months if the operator submits written notice to the Secretary with sufficient justification of the need for the extension.

(C) Clearly defined criteria for evaluating the results of assessments conducted under subparagraphs (A) and (B) and for taking actions based on such results.

(D) A method for conducting an analysis on a continuing basis that integrates all available information about the integrity of the facility and the consequences of releases from the facility.

(E) A description of actions to be taken by the operator to promptly address any integrity issue raised by an evaluation conducted under subparagraph (C) or the analysis conducted under subparagraph (D).

(F) A description of measures to prevent and mitigate the consequences of releases from the facility.

(G) A method for monitoring cathodic protection systems throughout the pipeline system of the operator to the extent not addressed by other regulations.

(H) If the Secretary raises a safety concern relating to the facility, a description of the actions to be taken by the operator to address the safety concern, including issues raised with the Secretary by States and local authorities under an agreement entered into under section 60106.

(4) Treatment of baseline integrity assessments.--In the case of a baseline integrity assessment

conducted by an operator in the period beginning on the date of enactment of this subsection and ending on the date of issuance of regulations under this subsection, the Secretary shall accept the assessment as complete, and shall not require the operator to repeat any portion of the assessment, if the Secretary determines that the assessment was conducted in accordance with the requirements of this subsection.

(5) Waivers and modifications.--In accordance with section 60118(c), the Secretary may waive or modify any requirement for reassessment of a facility under paragraph (3)(B) for reasons that may include the need to maintain local product supply or the lack of internal inspection devices if the Secretary determines that such waiver is not inconsistent with pipeline safety.

(6) Standards.--The standards prescribed by the Secretary under paragraph (2) shall address each of the following factors:

(A) The minimum requirements described in paragraph (3).

(B) The type or frequency of inspections or testing of pipeline facilities, in addition to the minimum requirements of paragraph (3)(B).

(C) The manner in which the inspections or testing are conducted.

(D) The criteria used in analyzing results of the inspections or testing.

(E) The types of information sources that must be integrated in assessing the integrity of a pipeline facility as well as the manner of integration.

(F) The nature and timing of actions selected to address the integrity of a pipeline facility.

(G) Such other factors as the Secretary determines appropriate to ensure that the integrity of a pipeline facility is addressed and that appropriate mitigative measures are adopted to protect areas identified under subsection (a)(1).

In prescribing those standards, the Secretary shall ensure that all inspections required are conducted in a manner that minimizes environmental and safety risks, and shall take into account the applicable level of protection established by national consensus standards organizations.

(7) Additional optional standards.--The Secretary may also prescribe standards requiring an operator of a pipeline facility to include in an integrity management program under this subsection--

(A) changes to valves or the establishment or modification of systems that monitor pressure and detect leaks based on the operator's risk analysis; and

(B) the use of emergency flow restricting devices.

(8) Lack of regulations.--In the absence of regulations addressing the elements of an integrity management program described in this subsection, the operator of a pipeline facility shall conduct a risk analysis and adopt and implement an integrity management program described in this subsection not later than 24 months after the date of enactment of this subsection and shall complete the baseline integrity assessment described in this subsection not later than 10 years after such date of enactment. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest risks are given priority for completion and that such assessments will be completed not later than 5 years after such date of enactment.

(9) Review of integrity management programs.--

(A) Review of programs.--

(i) In general.--The Secretary shall review a risk analysis and integrity management program under paragraph (1) and record the results of that review for use in the next review of an operator's program.

(ii) Context of review.--The Secretary may conduct a review under clause (i) as an element of the Secretary's inspection of an operator.

~~(iii) Inadequate programs.--If the Secretary determines that a risk analysis or integrity management program does not comply with the requirements of this subsection or regulations issued as described in paragraph (2), or is inadequate for the safe operation of a pipeline facility, the Secretary shall act under section 60108(a)(2) to require the operator to revise the risk analysis or integrity management program.~~

(iii) Inadequate programs.—If the Secretary determines that a risk analysis or integrity management program does not comply with the requirements of this subsection or regulations issued as described in paragraph (2), has not been adequately implemented, or

is inadequate for the safe operation of a pipeline facility, the Secretary may conduct proceedings under this chapter.

(B) Amendments to programs.--In order to facilitate reviews under this paragraph, an operator of a pipeline facility shall notify the Secretary of any amendment made to the operator's integrity management program not later than 30 days after the date of adoption of the amendment. The Secretary shall review any such amendment in accordance with this paragraph.

(C) Transmittal of programs to State authorities.--The Secretary shall provide a copy of each risk analysis and integrity management program reviewed by the Secretary under this paragraph to any appropriate State authority with which the Secretary has entered into an agreement under section 60106.

(10) State review of integrity management plans.--A State authority that enters into an agreement pursuant to section 60106, permitting the State authority to review the risk analysis and integrity management program pursuant to paragraph (9), may provide the Secretary with a written assessment of the risk analysis and integrity management program, make recommendations, as appropriate, to address safety concerns not adequately addressed by the operator's risk analysis or integrity management program, and submit documentation explaining the State-proposed revisions. The Secretary shall consider carefully the State's proposals and work in consultation with the States and operators to address safety concerns.

(11) Application of standards.--Section 60104(b) shall not apply to this section.

(d) Evaluation of integrity management regulations.--Not later than 4 years after the date of enactment of this subsection, the Comptroller General shall complete an assessment and evaluation of the effects on public safety and the environment of the requirements for the implementation of integrity management programs contained in the standards prescribed as described in subsection (c)(2).

(e) Distribution integrity management programs.—

(1) Minimum standards.—Not later than December 31, 2007, the Secretary shall prescribe minimum standards for integrity management programs for distribution pipelines.

(2) Additional authority of Secretary.—In carrying out this subsection, the Secretary may require operators of distribution pipelines to continually identify and assess risks on their distribution lines, to remediate conditions that present a potential threat to line integrity, and to monitor program effectiveness.

(3) Excess flow valves.—

(A) In general.—The minimum standards shall include a requirement for an operator of a natural gas distribution system to install an excess flow valve on each single family residence service line connected to such system if—

(i) the service line is installed or entirely replaced after June 1, 2008;

(ii) the service line operates continuously throughout the year at a pressure not less than 10 pounds per square inch gauge;

(iii) the service line is not connected to a gas stream with respect to which the operator has had prior experience with contaminants, the presence of which could interfere with the operation of an excess flow valve;

(iv) the installation of an excess flow valve on the service line is not likely to cause loss of service to the residence or interfere with necessary operation or maintenance activities, such as purging liquids from the service line; and

(v) an excess flow valve meeting performance standards developed under section 60110(e) of title 49, United States Code, is commercially available to the operator, as determined by the Secretary.

(B) Distribution branch services, multifamily facilities, and small commercial facilities.—Not later than 2 years after the date of enactment of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, and after issuing a final report on the evaluation of the National Transportation Safety Board's recommendation on excess flow valves in applications other than service lines serving one single family residence, the Secretary, if appropriate, shall by regulation require the use of excess flow valves, or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multifamily facilities, and small commercial facilities.

(C)~~(B)~~ Reports.—Operators of natural gas distribution systems shall report annually to the Secretary on the number of excess flow valves installed on their systems under subparagraph (A).

(4) Applicability.—The Secretary shall determine which distribution pipelines will be subject to the minimum standards.

(5) Development and implementation.—Each operator of a distribution pipeline that the Secretary determines is subject to the minimum standards prescribed by the Secretary under this subsection shall develop and implement an integrity management program in accordance with those standards.

(6) Savings clause.—Subject to section 60104(c), a State authority having a current certification under section 60105 may adopt or continue in force additional integrity management requirements, including additional requirements for installation of excess flow valves, for gas distribution pipelines within the boundaries of that State.

(f) Certification of pipeline integrity management program performance.—The Secretary shall establish procedures requiring certification of annual and semi-annual pipeline integrity management program performance reports by a senior executive officer of the company operating a pipeline subject to this chapter. The procedures shall require a signed statement, which may be effected electronically in accordance with the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.), certifying that—

(1) the signing officer has reviewed the report; and

(2) to the best of such officer's knowledge and belief, the report is true and complete.

(g) Hazardous Liquid Pipeline Facilities.—

(1) Integrity Assessments.—Notwithstanding any pipeline integrity management program or integrity assessment schedule otherwise required by the Secretary, each operator of a pipeline facility to which this subsection applies shall ensure that pipeline integrity assessments—

(A) using internal inspection technology appropriate for the integrity threat are completed not less often than once every 12 months; and

(B) using pipeline route surveys, depth of cover surveys, pressure tests, external corrosion direct assessment, or other technology that the operator demonstrates can further the understanding of the condition of the pipeline facility are completed on a schedule based on the risk that the pipeline facility poses to the high consequence area in which the pipeline facility is located.

(2) Application.—This subsection shall apply to any underwater hazardous liquid pipeline facility located in a high consequence area—

(A) that is not an offshore pipeline facility; and

(B) any portion of which is located at depths greater than 150 feet under the surface of the water.

(3) High Consequence Area Defined.—For purposes of this subsection, the term 'high consequence area' has the meaning given that term in section 195.450 of title 49, Code of Federal Regulations.

(4) Inspection and Enforcement.—The Secretary shall conduct inspections under section 60117(c) to determine whether each operator of a pipeline facility to which this subsection applies is complying with this section.

§ 60110. Excess flow valves

(a) Application.--This section applies only to--

(1) a natural gas distribution system installed after the effective date of regulations prescribed under this section; and

(2) any other natural gas distribution system when repair to the system requires replacing a part to accommodate installing excess flow valves.

(b) Installation requirements and considerations.--Not later than April 24, 1994, the Secretary of

Transportation shall prescribe standards on the circumstances, if any, under which an operator of a natural gas distribution system must install excess flow valves in the system. The Secretary shall consider--

(1) the system design pressure;
(2) the system operating pressure;
(3) the types of customers to which the distribution system supplies gas, including hospitals, schools, and commercial enterprises;
(4) the technical feasibility and cost of installing, operating, and maintaining the valve;
(5) the public safety benefits of installing the valve;
(6) the location of customer meters; and
(7) other factors the Secretary considers relevant.

(c) Notification of availability.--(1) Not later than October 24, 1994, the Secretary shall prescribe standards requiring an operator of a natural gas distribution system to notify in writing its customers having lines in which excess flow valves are not required by law but can be installed according to the standards prescribed under subsection (e) of this section, of--

(A) the availability of excess flow valves for installation in the system;
(B) safety benefits to be derived from installation; and
(C) costs associated with installation, maintenance, and replacement.

(2) The standards shall provide that, except when installation is required under subsection (b) of this section, excess flow valves shall be installed at the request of the customer if the customer will pay all costs associated with installation.

(d) Report.--If the Secretary decides under subsection (b) of this section that there are no circumstances under which an operator must install excess flow valves, the Secretary shall submit to Congress a report on the reasons for the decision not later than 30 days after the decision is made.

(e) Performance standards.--Not later than April 24, 1994, the Secretary shall develop standards for the performance of excess flow valves used to protect lines in a natural gas distribution system. The Secretary may adopt industry accepted performance standards in order to comply with the requirement under the preceding sentence. The standards shall be incorporated into regulations the Secretary prescribes under this section. All excess flow valves shall be installed according to the standards.

§ 60111. Financial responsibility for liquefied natural gas facilities

(a) Notice.--When the Secretary of Transportation believes that an operator of a liquefied natural gas facility does not have adequate financial responsibility for the facility, the Secretary may issue a notice to the operator about the inadequacy and the amount of financial responsibility the Secretary considers adequate.

(b) Hearings.--An operator receiving a notice under subsection (a) of this section may have a hearing on the record not later than 30 days after receiving the notice. The operator may show why the Secretary should not issue an order requiring the operator to demonstrate and maintain financial responsibility in at least the amount the Secretary considers adequate.

(c) Orders.--After an opportunity for a hearing on the record, the Secretary may issue the order if the Secretary decides it is justified in the public interest.

§ 60112. Pipeline facilities hazardous to life and property

(a) General authority.--After notice and an opportunity for a hearing, the Secretary of Transportation may decide that a pipeline facility is hazardous if the Secretary decides that--

(1) operation of the facility is or would be hazardous to life, property, or the environment; or
(2) the facility is or would be constructed or operated, or a component of the facility is or would be

constructed or operated, with equipment, material, or a technique that the Secretary decides is hazardous to life, property, or the environment.

(b) Considerations.--In making a decision under subsection (a) of this section, the Secretary shall consider, if relevant--

(1) the characteristics of the pipe and other equipment used in the pipeline facility, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment;

(2) the nature of the material the pipeline facility transports, the corrosive and deteriorative qualities of the material, the sequence in which the material are transported, and the pressure required for transporting the material;

(3) the aspects of the area in which the pipeline facility is located, including climatic and geologic conditions and soil characteristics;

(4) the proximity of the area in which the hazardous liquid pipeline facility is located to environmentally sensitive areas;

(5) the population density and population and growth patterns of the area in which the pipeline facility is located;

(6) any recommendation of the National Transportation Safety Board made under another law; and

(7) other factors the Secretary considers appropriate.

(c) Opportunity for State comment.--The Secretary shall provide, to any appropriate official of a State in which a pipeline facility is located and about which a proceeding has begun under this section, notice and an opportunity to comment on an agreement the Secretary proposes to make to resolve the proceeding. State comment shall incorporate comments of affected local officials.

(d) Corrective action orders.--

(1) In general.--If the Secretary decides under subsection (a) of this section that a pipeline facility is or would be hazardous, the Secretary shall order the operator of the facility to take necessary corrective action, including suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(2) Actions attributable to an employee.--If, in the case of a corrective action order issued following an accident, the Secretary determines that the actions of an employee carrying out an activity regulated under this chapter, including duties under section 60102(a), may have contributed substantially to the cause of the accident, the Secretary shall direct the operator to relieve the employee from performing those activities, reassign the employee, or place the employee on leave until the earlier of the date on which--

(A) the Secretary, after notice and an opportunity for a hearing, determines that the employee's actions did not contribute substantially to the cause of the accident; or

(B) the Secretary determines the employee has been re-qualified or re- trained as provided for in section 60131 and can safely perform those activities.

(3) Effect of collective bargaining agreements.--An action taken by an operator under paragraph (2) shall be in accordance with the terms and conditions of any applicable collective bargaining agreement.

(e) Waiver of notice and hearing in emergency.--The Secretary may waive the requirements for notice and an opportunity for a hearing under this section and issue expeditiously an order under this section if the Secretary decides failure to issue the order expeditiously will result in likely serious harm to life, property, or the environment. An order under this subsection shall provide an opportunity for a hearing as soon as practicable after the order is issued.

§ 60113. Customer-owned natural gas service lines

Not later than October 24, 1993, the Secretary of Transportation shall prescribe standards requiring an operator of a natural gas distribution pipeline that does not maintain customer-owned natural gas service lines up to building walls to advise its customers of--

(1) the requirements for maintaining those lines;
(2) any resources known to the operator that could assist customers in carrying out the maintenance;
(3) information the operator has on operating and maintaining its lines that could assist customers; and
(4) the potential hazards of not maintaining the lines.

§ 60114. One-call notification systems

(a) Minimum requirements.--The Secretary of Transportation shall prescribe standards providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:
(1) a requirement that the system apply to all areas of the State containing underground pipeline facilities.
(2) a requirement that a person, including a government employee or contractor, intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.
(3) a requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.
(4) qualifications for an operator of a facility, a private contractor, or a State or local authority to operate a system.
(5) procedures for advertisement and notice of the availability of a system.
(6) a requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.
(7) a requirement for the response of the operator of the system and of the facility after they are contacted by an individual under this subsection.
(8) a requirement that each State decide whether the system will be toll free.
(9) a requirement for sanctions substantially the same as provided under sections 60120 and 60122 of this title.

(b) Marking facilities.--On notification by an operator of a damage prevention program or by a person planning to carry out demolition, excavation, tunneling, or construction in the vicinity of a pipeline facility, the operator of the facility shall mark accurately, in a reasonable and timely way, the location of the pipeline facilities in the vicinity of the demolition, excavation, tunneling, or construction.

(c) Relationship to other laws.--This section and regulations prescribed under this section do not affect the liability established under a law of the United States or a State for damage caused by an activity described in subsection (a)(2) of this section.

(d) Prohibition applicable to excavators.—A person who engages in demolition, excavation, tunneling, or construction—
(1) may not engage in a demolition, excavation, tunneling, or construction activity in a State that has adopted a one-call notification system with out first using that system to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;
(2) may not engage in such demolition, excavation, tunneling, or construction activity in disregard of location information or markings established by a pipeline facility operator pursuant to subsection (b); and
(3) and who causes damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property—
(A) may not fail to promptly report the damage to the owner or operator of the facility; and
(B) if the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, may not fail to promptly report to other appropriate authorities by calling the 911 emergency telephone number.

(e) Prohibition applicable to underground pipeline facility owners and operators.—Any owner or operator of a pipeline facility who fails to respond to a location request in order to prevent damage to the pipeline facility or who fails to take reasonable steps, in response to such a request, to ensure accurate marking of the location of the pipeline facility in order to prevent damage to the pipeline facility shall be subject to a civil action under section 60120 or assessment of a civil penalty under section 60122.

(f) Limitation.—The Secretary may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a State that has the authority to impose penalties described in section 60134(b)(7) against persons who violate that State's damage prevention laws, unless the Secretary has determined that the State's enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate State enforcement of penalties.

(g) Technology development grants.—The Secretary may make grants to any organization or entity (not including for-profit entities) for the development of technologies that will facilitate the prevention of pipeline damage caused by demolition, excavation, tunneling, or construction activities, with emphasis on wireless and global positioning technologies having potential for use in connection with notification systems and underground facility locating and marking services. Funds provided under this subsection may not be used for lobbying or in direct support of litigation. The Secretary may also support such technology development through cooperative agreements with trade associations, academic institutions, and other organizations.

§ 60115. Technical safety standards committees

(a) Organization.--The Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee are committees in the Department of Transportation. The committees referred to in the preceding sentence shall serve as peer review committees for carrying out this chapter. Peer reviews conducted by the committees shall be treated for purposes of all Federal laws relating to risk assessment and peer review (including laws that take effect after the date of the enactment of the Accountable Pipeline Safety and Partnership Act of 1996) as meeting any peer review requirements of such laws.

(b) Composition and appointment.--(1) The Technical Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary of Transportation after consulting with public and private agencies concerned with the technical aspect of transporting gas or operating a gas pipeline facility. Each member must be experienced in the safety regulation of transporting gas and of gas pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting gas or operating a gas pipeline facility, to evaluate gas pipeline safety standards or risk management principles.

(2) The Technical Hazardous Liquid Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary after consulting with public and private agencies concerned with the technical aspect of transporting hazardous liquid or operating a hazardous liquid pipeline facility. Each member must be experienced in the safety regulation of transporting hazardous liquid and of hazardous liquid pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting hazardous liquid or operating a hazardous liquid pipeline facility, to evaluate hazardous liquid pipeline safety standards or risk management principles.

(3) The members of each committee are appointed as follows:

(A) 5 individuals selected from departments, agencies, and instrumentalities of the United States Government and of the States.

(B) 5 individuals selected from the natural gas or hazardous liquid industry, as appropriate, after consulting with industry representatives.

(C) 5 individuals selected from the general public.

(4)(A) Two of the individuals selected for each committee under paragraph (3)(A) of this subsection must be ~~State commissioners. The Secretary shall consult with the national organization of State commissions before selecting those 2 individuals.~~ State officials. The Secretary shall consult with national organizations representing State commissioners or utility regulators before making a selection under this subparagraph.

(B) At least 3 of the individuals selected for each committee under paragraph (3)(B) of this subsection must be currently in the active operation of natural gas pipelines or hazardous liquid pipeline facilities, as appropriate. At least 1 of the individuals selected for each committee under paragraph (3)(B) shall have education, background, or experience in risk assessment and cost-benefit analysis. The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B).

(C) Two of the individuals selected for each committee under paragraph (3)(C) of this subsection must have education, background, or experience in environmental protection or public safety. At least 1 of the individuals selected for each committee under paragraph (3)(C) shall have education, background, or experience in risk assessment and cost-benefit analysis. At least one individual selected for each committee under paragraph (3)(C) may not have a financial interest in the pipeline, petroleum, or natural gas industries.

(D) None of the individuals selected for a committee under paragraph (3)(C) may have a significant financial interest in the pipeline, petroleum, or gas industry.

(5) Within 90 days of the date of enactment of the PIPES Act of 2016, the Secretary shall fill all vacancies on the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, and any other committee established pursuant to this section. After that period, the Secretary shall fill a vacancy on any such committee not later than 60 days after the vacancy occurs.

(c) Committee reports on proposed standards.--(1) The Secretary shall give to--

(A) the Technical Pipeline Safety Standards Committee each standard proposed under this chapter for transporting gas and for gas pipeline facilities including the risk assessment information and other analyses supporting each proposed standard; and

(B) the Technical Hazardous Liquid Pipeline Safety Standards Committee each standard proposed under this chapter for transporting hazardous liquid and for hazardous liquid pipeline facilities including the risk assessment information and other analyses supporting each proposed standard.

(2) Not later than 90 days after receiving the proposed standard and supporting analyses, the appropriate committee shall prepare and submit to the Secretary a report on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the proposed standard and include in the report recommended actions. The Secretary shall publish each report, including any recommended actions and minority views. The report if timely made is part of the proceeding for prescribing the standard. The Secretary is not bound by the conclusions of the committee. However, if the Secretary rejects the conclusions of the committee, the Secretary shall publish the reasons.

(3) The Secretary may prescribe a standard after the end of the 90-day period.

(d) Proposed committee standards and policy development recommendations.--(1) The Technical Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting gas and for gas pipeline facilities. The Technical Hazardous Liquid Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(2) If requested by the Secretary, a committee shall make policy development recommendations to the Secretary.

(e) Meetings.--Each committee shall meet with the Secretary at least up to 4 times annually. Each committee proceeding shall be recorded. The record of the proceeding shall be available to the public.

(f) Expenses.--A member of a committee under this section is entitled to expenses under section 5703

of title 5. A payment under this subsection does not make a member an officer or employee of the Government. This subsection does not apply to members regularly employed by the Government.

§ 60116. Public education programs

(a) In general.--Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

(b) Modification of existing programs.--Not later than 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2002, each owner or operator of a gas or hazardous liquid pipeline facility shall review its existing public education program for effectiveness and modify the program as necessary. The completed program shall include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program shall be submitted to the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency, and shall be periodically reviewed by the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(c) Standards.--The Secretary may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.

§ 60117. Administrative

(a) General authority.--To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpoena, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities and promotional activities relating to prevention of damage to pipeline facilities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) Records, reports, and information.--To enable the Secretary to decide whether a person owning or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall--

(1) maintain records, make reports, and provide information the Secretary requires; and

(2) make the records, reports, and information available when the Secretary requests.

The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary's ability to make a determination as to whether and to what extent to regulate gathering lines.

(c) Entry and inspection.--An officer, employee, or agent of the Department of Transportation designated by the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person is complying with this chapter and standards prescribed or orders issued under this chapter.

(d) Confidentiality of information.--Information related to a confidential matter referred to in section 1905 of title 18 that is obtained by the Secretary or an officer, employee, or agent in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter or in a proceeding under this chapter.

(e) Use of accident reports.--(1) Each accident report made by an officer, employee, or agent of the Department may be used in a judicial proceeding resulting from the accident. The officer, employee, or

agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) Testing facilities involved in accidents.--The Secretary may require testing of a part of a pipeline facility subject to this chapter that has been involved in or affected by an accident only after--

(1) notifying the appropriate State official in the State in which the facility is located; and

(2) attempting to negotiate a mutually acceptable plan for testing with the owner of the facility and, when the Secretary considers appropriate, the National Transportation Safety Board.

(g) Providing safety information.--On request, the Secretary shall provide the Federal Energy Regulatory Commission or appropriate State authority with information the Secretary has on the safety of material, operations, devices, or processes related to pipeline transportation or operating a pipeline facility.

(h) Cooperation.--The Secretary may--

(1) advise, assist, and cooperate with other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons in planning and developing safety standards and ways to inspect and test to decide whether those standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.

(i) Promoting coordination.--(1) After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident.

(2) In consultation with the Occupational Safety and Health Administration, the Secretary shall establish procedures to notify the Administration of any pipeline accident in which an excavator that has caused damage to a pipeline may have violated a regulation of the Administration.

(j) Withholding information from Congress.--This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

(k) Authority for cooperative agreements.--To carry out this chapter, the Secretary may enter into grants, cooperative agreements, and other transactions with any person, agency, or instrumentality of the United States, any unit of State or local government, any educational institution, or any other entity to further the objectives of this chapter. The objectives of this chapter include the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.

~~(l) Safety orders.--If the Secretary decides that a pipeline facility has a potential safety-related condition, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, replacement, or other appropriate action to remedy the safety-related condition.~~

(l) Safety orders.—

(1) In general.—Not later than December 31, 2007, the Secretary shall issue regulations providing that, after notice and opportunity for a hearing, if the Secretary determines that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, or other appropriate action, to remedy that condition.

(2) Considerations.—In making a determination under paragraph (1), the Secretary, if relevant and pursuant to the regulations issued under paragraph (1), shall consider—
(A) the considerations specified in paragraphs (1) through (6) of section 60112(b);
(B) the likelihood that the condition will impair the serviceability of a pipeline;
(C) the likelihood that the condition will worsen over time; and
(D) the likelihood that the condition is present or could develop on other areas of the pipeline.

(m) Restoration of operations.—
(1) In general.—The Secretary may advise, assist, and cooperate with the heads of other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons to facilitate the restoration of pipeline operations that have been or are anticipated to become disrupted by man-made or natural disasters.
(2) Savings clause.—Nothing in this section alters or amends the authorities and responsibilities of any department, agency, or instrumentality of the United States Government, other than the Department of Transportation.

~~(n) Cost recovery for design reviews.—~~
~~(1) In general.—If the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a liquefied natural gas pipeline facility, the Secretary may require the person requesting such reviews to pay the associated staff costs relating to such reviews incurred by the Secretary in section 60301(d). The Secretary may assess such costs in any reasonable manner.~~
~~(2) Deposit.—The Secretary shall deposit all funds paid to the Secretary under this subsection into the Department of Treasury account 69-5172-0-2-407 or its successor account.~~
~~(3) Authorization of appropriations.—Funds deposited pursuant to this subsection are authorized to be appropriated for the purposes set forth in section 60301(d).~~
(n) Cost Recovery for Design Reviews.—
(1) In general.—
(A) Review costs.—For any project described in subparagraph (B), if the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a gas or hazardous liquid pipeline facility or liquefied natural gas pipeline facility, including construction inspections and oversight, the Secretary may require the person proposing the project to pay the costs incurred by the Secretary relating to such reviews. If the Secretary exercises the cost recovery authority described in this paragraph, the Secretary shall prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews and shall prescribe procedures to collect fees under this paragraph. The Secretary may not collect design safety review fees under this paragraph and section 60301 for the same design safety review.
(B) Projects to which applicable.—Subparagraph (A) applies to any project that—
(i) has design and construction costs totaling at least $2,500,000,000, as periodically adjusted by the Secretary to take into account increases in the Consumer Price Index for all-urban consumers published by the Department of Labor, based on—
(I) the cost estimate provided to the Federal Energy Regulatory Commission in an application for a certificate of public convenience and necessity for a gas pipeline facility or an application for authorization for a liquefied natural gas pipeline facility; or
(II) a good faith estimate developed by the person proposing a hazardous liquid pipeline facility and submitted to the Secretary; or
(ii) uses new or novel technologies or design, as determined by the Secretary.
(2) Notification.—For any new pipeline facility construction project in which the Secretary will conduct design reviews, the person proposing the project shall notify the Secretary and provide the design specifications, construction plans and procedures, and related materials at least 120 days prior to the commencement of construction. To the maximum extent practicable, not later than 90 days after receiving such design specifications, construction plans and procedures, and related materials, the Secretary shall provide written comments, feedback, and guidance on the project.
(3) Pipeline safety decision review fund.—

(A) Establishment.—There is established a Pipeline Safety Design Review Fund in the Treasury of the United States.
(B) Deposits.—The Secretary shall deposit funds paid under this subsection into the Fund.
(C) Use.—Amounts in the Fund shall be available to the Secretary, in amounts specified in appropriations Acts, to offset the costs of conducting facility design safety reviews under this subsection.
(4) No additional permitting authority.—Nothing in this subsection may be construed as authorizing the Secretary to require a person to obtain a permit before beginning design and construction in connection with a project described in paragraph (1)(B).

(o) Emergency Order Authority.—
(1) In General.—If the Secretary determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard, the Secretary may issue an emergency order described in paragraph (3) imposing emergency restrictions, prohibitions, and safety measures on owners and operators of gas or hazardous liquid pipeline facilities without prior notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.
(2) Considerations.—
(A) In General.—Before issuing an emergency order under paragraph (1), the Secretary shall consider, as appropriate, the following factors:
(i) The impact of the emergency order on public health and safety.
(ii) The impact, if any, of the emergency order on the national or regional economy or national security.
(iii) The impact of the emergency order on the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers.
(B) Consultation.—In considering the factors under subparagraph (A), the Secretary shall consult, as the Secretary determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.
(3) Written Order.—An emergency order issued by the Secretary pursuant to paragraph (1) with respect to an imminent hazard shall contain a written description of—
(A) the violation, condition, or practice that constitutes or is causing the imminent hazard;
(B) the entities subject to the order;
(C) the restrictions, prohibitions, or safety measures imposed;
(D) the standards and procedures for obtaining relief from the order;
(E) how the order is tailored to abate the imminent hazard and the reasons the authorities under section 60112 and 60117(l) are insufficient to do so; and
(F) how the considerations were taken into account pursuant to paragraph (2).
(4) Opportunity For Review.—Upon receipt of a petition for review from an entity subject to, and aggrieved by, an emergency order issued under this subsection, the Secretary shall provide an opportunity for a review of the order under section 554 of title 5 to determine whether the order should remain in effect, be modified, or be terminated.
(5) Expiration Of Effectiveness Order.—If a petition for review of an emergency order is filed under paragraph (4) and an agency decision with respect to the petition is not issued on or before the last day of the 30-day period beginning on the date on which the petition is filed, the order shall cease to be effective on such day, unless the Secretary determines in writing on or before the last day of such period that the imminent hazard still exists.
(6) Judicial Review Of Orders.—
(A) In General.—After completion of the review process described in paragraph (4), or the issuance of a written determination by the Secretary pursuant to paragraph (5), an entity subject to, and aggrieved by, an emergency order issued under this subsection may seek judicial review of the order in a district court of the United States and shall be given expedited consideration.
(B) Limitation.—The filing of a petition for review under subparagraph (A) shall not stay or modify the force and effect of the agency's final decision under paragraph (4), or the written determination under paragraph (5), unless stayed or modified by the Secretary.
(7) Regulations.—

(A) Temporary Regulations.—Not later than 60 days after the date of enactment of the PIPES Act of 2016, the Secretary shall issue such temporary regulations as are necessary to carry out this subsection. The temporary regulations shall expire on the date of issuance of the final regulations required under subparagraph (B).

(B) Final Regulations.—Not later than 270 days after such date of enactment, the Secretary shall issue such regulations as are necessary to carry out this subsection. Such regulations shall ensure that the review process described in paragraph (4) contains the same procedures as subsections (d) and (g) of section 109.19 of title 49, Code of Federal Regulations, and is otherwise consistent with the review process developed under such section, to the greatest extent practicable and not inconsistent with this section.

(8) Imminent Hazard Defined.—In this subsection, the term 'imminent hazard' means the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment.

(9) Limitation And Savings Clause.—An emergency order issued under this subsection may not be construed to—

(A) alter, amend, or limit the Secretary's obligations under, or the applicability of, section 553 of title 5; or

(B) provide the authority to amend the Code of Federal Regulations.

§ 60118. Compliance and waivers

(a) General requirements.--A person owning or operating a pipeline facility shall--

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section or in section 60126;

(2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title;

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60117(a) to (d) of this title; and

(4) conduct a risk analysis, and adopt and implement an integrity management program, for pipeline facilities as required under section 60109(c).

(b) Compliance orders.--The Secretary of Transportation may issue orders directing compliance with this chapter, an order under section 60126, or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.

~~(c) Waivers by Secretary.--On application of a person owning or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.~~

(c) Waivers by Secretary.—

(1) Nonemergency waivers.—

(A) In general.—On application of an owner or operator of a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter with respect to such facility on terms the Secretary considers appropriate if the Secretary determines that the waiver is not inconsistent with pipeline safety.

(B) Hearing.—The Secretary may act on a waiver under this paragraph only after notice and an opportunity for a hearing.

(2) Emergency waivers.—

(A) In general.—The Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate without prior notice and comment if the Secretary determines that—

(i) it is in the public interest to grant the waiver;

(ii) the waiver is not inconsistent with pipeline safety; and
(iii) the waiver is necessary to address an actual or impending emergency involving pipeline transportation, including an emergency caused by a natural or manmade disaster.

(B) Period of waiver.—A waiver under this paragraph may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this chapter.

(3) Statement of reasons.—The Secretary shall state in an order issued under this subsection the reasons for granting the waiver.

(d) Waivers by State authorities.--If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

(e) Operator assistance in investigations.~~--If the Secretary or the National Transportation Safety Board investigate an accident involving a pipeline facility, the operator of the facility shall make available to the Secretary or the Board all records and information that in any way pertain to the accident (including integrity management plans and test results), and shall afford all reasonable assistance in the investigation of the accident.~~

(1) Assistance and Access.— If the Secretary or the National Transportation Safety Board investigates an accident or incident involving a pipeline facility, the operator of the facility shall—

(A) make available to the Secretary or the Board all records and information that in any way pertain to the accident or incident, including integrity management plans and test results; and
(B) afford all reasonable assistance in the investigation of the accident or incident.

(2) Operator Assistance in Investigations.—

(A) In general.—The Secretary may impose a civil penalty under section 60122 on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under this chapter.

(B) Obstructs Defined.—

(i) In General.—In this paragraph, the term “obstructs” includes actions that were known, or reasonably should have been known, to prevent, hinder, or impede an investigation without good cause.
(ii) Good cause.—In clause (i), the term “good cause” may include actions such as restricting access to facilities that are not secure or safe for nonpipeline personnel or visitors.

(f) Limitation on statutory construction.--Nothing in this section may be construed to infringe upon the constitutional rights of an operator or its employees.

§ 60119. Judicial review

(a) Review of Regulations~~ and waiver orders~~, Orders, and Other Final Agency Actions.--(1) Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter or an order issued ~~about an application for a waiver under section 60118(c) or (d) of this title~~ under this chapter may apply for review of the regulation or order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under paragraph (1) is in addition to any other remedies provided by law.
(3) A judicial review of agency action under this section shall apply the standards of review established in section 706 of title 5.

(b) Review of financial responsibility orders.--(1) A person adversely affected by an order issued under section 60111 of this title may apply for review of the order by filing a petition for review in the appropriate court of appeals of the United States. The petition must be filed not later than 60 days after the order is issued. Findings of fact the Secretary makes are conclusive if supported by substantial evidence.
(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254(1) of title 28.

§ 60120. Enforcement

(a) Civil actions
(1) Civil actions to enforce this chapter.--At the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter, including section 60112, or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties, considering the same factors as prescribed for the Secretary in an administrative case under section 60122. The maximum amount of civil penalties for administrative enforcement actions under section 60122 shall not apply to enforcement actions under this section.
(2) Civil actions to require compliance with subpoenas or allow for inspections.--At the request of the Secretary, the Attorney General may bring a civil action in a district court of the United States to require a person to comply immediately with a subpoena or to allow an officer, employee, or agent authorized by the Secretary to enter the premises, and inspect the records and property, of the person to decide whether the person is complying with this chapter. The action may be brought in the judicial district in which the defendant resides, is found, or does business. The court may punish a failure to obey the order as a contempt of court.

(b) Jury trial demand.--In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) Effect on tort liability.--This chapter does not affect the tort liability of any person.

§ 60121. Actions by private persons

(a) General authority.--(1) A person may bring a civil action in an appropriate district court of the United States for an injunction against another person (including the United States Government and other governmental authorities to the extent permitted under the 11th amendment to the Constitution) for a violation of this chapter or a regulation prescribed or order issued under this chapter. However, the person—
(A) may bring the action only after 60 days after the person has given notice of the violation to the Secretary of Transportation or to the appropriate State authority (when the violation is alleged to have occurred in a State certified under section 60105 of this title) and to the person alleged to have committed the violation;
(B) may not bring the action if the Secretary or authority has begun and diligently is pursuing an administrative proceeding for the violation; and

(C) may not bring the action if the Attorney General of the United States, or the chief law enforcement officer of a State, has begun and diligently is pursuing a judicial proceeding for the violation.

(2) The Secretary shall prescribe the way in which notice is given under this subsection.

(3) The Secretary, with the approval of the Attorney General, or the Attorney General may intervene in an action under paragraph (1) of this subsection.

(b) Costs and fees.--The court may award costs, reasonable expert witness fees, and a reasonable attorney's fee to a prevailing plaintiff in a civil action under this section. The court may award costs to a prevailing defendant when the action is unreasonable, frivolous, or meritless. In this subsection, a reasonable attorney's fee is a fee--

(1) based on the actual time spent and the reasonable expenses of the attorney for legal services provided to a person under this section; and

(2) computed at the rate prevailing for providing similar services for actions brought in the court awarding the fee.

(c) State violations as violations of this chapter.--In this section, a violation of a safety standard or practice of a State is deemed to be a violation of this chapter or a regulation prescribed or order issued under this chapter only to the extent the standard or practice is not more stringent than a comparable minimum safety standard prescribed under this chapter.

(d) Additional remedies.--A remedy under this section is in addition to any other remedies provided by law. This section does not restrict a right to relief that a person or a class of persons may have under another law or at common law.

§ 60122. Civil penalties

(a) General penalties.--(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section ~~60114(b)~~ 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than ~~$100,000~~ $200,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is ~~$1,000,000~~ $2,000,000.

(2) A person violating a standard or order under section 60103 or 60111 of this title is liable to the Government for a civil penalty of not more than $50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(3) A person violating section 60129, or an order issued thereunder, is liable to the Government for a civil penalty of not more than $1,000 for each violation. The penalties provided by paragraph (1) do not apply to a violation of section 60129 or an order issued thereunder.

(b) Penalty considerations.--In determining the amount of a civil penalty under this section--

(1) the Secretary shall consider--

(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

(B) with respect to the violator, the degree of culpability, any history of prior violations, ~~the ability to pay,~~ and any effect on ability to continue doing business; and

(C) good faith in attempting to comply; and

(2) the Secretary may consider--

(A) the economic benefit gained from the violation without any reduction because of subsequent damages; and

(B) other matters that justice requires.

(c) Collection and compromise.--(1) The Secretary may request the Attorney General to bring a civil action in an appropriate district court of the United States to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(d) Setoff.--The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) Deposit in Treasury.--Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) Prohibition on multiple penalties for same act.--Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title may not be imposed under this chapter if both violations are based on the same act.

§ 60123. Criminal penalties

(a) General penalty.--A person knowingly and willfully violating section 60114(b), 60118(a), or 60128 of this title or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) Penalty for damaging or destroying facility.--A person knowingly and willfully damaging or destroying an interstate gas pipeline facility, an interstate hazardous liquid pipeline facility, or either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(c) Penalty for damaging or destroying sign.--A person knowingly and willfully defacing, damaging, removing, or destroying a pipeline sign or right-of-way marker required by a law or regulation of the United States shall be fined under title 18, imprisoned for not more than one year, or both.

(d) Penalty for not using one-call notification system or not heeding location information or markings.--A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person--

(1) knowingly and willfully engages in an excavation activity--

(A) without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or

(B) without paying attention to appropriate location information or markings the operator of a pipeline facility establishes; and

(2) subsequently damages--

(A) a pipeline facility that results in death, serious bodily harm, or actual damage to property of more than $50,000;

(B) a pipeline facility, and knows or has reason to know of the damage, but does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or

(C) a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product.

Penalties under this subsection may be reduced in the case of a violation that is promptly reported by the violator.

§ 60124. Biennial reports

(a) Submission and contents.--Not later than August 15, 1997, and every 2 years thereafter, the Secretary of Transportation shall submit to Congress a report on carrying out this chapter for the 2 immediately preceding calendar years for gas and a report on carrying out this chapter for such period for hazardous liquid. Each report shall include the following information about the prior year for gas or hazardous liquid, as appropriate:

(1) a thorough compilation of the leak repairs, accidents, and casualties and a statement of cause when investigated and established by the National Transportation Safety Board.
(2) a list of applicable pipeline safety standards prescribed under this chapter including identification of standards prescribed during the year.
(3) a summary of the reasons for each waiver granted under section 60118(c) and (d) of this title.
(4) an evaluation of the degree of compliance with applicable safety standards, including a list of enforcement actions and compromises of alleged violations by location and company name.
(5) a summary of outstanding problems in carrying out this chapter, in order of priority.
(6) an analysis and evaluation of--
(A) research activities, including their policy implications, completed as a result of the United States Government and private sponsorship; ~~and~~
(B) technological progress in safety achieved~~.~~; and
(C) a summary of each research and development project carried out with Federal and non-Federal entities pursuant to section 12 of the Pipeline Safety Improvement Act of 2002 and a review of how the project affects safety.
(7) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter.
(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.
(9) a compilation of certifications filed under section 60105 of this title that were--
(A) in effect; or
(B) rejected in any part by the Secretary and a summary of the reasons for each rejection.
(10) a compilation of agreements made under section 60106 of this title that were--
(A) in effect; or
(B) ended in any part by the Secretary and a summary of the reasons for ending each agreement.
(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect and the number and qualifications of inspectors the Secretary recommends for that State.
(12) recommendations for legislation the Secretary considers necessary--
(A) to promote cooperation among the States in improving--
(i) gas pipeline safety; or
(ii) hazardous liquid pipeline safety programs; and
(B) to strengthen the national gas pipeline safety program.

(b) Submission of one report.--The Secretary may submit one report to carry out subsection (a) of this section.

§ 60125. Authorization of appropriations

~~(a) Gas and hazardous liquid.--To carry out this chapter (except for section 60107) related to gas and hazardous liquid, the following amounts are authorized to be appropriated to the Department of Transportation:~~
~~(1) $45,800,000 for fiscal year 2003, of which $31,900,000 is to be derived from user fees for fiscal year 2003 collected under section 60301 of this title.~~
~~(2) $46,800,000 for fiscal year 2004, of which $35,700,000 is to be derived from user fees for fiscal year 2004 collected under section 60301 of this title.~~
~~(3) $47,100,000 for fiscal year 2005, of which $41,100,000 is to be derived from user fees for fiscal year 2005 collected under section 60301 of this title.~~
~~(4) $50,000,000 for fiscal year 2006, of which $45,000,000 is to be derived from user fees for fiscal year 2006 collected under section 60301 of this title.~~
(a) Gas and hazardous liquid.—
(1) In general.—To carry out the provisions of this chapter related to gas and hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107–

355), there is authorized to be appropriated to the Department of Transportation for each of fiscal years 2012 through 2015, from fees collected under section 60301, $90,679,000, of which $4,746,000 is for carrying out such section 12 and $36,194,000 is for making grants. there is authorized to be appropriated to the Department of Transportation from fees collected under section 60301—

(A) $124,500,000 for fiscal year 2016, of which $9,000,000 shall be expended for carrying out such section 12 and $39,385,000 shall be expended for making grants;

(B) $128,000,000 for fiscal year 2017, of which $9,000,000 shall be expended for carrying out such section 12 and $41,885,000 shall be expended for making grants;

(C) $131,000,000 for fiscal year 2018, of which $9,000,000 shall be expended for carrying out such section 12 and $44,885,000 shall be expended for making grants; and

(D) $134,000,000 for fiscal year 2019, of which $9,000,000 shall be expended for carrying out such section 12 and $47,885,000 shall be expended for making grants.

the following amounts are authorized to be appropriated to the Department of Transportation from fees collected under section 60301 in each respective year:

(A) For fiscal year 2007, $60,175,000 of which $7,386,000 is for carrying out such section 12 and $17,556,000 is for making grants.

(B) For fiscal year 2008, $67,118,000 of which $7,586,000 is for carrying out such section 12 and $20,614,000 is for making grants.

(C) For fiscal year 2009, $72,045,000 of which $7,586,000 is for carrying out such section 12 and $21,513,000 is for making grants.

(D) For fiscal year 2010, $76,580,000 of which $7,586,000 is for carrying out subsection 12 and $22,252,000 is for making grants.

(2) Trust fund amounts.—In addition to the amounts authorized to be appropriated by paragraph (1) the following amounts are authorized from the Oil Spill Liability Trust Fund to carry out the provisions of this chapter related to hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107–355):

(A) For fiscal year 2007, $18,810,000 of which $4,207,000 is for carrying out such section 12 and $2,682,000 is for making grants.

(B) For fiscal year 2008, $19,000,000 of which $4,207,000 is for carrying out such section 12 and $2,682,000 is for making grants.

(C) For fiscal year 2009, $19,500,000 of which $4,207,000 is for carrying out such section 12 and $3,103,000 is for making grants.

(D) For fiscal year 2010, $20,000,000 of which $4,207,000 is for carrying out such section 12 $3,603,000 is for making grants.

(2) Trust fund amounts.—In addition to the amounts authorized to be appropriated by paragraph (1), there is authorized to be appropriated for each of fiscal years 2012 through 2015 from the Oil Spill Liability Trust Fund to carry out the provisions of this chapter related to hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107–355), $18,573,000, of which $2,174,000 is for carrying out such section 12 and $4,558,000 is for making grants. there is authorized to be appropriated from the Oil Spill Liability Trust Fund to carry out the provisions of this chapter related to hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107–355)—

(A) $22,123,000 for fiscal year 2016, of which $3,000,000 shall be expended for carrying out such section 12 and $8,067,000 shall be expended for making grants;

(B) $22,123,000 for fiscal year 2017, of which $3,000,000 shall be expended for carrying out such section 12 and $8,067,000 shall be expended for making grants;

(C) $23,000,000 for fiscal year 2018, of which $3,000,000 shall be expended for carrying out such section 12 and $8,067,000 shall be expended for making grants; and

(D) $23,000,000 for fiscal year 2019, of which $3,000,000 shall be expended for carrying out such section 12 and $8,067,000 shall be expended for making grants.

(3) Underground natural gas storage facility safety account.—To carry out section 60141, there is authorized to be appropriated to the Department of Transportation from fees collected under section 60302 $8,000,000 for each of fiscal years 2017 through 2019.

~~(b) State grants.--(1) Not more than the following amounts may be appropriated to the Secretary to carry out section 60107 of this title:~~

~~(A) $19,800,000 for fiscal year 2003, of which $14,800,000 is to be derived from user fees for fiscal year 2003 collected under section 60301 of this title.~~

~~(B) $21,700,000 for fiscal year 2004, of which $16,700,000 is to be derived from user fees for fiscal year 2004 collected under section 60301 of this title.~~

~~(C) $24,600,000 for fiscal year 2005, of which $19,600,000 is to be derived from user fees for fiscal year 2005 collected under section 60301 of this title.~~

~~(D) $26,500,000 for fiscal year 2006, of which $21,500, 000 is to be derived from user fees for fiscal year 2006 collected under section 60301 of this title.~~

~~(2) At least 5 percent of amounts appropriated to carry out United States Government grants-in-aid programs for a fiscal year are available only to carry out section 60107 of this title related to hazardous liquid.~~

~~(3) Not more than 20 percent of a pipeline safety program grant under section 60107 of this title may be allocated to indirect expenses.~~

~~(c) Oil Spill Liability Trust Fund.--Of the amounts available in the Oil Spill Liability Trust Fund, $8,000,000 shall be transferred to the Secretary of Transportation, as provided in appropriation Acts, to carry out programs authorized in this chapter for each of fiscal years 2003 through 2006.~~

~~(d)~~(b) Emergency response grants.--

(1) In general.--The Secretary may establish a program for making grants to State, county, and local governments in high consequence areas, as defined by the Secretary, for emergency response management, training, and technical assistance. To the extent that such grants are used to train emergency responders, such training shall ensure that emergency responders have the ability to protect nearby persons, property and the environment from the effects of accidents or incidents involving gas or hazardous liquid pipelines, in accordance with existing regulations.

(2) Authorization of appropriations.--There is authorized to be appropriated ~~$6,000,000~~ $10,000,000 for each of fiscal years ~~2003 through 2006~~ ~~2007 through 2010~~ 2012 through 2015 to carry out this subsection.

~~(e)~~(c) Crediting appropriations for expenditures for training.--The Secretary may credit to an appropriation authorized under subsection (a) amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

§ 60126. Risk management

(a) Risk management program demonstration projects.--

(1) In general.--The Secretary shall establish risk management demonstration projects--

(A) to demonstrate, through the voluntary participation by owners and operators of gas pipeline facilities and hazardous liquid pipeline facilities, the application of risk management; and

(B) to evaluate the safety and cost-effectiveness of the program.

(2) Exemptions.--In carrying out a demonstration project under this subsection, the Secretary, by order--

(A) may exempt an owner or operator of the pipeline facility covered under the project (referred to in this subsection as a "covered pipeline facility"), from the applicability of all or a portion of the requirements under this chapter that would otherwise apply to the covered pipeline facility; and

(B) shall exempt, for the period of the project, an owner or operator of the covered pipeline facility, from the applicability of any new standard that the Secretary promulgates under this chapter during the period of that participation, with respect to the covered facility.

(b) Requirements.--In carrying out a demonstration project under this section, the Secretary shall--

(1) invite owners and operators of pipeline facilities to submit risk management plans for timely approval by the Secretary;

(2) require, as a condition of approval, that a risk management plan submitted under this subsection contain measures that are designed to achieve an equivalent or greater overall level of safety than would otherwise be achieved through compliance with the standards contained in this chapter or promulgated by the Secretary under this chapter;
(3) provide for--
(A) collaborative government and industry training;
(B) methods to measure the safety performance of risk management plans;
(C) the development and application of new technologies;
(D) the promotion of community awareness concerning how the overall level of safety will be maintained or enhanced by the demonstration project;
(E) the development of models that categorize the risks inherent to each covered pipeline facility, taking into consideration the location, volume, pressure, and material transported or stored by that pipeline facility;
(F) the application of risk assessment and risk management methodologies that are suitable to the inherent risks that are determined to exist through the use of models developed under subparagraph (E);
(G) the development of project elements that are necessary to ensure that--
(i) the owners and operators that participate in the demonstration project demonstrate that they are effectively managing the risks referred to in subparagraph (E); and
(ii) the risk management plans carried out under the demonstration project under this subsection can be audited;
(H) a process whereby an owner or operator of a pipeline facility is able to terminate a risk management plan or, with the approval of the Secretary, to amend, modify, or otherwise adjust a risk management plan referred to in paragraph (1) that has been approved by the Secretary pursuant to that paragraph to respond to--
(i) changed circumstances; or
(ii) a determination by the Secretary that the owner or operator is not achieving an overall level of safety that is at least equivalent to the level that would otherwise be achieved through compliance with the standards contained in this chapter or promulgated by the Secretary under this chapter;
(I) such other elements as the Secretary, with the agreement of the owners and operators that participate in the demonstration project under this section, determines to further the purposes of this section; and
(J) an opportunity for public comment in the approval process; and
(4) in selecting participants for the demonstration project, take into consideration the past safety and regulatory performance of each applicant who submits a risk management plan pursuant to paragraph (1).

(c) Emergencies and revocations.--Nothing in this section diminishes or modifies the Secretary's authority under this title to act in case of an emergency. The Secretary may revoke any exemption granted under this section for substantial noncompliance with the terms and conditions of an approved risk management plan.

(d) Participation by State authority.--In carrying out this section, the Secretary may provide for consultation by a State that has in effect a certification under section 60105. To the extent that a demonstration project comprises an intrastate natural gas pipeline or an intrastate hazardous liquid pipeline facility, the Secretary may make an agreement with the State agency to carry out the duties of the Secretary for approval and administration of the project.

(e) Report.--Not later than March 31, 2000, the Secretary shall transmit to the Congress a report on the results of the demonstration projects carried out under this section that includes--
(1) an evaluation of each such demonstration project, including an evaluation of the performance of each participant in that project with respect to safety and environmental protection; and
(2) recommendations concerning whether the applications of risk management demonstrated under the demonstration project should be incorporated into the Federal pipeline safety program under this chapter on a permanent basis.

§ 60127. Population encroachment and rights-of-way

(a) Study.--The Secretary of Transportation, in conjunction with the Federal Energy Regulatory Commission and in consultation with appropriate Federal agencies and State and local governments, shall undertake a study of land use practices, zoning ordinances, and preservation of environmental resources with regard to pipeline rights-of-way and their maintenance.

(b) Purpose of study.--The purpose of the study shall be to gather information on land use practices, zoning ordinances, and preservation of environmental resources--

(1) to determine effective practices to limit encroachment on existing pipeline rights-of-way;
(2) to address and prevent the hazards and risks to the public, pipeline workers, and the environment associated with encroachment on pipeline rights-of-way;
(3) to raise the awareness of the risks and hazards of encroachment on pipeline rights-of-way; and
(4) to address how to best preserve environmental resources in conjunction with maintaining pipeline rights-of-way, recognizing pipeline operators' regulatory obligations to maintain rights-of-way and to protect public safety.

(c) Considerations.--In conducting the study, the Secretary shall consider, at a minimum, the following:

(1) The legal authority of Federal agencies and State and local governments in controlling land use and the limitations on such authority.
(2) The current practices of Federal agencies and State and local governments in addressing land use issues involving a pipeline easement.
(3) The most effective way to encourage Federal agencies and State and local governments to monitor and reduce encroachment upon pipeline rights-of-way.

(d) Report.--

(1) In general.--Not later than 1 year after the date of enactment of this subsection, the Secretary shall publish a report identifying practices, laws, and ordinances that are most successful in addressing issues of encroachment and maintenance on pipeline rights-of-way so as to more effectively protect public safety, pipeline workers, and the environment.
(2) Distribution of report.--The Secretary shall provide a copy of the report to--
    (A) Congress and appropriate Federal agencies; and
    (B) States for further distribution to appropriate local authorities.
(3) Adoption of practices, laws, and ordinances.--The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances, as identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way and to address the potential methods of preserving environmental resources while maintaining pipeline rights-of-way, consistent with pipeline safety.

§ 60128. Dumping within pipeline rights-of-way

(a) Prohibition.--No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

(b) Definition.--For purposes of this section, the term "solid waste" has the meaning given that term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).

§ 60129. Protection of employees providing pipeline safety information

(a) Discrimination against employee.--
(1) In general.--No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)--
(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;
(B) refused to engage in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;
(C) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or any other Federal law relating to pipeline safety;
(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or any other Federal law relating to pipeline safety;
(E) provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in subparagraph (D); or
(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or any other Federal law relating to pipeline safety.
(2) Employer defined.--In this section, the term "employer" means--
(A) a person owning or operating a pipeline facility; or
(B) a contractor or subcontractor of such a person.

(b) Department of labor complaint procedure.--
(1) Filing and notification.--A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person or persons named in the complaint and the Secretary of Transportation of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person or persons under paragraph (2).
(2) Investigation; preliminary order.--
(A) In general.--Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person or persons named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person or persons alleged to have committed a violation of subsection (a) of the Secretary of Labor's findings. If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall include with the Secretary of Labor's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 60 days after the date of notification of findings under this subparagraph, any person alleged to have committed a violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 60-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.
(B) Requirements.--

(i) Required showing by complainant.--The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Showing by employer.--Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) Criteria for determination by Secretary.--The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Prohibition.--Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) Final order.--

(A) Deadline for issuance; settlement agreements.--Not later than 90 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person or persons alleged to have committed the violation.

(B) Remedy.--If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person or persons who committed such violation to--

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person or persons against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) Frivolous complaints.--If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

(4) Review.--

(A) Appeal to court of appeals.--Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) Limitation on collateral attack.--An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) Enforcement of order by Secretary of labor.--Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In

actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including, but not to be limited to, injunctive relief and compensatory damages.

(6) Enforcement of order by parties.--

(A) Commencement of action.--A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person or persons to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) Attorney fees.--The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award of costs is appropriate.

(c) Mandamus.--Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) Nonapplicability to deliberate violations.--Subsection (a) shall not apply with respect to an action of an employee of an employer who, acting without direction from the employer (or such employer's agent), deliberately causes a violation of any requirement relating to pipeline safety under this chapter or any other law of the United States.

§ 60130. Pipeline safety information grants to communities

(a) Grant authority.--

(1) In general.--The Secretary of Transportation may make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities in local communities, other than facilities regulated under Public Law 93-153 (43 U.S.C. 1651 et seq.). ~~The Secretary shall establish competitive~~ No grants may be awarded under section 60114(g) until the Secretary has established competitive procedures for awarding grants under this section and criteria for selecting grant recipients. The amount of any grant under this section may not exceed ~~$50,000~~$100,000 for a single grant recipient. The Secretary shall establish appropriate procedures to ensure the proper use of funds provided under this section.

(2) Demonstration grants.—At least the first 3 grants awarded under this section shall be demonstration grants for the purpose of demonstrating and evaluating the utility of grants under this section. Each such demonstration grant shall not exceed $25,000.

(3) Dissemination of technical findings.—Each recipient of a grant under this section shall ensure that—

(A) the technical findings made possible by the grants are made available to the relevant operators; and

(B) open communication between the grant recipients, local operators, local communities, and other interested parties is encouraged.

(~~2~~4) Technical assistance defined.--In this subsection, the term "technical assistance" means engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation on technical pipeline safety issues in official proceedings conducted under this chapter.

(b) Prohibited uses.--Funds provided under this section to grant recipients and their contractors may not be used for lobbying, for direct advocacy for or against a pipeline construction or expansion project, or in direct support of litigation.

~~(c) Annual report.--~~

~~(1) In general.--Not later than 90 days after the last day of each fiscal year for which grants are made by the Secretary under this section, the Secretary shall report to the Committees on Commerce, Science, and Transportation and Energy and Natural Resources of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives on grants made under this section in the preceding fiscal year.~~

~~(2) Contents.--The report shall include--~~

~~(A) a listing of the identity and location of each recipient of a grant under this section in the preceding fiscal year and the amount received by the recipient;~~
~~(B) a description of the purpose for which each grant was made; and~~
~~(C) a description of how each grant was used by the recipient.~~

(c~~d~~) Authorization of appropriations.-- Of the amounts made available under section 2(b) of the PIPES Act of 2016, the Secretary shall expend $1,500,000 for each fiscal years 2016 through 2019 to carry out this section. ~~There is authorized to be appropriated to the Secretary of Transportation for carrying out this section $1,500,000 for each of the fiscal years 2012 through 2015. Such amounts shall not be derived from user fees collected under section 60301.~~

§ 60131. Verification of pipeline qualification programs

(a) In general.--Subject to the requirements of this section, the Secretary of Transportation shall require the operator of a pipeline facility to develop and adopt a qualification program to ensure that the individuals who perform covered tasks are qualified to conduct such tasks.

(b) Standards and criteria.--
(1) Development.--Not later than 1 year after the date of enactment of this section, the Secretary shall ensure that the Department of Transportation has in place standards and criteria for qualification programs referred to in subsection (a).
(2) Contents.--The standards and criteria shall include the following:
(A) The establishment of methods for evaluating the acceptability of the qualifications of individuals described in subsection (a).
(B) A requirement that pipeline operators develop and implement written plans and procedures to qualify individuals described in subsection (a) to a level found acceptable using the methods established under subparagraph (A) and evaluate the abilities of individuals described in subsection (a) according to such methods.
(C) A requirement that the plans and procedures adopted by a pipeline operator under subparagraph (B) be reviewed and verified under subsection (e).

(c) Development of qualification programs by pipeline operators.--The Secretary shall require each pipeline operator to develop and adopt, not later than 2 years after the date of enactment of this section, a qualification program that complies with the standards and criteria described in subsection (b).

(d) Elements of qualification programs.--A qualification program adopted by an operator under subsection (a) shall include, at a minimum, the following elements:
(1) A method for examining or testing the qualifications of individuals described in subsection (a). The method may include written examination, oral examination, observation during on-the-job performance, on-the-job training, simulations, and other forms of assessment. The method may not be limited to observation of on-the-job performance, except with respect to tasks for which the Secretary has determined that such observation is the best method of examining or testing qualifications. The Secretary shall ensure that the results of any such observations are documented in writing.
(2) A requirement that the operator complete the qualification of all individuals described in subsection (a) not later than 18 months after the date of adoption of the qualification program.
(3) A periodic requalification component that provides for examination or testing of individuals in accordance with paragraph (1).
(4) A program to provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.

(e) Review and verification of programs.--
(1) In general.--The Secretary shall review the qualification program of each pipeline operator and verify its compliance with the standards and criteria described in subsection (b) and that it includes

the elements described in subsection (d). The Secretary shall record the results of that review for use in the next review of an operator's program.
(2) Deadline for completion.--Reviews and verifications under this subsection shall be completed not later than 3 years after the date of the enactment of this section.
(3) Inadequate programs.--If the Secretary decides that a qualification program is inadequate for the safe operation of a pipeline facility, the Secretary shall act as under section 60108(a)(2) to require the operator to revise the qualification program.
(4) Program modifications.--If the operator of a pipeline facility significantly modifies a program that has been verified under this subsection, the operator shall notify the Secretary of the modifications. The Secretary shall review and verify such modifications in accordance with paragraph (1).
(5) Waivers and modifications.--In accordance with section 60118(c), the Secretary may waive or modify any requirement of this section if the waiver or modification is not inconsistent with pipeline safety.
(6) Inaction by the Secretary.--Notwithstanding any failure of the Secretary to prescribe standards and criteria as described in subsection (b), an operator of a pipeline facility shall develop and adopt a qualification program that complies with the requirement of subsection (b)(2)(B) and includes the elements described in subsection (d) not later than 2 years after the date of enactment of this section.

(f) Intrastate pipeline facilities.--In the case of an intrastate pipeline facility operator, the duties and powers of the Secretary under this section with respect to the qualification program of the operator shall be vested in the appropriate State regulatory agency, consistent with this chapter.

(g) Covered task defined.--In this section, the term "covered task"--
(1) with respect to a gas pipeline facility, has the meaning such term has under section 192.801 of title 49, Code of Federal Regulations, including any subsequent modifications; and
(2) with respect to a hazardous liquid pipeline facility, has the meaning such term has under section 195.501 of such title, including any subsequent modifications.

(h) Report.--Not later than 4 years after the date of enactment of this section, the Secretary shall transmit to Congress a report on the status and results to date of the personnel qualification regulations issued under this chapter.

§ 60132. National pipeline mapping system

(a) Information to be provided.--Not later than 6 months after the date of enactment of this section, the operator of a pipeline facility (except distribution lines and gathering lines) shall provide to the Secretary of Transportation the following information with respect to the facility:
(1) Geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data.
(2) The name and address of the person with primary operational control to be identified as its operator for purposes of this chapter.
(3) A means for a member of the public to contact the operator for additional information about the pipeline facilities it operates.
(4) Any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.

(b) Updates.--A person providing information under subsection (a) shall provide to the Secretary updates of the information to reflect changes in the pipeline facility owned or operated by the person and as otherwise required by the Secretary.

(c) Technical assistance to improve local response capabilities.--The Secretary may provide technical assistance to State and local officials to improve local response capabilities for pipeline emergencies by

adapting information available through the National Pipeline Mapping System to software used by emergency response personnel responding to pipeline emergencies.

(d) Map of High-consequence Areas.—The Secretary shall—
(1) maintain, as part of the National Pipeline Mapping System, a map of designated high-consequence areas (as described in section 60109(a)) in which pipelines are required to meet integrity management program regulations, excluding any proprietary or sensitive security information; and
(2) update the map biennially.

(e) Program To Promote Awareness of National Pipeline Mapping System.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop and implement a program promoting greater awareness of the existence of the National Pipeline Mapping System to State and local emergency responders and other interested parties. The program shall include guidance on how to use the National Pipeline Mapping System to locate pipelines in communities and local jurisdictions.

(f) Public Disclosure Limited.—The Secretary may not disclose information collected pursuant to subsection (a) except to the extent permitted by section 552 of title 5.

§ 60133. Coordination of environmental reviews

(a) Interagency committee.--
(1) Establishment and purpose.--Not later than 30 days after the date of enactment of this section, the President shall establish an Interagency Committee to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs within any time periods specified by rule by the Secretary.
(2) Membership.--The Chairman of the Council on Environmental Quality (or a designee of the Chairman) shall chair the Interagency Committee, which shall consist of representatives of Federal agencies with responsibilities relating to pipeline repair projects, including each of the following persons (or a designee thereof):
(A) The Secretary of Transportation.
(B) The Administrator of the Environmental Protection Agency.
(C) The Director of the United States Fish and Wildlife Service.
(D) The Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.
(E) The Director of the Bureau of Land Management.
(F) The Director of the Minerals Management Service.
(G) The Assistant Secretary of the Army for Civil Works.
(H) The Chairman of the Federal Energy Regulatory Commission.
(3) Evaluation.--The Interagency Committee shall evaluate Federal permitting requirements to which access, excavation, and restoration activities in connection with pipeline repairs described in paragraph (1) may be subject. As part of its evaluation, the Interagency Committee shall examine the access, excavation, and restoration practices of the pipeline industry in connection with such pipeline repairs, and may develop a compendium of best practices used by the industry to access, excavate, and restore the site of a pipeline repair.
(4) Memorandum of understanding.--Based upon the evaluation required under paragraph (3) and not later than 1 year after the date of enactment of this section, the members of the Interagency Committee shall enter into a memorandum of understanding to provide for a coordinated and expedited pipeline repair permit review process to carry out the purpose set forth in paragraph (1). The Interagency Committee shall include provisions in the memorandum of understanding identifying those repairs or categories of repairs described in paragraph (1) for which the best practices identified under paragraph (3), when properly employed by a pipeline operator, would result in no more than minimal adverse effects on the environment and for which discretionary

administrative reviews may therefore be minimized or eliminated. With respect to pipeline repairs described in paragraph (1) to which the preceding sentence would not be applicable, the Interagency Committee shall include provisions to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs within any time periods specified by rule by the Secretary. The Interagency Committee shall include in the memorandum of understanding criteria under which permits required for such pipeline repair activities should be prioritized over other less urgent agency permit application reviews. The Interagency Committee shall not enter into a memorandum of understanding under this paragraph except by unanimous agreement of the members of the Interagency Committee.

(5) State and local consultation.--In carrying out this subsection, the Interagency Committee shall consult with appropriate State and local environmental, pipeline safety, and emergency response officials, and such other officials as the Interagency Committee considers appropriate.

(b) Implementation.--Not later than 180 days after the completion of the memorandum of understanding required under subsection (a)(4), each agency represented on the Interagency Committee shall revise its regulations as necessary to implement the provisions of the memorandum of understanding.

(c) Savings provisions; no preemption.--Nothing in this section shall be construed--

(1) to require a pipeline operator to obtain a Federal permit, if no Federal permit would otherwise have been required under Federal law; or

(2) to preempt applicable Federal, State, or local environmental law.

(d) Interim operational alternatives.--

(1) In general.--Not later than 30 days after the date of enactment of this section, and subject to the limitations in paragraph (2), the Secretary of Transportation shall revise the regulations of the Department, to the extent necessary, to permit a pipeline operator subject to time periods for repair specified by rule by the Secretary to implement alternative mitigation measures until all applicable permits have been granted.

(2) Limitations.--The regulations issued by the Secretary pursuant to this subsection shall not allow an operator to implement alternative mitigation measures pursuant to paragraph (1) unless--

(A) allowing the operator to implement such measures would be consistent with the protection of human health, public safety, and the environment;

(B) the operator, with respect to a particular repair project, has applied for and is pursuing diligently and in good faith all required Federal, State, and local permits to carry out the project; and

(C) the proposed alternative mitigation measures are not incompatible with pipeline safety.

(e) Ombudsman.--The Secretary shall designate an ombudsman to assist in expediting pipeline repairs and resolving disagreements between Federal, State, and local permitting agencies and the pipeline operator during agency review of any pipeline repair activity, consistent with protection of human health, public safety, and the environment.

(f) State and local permitting processes.--The Secretary shall encourage States and local governments to consolidate their respective permitting processes for pipeline repair projects subject to any time periods for repair specified by rule by the Secretary. The Secretary may request other relevant Federal agencies to provide technical assistance to States and local governments for the purpose of encouraging such consolidation.

§ 60134. State damage prevention programs

(a) In general.—The Secretary may make a grant to a State authority (including a municipality with respect to intrastate gas pipeline transportation) to assist in improving the overall quality and effectiveness of a damage prevention program of the State authority under subsection (e) if the State authority—

(1) has in effect an annual certification under section 60105 or an agreement under section 60106; ~~and~~

(2)(A) has in effect an effective damage prevention program that meets the requirements of subsection (b); or

(B) demonstrates that it has made substantial progress toward establishing such a program, and that such program will meet the requirements of subsection ~~(b).~~(b); and

(3) does not provide any exemptions to municipalities, State agencies, or their contractors from the one-call notification system requirements of the program. *[this amendment takes effect 1/3/2014]*

(b) Damage prevention program elements.— An effective damage prevention program includes the following elements:

(1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.

(2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.

(3) A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.

(4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.

(5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

(6) A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.

(7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.

(8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.

(9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

(c) Factors to consider.—In making grants under this section, the Secretary shall take into consideration the commitment of each State to ensuring the effectiveness of its damage prevention program, including legislative and regulatory actions taken by the State.

(d) Application.—If a State authority files an application for a grant under this section not later than September 30 of a calendar year and demonstrates that the Governor (or chief executive) of the State has designated it as the appropriate State authority to receive the grant, the Secretary shall review the State's damage prevention program to determine its effectiveness.

(e) Use of funds.—A grant under this section to a State authority may only be used to pay the cost of the personnel, equipment, and activities that the State authority reasonably requires for the calendar year covered by the grant to develop or carry out its damage prevention program in accordance with subsection (b).

(f) Nonapplicability of limitation.—A grant made under this section is not subject to the section 60107(a) limitation on the maximum percentage of funds to be paid by the Secretary.

(g) Limitation on use of funds.—Funds provided to carry out this section may not be used for lobbying or in direct support of litigation.

(h) Damage prevention process defined.—In this section, the term 'damage prevention process' means a process that incorporates the principles described in sections 60114(b), 60114(d), and 60114(e).

(i) Authorization of appropriations.—There is authorized to be appropriated to the Secretary to provide grants under this section $1,500,000 for each of fiscal years 2012 through 2015. Such funds shall remain available until expended.

§ 60135. Enforcement transparency

(a) In general.—Not later than December 31, 2007, the Secretary shall—

(1) provide a monthly updated summary to the public of all gas and hazardous liquid pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration, from the time a notice commencing an enforcement action is issued until the enforcement action is final;

(2) include in each such summary identification of the operator involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate; and

(3) provide a mechanism by which a pipeline operator named in an enforcement action may make information, explanations, or documents it believes are responsive to the enforcement action available to the public.

(b) Electronic availability.—Each summary under this section shall be made available to the public by electronic means.

(c) Relationship to FOIA.—Nothing in this section shall be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.

§ 60136. Petroleum product transportation capacity study

(a) In general.—The Secretaries of Transportation and Energy shall conduct periodic analyses of the domestic transport of petroleum products by pipeline. Such analyses should identify areas of the United States where unplanned loss of individual pipeline facilities may cause shortages of petroleum products or price disruptions and where shortages of pipeline capacity and reliability concerns may have or are anticipated to contribute to shortages of petroleum products or price disruptions. Upon identifying such areas, the Secretaries may determine if the current level of regulation is sufficient to minimize the potential for un-planned losses of pipeline capacity.

(b) Consultation.—In preparing any analysis under this section, the Secretaries may consult with the heads of other government agencies and public- and private-sector experts in pipeline and other forms of petroleum product transportation, energy consumption, pipeline capacity, population, and economic development.

(c) Report to Congress.—Not later than June 1, 2008, the Secretaries shall submit to the Committee on Energy and Commerce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Energy and Natural Resources of the Senate a report setting forth their recommendations to reduce the likelihood of the shortages and price disruptions referred to in subsection (a).

(d) Additional reports.—The Secretaries shall submit additional reports to the congressional committees referred to in subsection (c) containing the results of any subsequent analyses performed under subsection (a) and any additional recommendations, as appropriate.

(e) Petroleum product defined.—In this section, the term 'petroleum product' means oil of any kind or in any form, gasoline, diesel fuel, aviation fuel, fuel oil, kerosene, any product obtained from refining or processing of crude oil, liquefied petroleum gases, natural gas liquids, petrochemical feedstocks, condensate, waste or refuse mixtures containing any of such oil products, and any other liquid hydrocarbon compounds.

§ 60137. Pipeline control room management

(a) In general.—Not later than June 1, 2008, the Secretary shall issue regulations requiring each operator of a gas or hazardous liquid pipeline to develop, implement, and submit to the Secretary or, in the case of an operator of an intrastate pipeline located within the boundaries of a State that has in effect an annual certification under section 60105, to the head of the appropriate State authority, a human factors management plan designed to reduce risks associated with human factors, including fatigue, in each control center for the pipeline. Each plan must include, among the measures to reduce such risks, a maximum limit on the hours of service established by the operator for individuals employed as controllers in a control center for the pipeline.

(b) Review and approval of the plan.—The Secretary or, in the case of an operator of an intrastate pipeline located within the boundaries of a State that has in effect an annual certification under section 60105, the head of the appropriate State authority, shall review and approve each plan submitted to the Secretary or the head of such authority, under subsection (a). The Secretary and the head of such authority may not approve a plan that does not include a maximum limit on the hours of service established by the operator of the pipeline for individuals employed as controllers in a control center for the pipeline.

(c) Enforcement of the plan.—If the Secretary or the head of the appropriate State authority determines that an operator's plan submitted to the Secretary or the head of such authority under subsection (a), or implementation of such a plan, does not comply with the regulations issued under this section or is inadequate for the safe operation of a pipeline, the Secretary or the head of such authority may take action consistent with this chapter and enforce the requirements of such regulations.

(d) Compliance with the plan.—Each operator of a gas or hazardous liquid pipeline shall document compliance with the plan submitted by the operator under subsection (a) and the reasons for any deviation from compliance with such plan. The Secretary or the head of the appropriate State authority, as the case may be, shall review the reasonableness of any such deviation in considering whether to take enforcement action or discontinue approval of the operator's plan under subsection (b).

(e) Deviation reporting requirements.—In issuing regulations under subsection (a), the Secretary shall develop and include in such regulations requirements for an operator of a gas or hazardous liquid pipeline to report deviations from compliance with the plan submitted to the Secretary by the operator under subsection (a).

§ 60138. Response plans

(a) In General.—The Secretary of Transportation shall—
(1) maintain on file a copy of the most recent response plan (as defined in part 194 of title 49, Code of Federal Regulations) prepared by an owner or operator of a pipeline facility; and
(2) provide upon written request to a person a copy of the plan, which may exclude, as the Secretary determines appropriate—
(A) proprietary information;
(B) security-sensitive information, including information described in section 1520.5(a) of title 49, Code of Federal Regulations;
(C) specific response resources and tactical resource deployment plans; and

(D) the specific amount and location of worst case discharges (as defined in part 194 of title 49, Code of Federal Regulations), including the process by which an owner or operator determines the worst case discharge.

(b) Relationship to FOIA.—Nothing in this section may be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.

§ 60139. Maximum allowable operating pressure

(a) Verification of Records.—
(1) In general.—The Secretary of Transportation shall require each owner or operator of a pipeline facility to conduct, not later than 6 months after the date of enactment of this section, a verification of the records of the owner or operator relating to the interstate and intrastate gas transmission pipelines of the owner or operator in class 3 and class 4 locations and class 1 and class 2 high-consequence areas.
(2) Purpose.—The purpose of the verification shall be to ensure that the records accurately reflect the physical and operational characteristics of the pipelines described in paragraph (1) and confirm the established maximum allowable operating pressure of the pipelines.
(3) Elements.—The verification process under this subsection shall include such elements as the Secretary considers appropriate.

(b) Reporting.—
(1) Documentation of certain pipelines.—Not later than 18 months after the date of enactment of this section, each owner or operator of a pipeline facility shall identify and submit to the Secretary documentation relating to each pipeline segment of the owner or operator described in subsection (a)(1) for which the records of the owner or operator are insufficient to confirm the established maximum allowable operating pressure of the segment.
(2) Exceedances of maximum allowable operating pressure.—If there is an exceedance of the maximum allowable operating pressure with respect to a gas transmission pipeline of an owner or operator of a pipeline facility that exceeds the build-up allowed for operation of pressure-limiting or control devices, the owner or operator shall report the exceedance to the Secretary and appropriate State authorities on or before the 5th day following the date on which the exceedance occurs.

(c) Determination of maximum allowable operating pressure.—
(1) In general.—In the case of a transmission line of an owner or operator of a pipeline facility identified under subsection (b)(1), the Secretary shall—
(A) require the owner or operator to reconfirm a maximum allowable operating pressure as expeditiously as economically feasible; and
(B) determine what actions are appropriate for the pipeline owner or operator to take to maintain safety until a maximum allowable operating pressure is confirmed.
(2) Interim actions.—In determining the actions for an owner or operator of a pipeline facility to take under paragraph (1)(B), the Secretary shall take into account potential consequences to public safety and the environment, potential impacts on pipeline system reliability and deliverability, and other factors, as appropriate.

(d) Testing regulations.—
(1) In general.—Not later than 18 months after the date of enactment of this section, the Secretary shall issue regulations for conducting tests to confirm the material strength of previously untested natural gas transmission pipelines located in high-consequence areas and operating at a pressure greater than 30 percent of specified minimum yield strength.
(2) Considerations.—In developing the regulations, the Secretary shall consider safety testing methodologies, including, at a minimum—
(A) pressure testing; and

(B) other alternative methods, including in-line inspections, determined by the Secretary to be of equal or greater effectiveness.

(3) Completion of testing.—The Secretary, in consultation with the Chairman of the Federal Energy Regulatory Commission and State regulators, as appropriate, shall establish timeframes for the completion of such testing that take into account potential consequences to public safety and the environment and that minimize costs and service disruptions.

(e) High-consequence area defined.—In this section, the term "high-consequence area" means an area described in section 60109(a).

§ 60140. Cover over buried pipelines

(a) Hazardous liquid pipeline incidents involving buried pipelines.—

(1) Study.—The Secretary of Transportation shall conduct a study of hazardous liquid pipeline incidents at crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark to determine if the depth of cover over the buried pipeline was a factor in any accidental release of hazardous liquids.

(2) Report.—Not later than 1 year after the date of enactment of this section, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

(b) Assessment of current requirements for depth of cover over buried pipelines.—

(1) In general.—If, following completion of the study under subsection (a), the Secretary finds that the depth of cover over buried pipelines is a contributing factor in the accidental release of hazardous liquids from the pipelines, the Secretary, not later than 1 year after the date of completion of the study, shall review and determine the sufficiency of current requirements for the depth of cover over buried pipelines.

(2) Legislative recommendations.—

(A) Development.—If the Secretary determines under paragraph (1) that the current requirements for the depth of cover over buried pipelines are insufficient, the Secretary shall develop legislative recommendations for improving the safety of buried pipelines at crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark.

(B) Consideration of factors.—In developing legislative recommendations under subparagraph (A), the Secretary shall consider the factors specified in section 60102(b)(2).

(C) Report to Congress.—If the Secretary develops legislative recommendations under subparagraph (A), the Secretary shall submit to the committees referred to in subsection (a)(2) a report containing the legislative recommendations.

§ 60141. Standards for underground natural gas storage facilities

(a) Minimum safety standards.—Not later than 2 years after the date of enactment of the PIPES Act of 2016, the Secretary, in consultation with the heads of other relevant Federal agencies, shall issue minimum safety standards for underground natural gas storage facilities.

(b) Considerations.—In developing the safety standards required under subsection (a), the Secretary shall, to the extent practicable—

(1) consider consensus standards for the operation, environmental protection, and integrity management of underground natural gas storage facilities;

(2) consider the economic impacts of the regulations on individual gas customers;

(3) ensure that the regulations do not have a significant economic impact on end users; and

(4) consider the recommendations of the Aliso Canyon natural gas leak task force established under section 31 of the PIPES Act of 2016.

(c) Federal-state cooperation.—The Secretary may authorize a State authority (including a municipality) to participate in the oversight of underground natural gas storage facilities in the same manner as provided in sections 60105 and 60106.

(d) Rules of construction.—(1) In general.—Nothing in this section may be construed to affect any Federal regulation relating to gas pipeline facilities that is in effect on the day before the date of enactment of the PIPES Act of 2016.

(2) Limitations.—Nothing in this section may be construed to authorize the Secretary—

(A) to prescribe the location of an underground natural gas storage facility; or

(B) to require the Secretary's permission to construct a facility referred to in subparagraph (A).

(e) Preemption.—A State authority may adopt additional or more stringent safety standards for intrastate underground natural gas storage facilities if such standards are compatible with the minimum standards prescribed under this section.

(f) Statutory construction.—Nothing in this section shall be construed to affect the Secretary's authority under this title to regulate the underground storage of gas that is not natural gas.

User Fees (49 U.S.C. Chapter 603)

§ 60301. User fees

(a) Schedule of fees.--The Secretary of Transportation shall prescribe a schedule of fees for all natural gas and hazardous liquids transported by pipelines subject to chapter 601 of this title. The fees shall be based on usage (in reasonable relationship to volume-miles, miles, revenues, or a combination of volume-miles, miles, and revenues) of the pipelines. The Secretary shall consider the allocation of resources of the Department of Transportation when establishing the schedule.

(b) Imposition and time of collection.--A fee shall be imposed on each person operating a gas pipeline transmission facility, a liquefied natural gas pipeline facility, or a hazardous liquid pipeline facility to which chapter 601 of this title applies. The fee shall be collected before the end of the fiscal year to which it applies.

(c) Means of collection.--The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(d) Use of fees.--A fee collected under this section--
(1)(A) related to a gas pipeline facility may be used only for an activity related to gas under chapter 601 of this title; and
(B) related to a hazardous liquid pipeline facility may be used only for an activity related to hazardous liquid under chapter 601 of this title; and
(2) may be used only to the extent provided in advance in an appropriation law.

(e) Limitations.--Fees prescribed under subsection (a) of this section shall be sufficient to pay for the costs of activities described in subsection (d) of this section. However, the total amount collected for a fiscal year may not be more than 105 percent of the total amount of the appropriations made for the fiscal year for activities to be financed by the fees.

§ 60302. User fees for underground natural gas storage facilities

(a) In General.—A fee shall be imposed on an entity operating an underground natural gas storage facility subject to section 60141. Any such fee imposed shall be collected before the end of the fiscal year to which it applies.

(b) Means of Collection.—The Secretary of Transportation shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(c) Use of Fees.—
(1) Account.—There is established an Underground Natural Gas Storage Facility Safety Account in the Pipeline Safety Fund established in the Treasury of the United States under section 60301.
(2) Use of Fees.—A fee collected under this section—
(A) shall be deposited in the Underground Natural Gas Storage Facility Safety Account; and

(B) if the fee is related to an underground natural gas storage facility subject to section 60141, the amount of the fee may be used only for an activity related to underground natural gas storage facility safety.

(3) Limitation.—No fee may be collected under this section, except to the extent that the expenditure of such fee to pay the costs of an activity related to underground natural gas storage facility safety for which such fee is imposed is provided in advance in an appropriations Act.

One-Call Notification Programs Statutes (49 U.S.C. § 6101 et seq.)

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§ 6101. Purposes

The purposes of this chapter are--
(1) to enhance public safety;
(2) to protect the environment;
(3) to minimize risks to excavators; and
(4) to prevent disruption of vital public services,
by reducing the incidence of damage to underground facilities during excavation through the voluntary adoption and efficient implementation by all States of State one-call notification programs that meet the minimum standards set forth under section 6103.

§ 6102. Definitions

In this chapter, the following definitions apply:
(1) One-call notification system.--The term "one-call notification system" means a system operated by an organization that has as 1 of its purposes to receive notification from excavators of intended excavation in a specified area in order to disseminate such notification to underground facility operators that are members of the system so that such operators can locate and mark their facilities in order to prevent damage to underground facilities in the course of such excavation.
(2) State one-call notification program.--The term "State one-call notification program" means the State statutes, regulations, orders, judicial decisions, and other elements of law and policy in effect in a State that establish the requirements for the operation of one-call notification systems in such State.
(3) State.--The term "State" means a State, the District of Columbia, and Puerto Rico.
(4) Secretary.--The term "Secretary" means the Secretary of Transportation.

§ 6103. Minimum standards for State one-call notification programs

~~(a) Minimum standards.--In order to qualify for a grant under section 6106, a State one-call notification program shall, at a minimum, provide for--~~
~~(1) appropriate participation by all underground facility operators, including all government operators;~~
~~(2) appropriate participation by all excavators, including all government and contract excavators; and~~
~~(3) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.~~

(a) Minimum Standards.—
(1) In general.—In order to qualify for a grant under section 6106, a State one-call notification program, at a minimum, shall provide for—
(A) appropriate participation by all underground facility operators, including all government operators;
(B) appropriate participation by all excavators, including all government and contract excavators; and
(C) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.
(2) Exemptions prohibited.—In order to qualify for a grant under section 6106, a State one-call notification program may not exempt municipalities, State agencies, or their contractors from the one-call notification system requirements of the program. *[this amendment takes effect 1/3/2014]*

(b) Appropriate participation.--In determining the appropriate extent of participation required for types of underground facilities or excavators under subsection (a), a State shall assess, rank, and take into consideration the risks to the public safety, the environment, excavators, and vital public services associated with--
(1) damage to types of underground facilities; and
(2) activities of types of excavators.

(c) Implementation.--A State one-call notification program also shall, at a minimum, provide for and document--

(1) consideration of the ranking of risks under subsection (b) in the enforcement of its provisions;
(2) a reasonable relationship between the benefits of one-call notification and the cost of implementing and complying with the requirements of the State one-call notification program; and
(3) voluntary participation where the State determines that a type of underground facility or an activity of a type of excavator poses a de minimis risk to public safety or the environment.

(d) Penalties.--To the extent the State determines appropriate and necessary to achieve the purposes of this chapter, a State one-call notification program shall, at a minimum, provide for--

(1) administrative or civil penalties commensurate with the seriousness of a violation by an excavator or facility owner of a State one-call notification program;
(2) increased penalties for parties that repeatedly damage underground facilities because they fail to use one-call notification systems or for parties that repeatedly fail to provide timely and accurate marking after the required call has been made to a one-call notification system;
(3) reduced or waived penalties for a violation of a requirement of a State one-call notification program that results in, or could result in, damage that is promptly reported by the violator;
(4) equitable relief; and
(5) citation of violations.

§ 6104. Compliance with minimum standards

(a) Requirement.--In order to qualify for a grant under section 6106, each State shall submit to the Secretary a grant application under subsection (b). The State shall submit the application not later than 2 years after the date of enactment of this chapter.

(b) Application.--

(1) Upon application by a State, the Secretary shall review that State's one-call notification program, including the provisions for the implementation of the program and the record of compliance and enforcement under the program.
(2) Based on the review under paragraph (1), the Secretary shall determine whether the State's one-call notification program meets the minimum standards for such a program set forth in section 6103 in order to qualify for a grant under section 6106.
(3) In order to expedite compliance under this section, the Secretary may consult with the State as to whether an existing State one-call notification program, a specific modification thereof, or a proposed State program would result in a positive determination under paragraph (2).
(4) The Secretary shall prescribe the form and manner of filing an application under this section that shall provide sufficient information about a State's one-call notification program for the Secretary to evaluate its overall effectiveness. Such information may include the nature and reasons for exceptions from required participation, the types of enforcement available, and such other information as the Secretary deems necessary.
(5) The application of a State under paragraph (1) and the record of actions of the Secretary under this section shall be available to the public.

(c) Alternative program.--A State is eligible to receive a grant under section 6106 if the State maintains an alternative one-call notification program that provides protection for public safety, excavators, and the environment that is equivalent to, or greater than, protection provided under a program that meets the minimum standards set forth in section 6103.

(d) Report.--The Secretary shall include the following information in reports submitted under section 60124 of this title--

(1) a description of the extent to which each State has adopted and implemented the minimum Federal standards under section 6103 or maintains an alternative program under subsection (c);

(2) an analysis by the Secretary of the overall effectiveness of each State's one-call notification program and the one-call notification systems operating under such program in achieving the purposes of this chapter;
(3) the impact of each State's decisions on the extent of required participation in one-call notification systems on prevention of damage to underground facilities; and
(4) areas where improvements are needed in one-call notification systems in operation in each State.

The report shall also include any recommendations the Secretary determines appropriate. If the Secretary determines that the purposes of this chapter have been substantially achieved, no further report under this section shall be required.

§ 6105. Implementation of best practices guidelines

(a) Adoption of best practices.--The Secretary of Transportation shall encourage States, operators of one-call notification programs, excavators (including all government and contract excavators), and underground facility operators to adopt and implement practices identified in the best practices report entitled "Common Ground", as periodically updated.

(b) Technical assistance.--The Secretary shall provide technical assistance to and participate in programs sponsored by a non- profit organization specifically established for the purpose of reducing construction-related damage to underground facilities.

(c) Grants.--
(1) In general.--The Secretary may make grants to a non-profit organization described in subsection (b).
(2) Authorization of appropriations.--In addition to amounts authorized under section 6107, there is authorized to be appropriated for making grants under this subsection $500,000 for each of fiscal years 2003 through 2006. Such sums shall remain available until expended.
(3) General revenue funding.--Any sums appropriated under this subsection shall be derived from general revenues and may not be derived from amounts collected under section 60301.

§ 6106. Grants to States

(a) In general.--The Secretary may make a grant of financial assistance to a State that qualifies under section 6104(b) to assist in improving--
(1) the overall quality and effectiveness of one-call notification systems in the State;
(2) communications systems linking one-call notification systems;
(3) location capabilities, including training personnel and developing and using location technology;
(4) record retention and recording capabilities for one-call notification systems;
(5) public information and education;
(6) participation in one-call notification systems; or
(7) compliance and enforcement under the State one-call notification program.

(b) State action taken into account.--In making grants under this section, the Secretary shall take into consideration the commitment of each State to improving its State one-call notification program, including legislative and regulatory actions taken by the State after the date of enactment of this chapter.

(c) Funding for one-call notification systems.--A State may provide funds received under this section directly to any one-call notification system in such State that substantially adopts the best practices identified under section 6105.

~~**§ 6107. Authorization of appropriations**~~

~~(a) For grants to states.--There are authorized to be appropriated to the Secretary to provide grants to States under section 6106 $1,000,000 for each of fiscal years 2003 through 2006~~ 2007 through 2010 2012 through 2015~~. Such funds shall remain available until expended.~~

~~(b) For administration.--There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out sections 6103, 6104, and 6105 for fiscal years 2003 through 2006~~ fiscal years 2007 through 2010 ~~2012 through 2015~~.

~~(c) General revenue funding.--Any sums appropriated under this section shall be derived from general revenues and may not be derived from amounts collected under section 60301 of this title.~~

§ 6107. Funding

Of the amounts made available under section 60125(a)(1), the Secretary shall expend $1,058,000 for each of fiscal years 2016 through 2019 to carry out section 6106.

§ 6108. Relationship to State laws

Nothing in this chapter preempts State law or shall impose a new requirement on any State or mandate revisions to a one-call system.

§ 6109. Public education and awareness

(a) Grant authority.—The Secretary shall make a grant to an appropriate entity for promoting public education and awareness with respect to the 811 national excavation damage prevention phone number.

(b) Authorization of appropriations.—There is authorized to be appropriated to the Secretary $1,000,000 for the period beginning October 1, 2006, and ending September 30, 2008, to carry out this section.

Section 12 of the Pipeline Safety Improvement Act of 2002
(49 U.S.C. 60101 note; Public Law 107–355)

Sec. 12. Pipeline Integrity, Safety, and Reliability Research and Development.

(a) In general.—The heads of the participating agencies shall carry out a program of research, development, demonstration, and standardization to ensure the integrity of pipeline facilities.

(b) Memorandum of understanding.—

(1) In general.—Not later than 120 days after the date of enactment of this Act, the heads of the participating agencies shall enter into a memorandum of understanding detailing their respective responsibilities in the program authorized by subsection (a).

(2) Areas of expertise.—Under the memorandum of understanding, each of the participating agencies shall have the primary responsibility for ensuring that the elements of the program within its expertise are implemented in accordance with this section. The Department of Transportation's responsibilities shall reflect its lead role in pipeline safety and expertise in pipeline inspection, integrity management, and damage prevention. The Department of Energy's responsibilities shall reflect its expertise in system reliability, low-volume gas leak detection, and surveillance technologies. The National Institute of Standards and Technology's responsibilities shall reflect its expertise in materials research and assisting in the development of consensus technical standards, as that term is used in section 12(d)(4) of Public Law 104–13 (15 U.S.C. 272 note).

(c) Program elements.—The program authorized by subsection (a) shall include research, development, demonstration, and standardization activities related to—

(1) materials inspection;

(2) stress and fracture analysis, detection of cracks, ~~corrosion,~~ abrasion, and other abnormalities inside pipelines that lead to pipeline failure, and development of new equipment or technologies that are inserted into pipelines to detect anomalies;

(3) internal inspection and leak detection technologies, including detection of leaks at very low volumes;

(4) methods of analyzing content of pipeline throughput;

(5) pipeline security, including improving the real-time surveillance of pipeline rights-of-way, developing tools for evaluating and enhancing pipeline security and infrastructure, reducing natural, technological, and terrorist threats, and protecting first response units and persons near an incident;

(6) risk assessment methodology, including vulnerability assessment and reduction of third-party damage;

(7) communication, control, and information systems surety;

(8) fire safety of pipelines;

(9) improved excavation, construction, and repair technologies; ~~and~~

(10) corrosion detection and improving methods, best practices, and technologies for identifying, detecting, preventing, and managing internal and external corrosion and other safety risks; and

(~~10~~11) other appropriate elements.

The results of activities carried out under paragraph (10) shall be used by the participating agencies to support development and improvement of national consensus standards.

(d) Program plan.—

(1) In general.—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. Such program plan shall be submitted to the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee for review, and the report to Congress shall include the comments of the committees. The 5-year program plan shall be based on the memorandum of understanding under subsection (b) and take into account related activities of other Federal agencies.

(2) Consultation.—In preparing the program plan and selecting and prioritizing appropriate project proposals, the Secretary of Transportation shall consult with or seek the advice of appropriate representatives of the natural gas, crude oil, and petroleum product pipeline industries, utilities, manufacturers, institutions of higher learning, Federal agencies, pipeline research institutions, national laboratories, State pipeline safety officials, labor organizations, environmental organizations, pipeline safety advocates, and professional and technical societies.

(3) Ongoing pipeline transportation research and development.—

(A) In general.—After the initial 5-year program plan has been carried out by the participating agencies, the Secretary of Transportation, in coordination with the Director of the National Institute of Standards and Technology, as appropriate, shall prepare a research and development program plan every 5 years thereafter and shall transmit a report to Congress on the status and results-to-date of implementation of the program every 2 years. The biennial report shall include a summary of updated research needs and priorities identified through the consultation requirements of paragraph (2).

(B) Consultation.—The Secretary shall comply with the consultation requirements of paragraph (2) when preparing the program plan and in the selection and prioritization of research and development projects.

~~(C) Funding from non-federal sources.—The Secretary shall ensure at least 30 percent of the costs of program-wide research and development activities are carried out using non-Federal sources.~~

(C) Funding From Non-Federal Sources.—The Secretary shall ensure that—

(i) at least 30 percent of the costs of technology research and development activities may be carried out using non-Federal sources;

(ii) at least 20 percent of the costs of basic research and development with universities may be carried out using non-Federal sources; and

(iii) up to 100 percent of the costs of research and development for purely governmental purposes may be carried out using Federal funds.

(e) Reports to Congress.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the heads of the participating agencies shall transmit jointly to Congress a report on the status and results to date of the implementation of the program plan prepared under subsection (d).

~~(f) Authorization of Appropriations.—~~

~~(1) Department of Transportation.—There is authorized to be appropriated to the Secretary of Transportation for carrying out this section $10,000,000 for each of the fiscal years 2003 through 2006.~~

~~(2) Department of Energy.—There is authorized to be appropriated to the Secretary of Energy for carrying out this section $10,000,000 for each of the fiscal years 2003 through 2006.~~

~~(3) National Institute of Standards and Technology.—There is authorized to be appropriated to the Director of the National Institute of Standards and Technology for carrying out this section $5,000,000 for each of the fiscal years 2003 through 2006.~~

~~(4) General Revenue Funding.—Any sums appropriated under this subsection shall be derived from general revenues and may not be derived from amounts collected under section 60301 of title 49, United States Code.~~

~~(g)~~(f) Pipeline integrity program.—Of the amounts available in the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), $3,000,000 shall be transferred to the Secretary of Transportation, as provided in appropriation Acts, to carry out programs for detection, prevention, and mitigation of oil spills for each of the fiscal years ~~2003 through 2006~~ 2012 through 2015.

~~(h)~~(g) Participating agencies defined.—In this section, the term ''participating agencies'' means the Department of Transportation, the Department of Energy, and the National Institute of Standards and Technology.

(h) Independent Experts.—Not later than 180 days after the date of enactment of the PIPES Act of 2016, the Secretary shall—

(1) implement processes and procedures to ensure that activities listed under subsection (c), to the greatest extent practicable, produce results that are peer-reviewed by independent experts and not by persons or entities that have a financial interest in the pipeline, petroleum, or natural gas industries, or that would be directly impacted by the results of the projects; and

(2) submit to the Committee on Transportation and Infrastructure, the Committee on Energy and Commerce, and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the processes and procedures implemented under paragraph (1).

(i) Conflict Of Interest.—The Secretary shall take all practical steps to ensure that each recipient of an agreement under this section discloses in writing to the Secretary any conflict of interest on a research and development project carried out under this section, and includes any such disclosure as part of the final deliverable pursuant to such agreement. The Secretary may not make an award under this section directly to a pipeline owner or operator that is regulated by the Pipeline and Hazardous Materials Safety Administration or a State-certified regulatory authority if there is a conflict of interest relating to such owner or operator.

Uncodified Mandates from Act of 2011

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Sec. 3. Pipeline Damage Prevention.

(d) Excavation Damage.

(1) Study.—The Secretary of Transportation shall conduct a study on the impact of excavation damage on pipeline safety.

(2) Contents.—The study shall include—

(A) an analysis of the frequency and severity of different types of excavation damage incidents;

(B) an analysis of exemptions to the one-call notification system requirements in each State;

(C) a comparison of exemptions to the one-call notification system requirements in each State to the types of excavation damage incidents in that State; and

(D) an analysis of the potential safety benefits and adverse consequences of eliminating all exemptions for mechanized excavation from State one-call notification systems.

(3) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

Sec. 5. Integrity Management.

(a) Evaluation.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall evaluate—

(1) whether integrity management system requirements, or elements thereof, should be expanded beyond high-consequence areas; and

(2) with respect to gas transmission pipeline facilities, whether applying integrity management program requirements, or elements thereof, to additional areas would mitigate the need for class location requirements.

(b) Factors.—In conducting the evaluation under subsection (a), the Secretary shall consider, at a minimum, the following:

(1) The continuing priority to enhance protections for public safety.

(2) The continuing importance of reducing risk in high consequence areas.

(3) The incremental costs of applying integrity management standards to pipelines outside of high-consequence areas where operators are already conducting assessments beyond what is required under chapter 601 of title 49, United States Code.

(4) The need to undertake integrity management assessments and repairs in a manner that is achievable and sustainable, and that does not disrupt pipeline service.

(5) The options for phasing in the extension of integrity management requirements beyond high-consequence areas, including the most effective and efficient options for decreasing risks to an increasing number of people living or working in proximity to pipeline facilities.

(6) The appropriateness of applying repair criteria, such as pressure reductions and special requirements for scheduling remediation, to areas that are not high-consequence areas.

(c) Report.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, based on the evaluation conducted under subsection (a), containing the Secretary's analysis and findings regarding—

(1) expansion of integrity management requirements, or elements thereof, beyond high-consequence areas; and

(2) with respect to gas transmission pipeline facilities, whether applying the integrity management program requirements, or elements thereof, to additional areas would mitigate the need for class location requirements.

(d) Data reporting.—The Secretary shall collect any relevant data necessary to complete the evaluation required by subsection (a).

* * * * *

(f) Rulemaking requirements.—

(1) Review period defined.—In this subsection, the term ‘‘review period’’ means the period beginning on the date of enactment of this Act and ending on the earlier of—

(A) the date that is 1 year after the date of completion of the report under subsection (c); or

(B) the date that is 3 years after the date of enactment of this Act.

(2) Congressional authority.—In order to provide Congress the necessary time to review the results of the report required by subsection (c) and implement appropriate recommendations, the Secretary shall not, during the review period, issue final regulations described in paragraph (3)(B).

(3) Standards.—

(A) Findings.—As soon as practicable following the review period, the Secretary shall issue final regulations described in subparagraph (B), if the Secretary finds, in the report required under subsection (c), that—

(i) integrity management system requirements, or elements thereof, should be expanded beyond high consequence areas; and

(ii) with respect to gas transmission pipeline facilities, applying integrity management program requirements, or elements thereof, to additional areas would mitigate the need for class location requirements.

(B) Regulations.—Regulations issued by the Secretary under subparagraph (A), if any, shall—

(i) expand integrity management system requirements, or elements thereof, beyond high-consequence areas; and

(ii) remove redundant class location requirements for gas transmission pipeline facilities that are regulated under an integrity management program adopted and implemented under section 60109(c)(2) of title 49, United States Code.

(4) Savings clause.—

(A) In general.—Notwithstanding any other provision of this subsection, the Secretary, during the review period, may issue final regulations described in paragraph (3)(B), if the Secretary determines that a condition that poses a risk to public safety, property, or the environment is present or an imminent hazard exists and that the regulations will address the risk or hazard.

(B) Imminent hazard defined.—In subparagraph (A), the term ‘‘imminent hazard’’ means the existence of a condition related to pipelines or pipeline operations that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur.

(g) Report to Congress on risk-based pipeline reassessment intervals.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall evaluate—

(1) whether risk-based reassessment intervals are a more effective alternative for managing risks to pipelines in high consequence areas once baseline assessments are complete when compared to the reassessment interval specified in section 60109(c)(3)(B) of title 49, United States Code;

(2) the number of anomalies found in baseline assessments required under section 60109(c)(3)(A) of title 49, United States Code, as compared to the number of anomalies found in reassessments required under section 60109(c)(3)(B) of such title; and

(3) the progress made in implementing the recommendations in GAO Report 06–945 and the current relevance of those recommendations that have not been implemented.

Sec. 6 Public Education and Awareness.

(b) Information to emergency response agencies.—

(1) Guidance.—Not later than 18 months after the date of enactment of this Act, the Secretary shall issue guidance to owners and operators of pipeline facilities on the importance of providing system-specific information about their pipeline facilities to emergency response agencies of the communities and jurisdictions in which those facilities are located.

(2) Consultation.—Before issuing guidance under paragraph (1), the Secretary shall consult with owners and operators of pipeline facilities to determine the extent to which the owners and operators are already providing system-specific information about their pipeline facilities to emergency response agencies.

Sec. 7. Cast Iron Gas Pipelines.

(b) Status report.—Not later than December 31, 2013, the Secretary of Transportation shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(1) identifies the total mileage of cast iron gas pipelines in the United States; and

(2) evaluates the progress that owners and operators of pipeline facilities have made in implementing their plans for the safe management and replacement of cast iron gas pipelines.

Sec. 8. Leak Detection.

(a) Leak detection report.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives a report on leak detection systems utilized by operators of hazardous liquid pipeline facilities and transportation-related flow lines.

(2) Contents.—The report shall include—

(A) an analysis of the technical limitations of current leak detection systems, including the ability of the systems to detect ruptures and small leaks that are ongoing or intermittent, and what can be done to foster development of better technologies; and

(B) an analysis of the practicability of establishing technically, operationally, and economically feasible standards for the capability of such systems to detect leaks, and the safety benefits and adverse consequences of requiring operators to use leak detection systems.

(b) Rule making requirements.—

(1) Review period defined.—In this subsection, the term ‘‘review period’’ means the period beginning on the date of enactment of this Act and ending on the earlier of—

(A) the date that is 1 year after the date of completion of the report under subsection (a); or

(B) the date that is 2 years after the date of enactment of this Act.

(2) Congressional Authority.—In order to provide Congress the necessary time to review the results of the report required by subsection (a) and implement appropriate recommendations, the Secretary, during the review period, shall not issue final regulations described in paragraph (3).

(3) Standards.—As soon as practicable following the review period, if the report required by subsection (a) finds that it is practicable to establish technically, operationally, and economically feasible standards for the capability of leak detection systems to detect leaks, the Secretary shall issue final regulations that—

(A) require operators of hazardous liquid pipeline facilities to use leak detection systems where practicable; and

(B) establish technically, operationally, and economically feasible standards for the capability of such systems to detect leaks.

(4) Savings clause.—

(A) In general.—Notwithstanding any other provision of this subsection, the Secretary, during the review period, may issue final regulations described in paragraph (3) if the Secretary determines that a condition that poses a risk to public safety, property, or the environment is present or an imminent hazard exists and that the regulations will address the risk or hazard.

(B) Imminent hazard defined.—In subparagraph (A), the term ‘‘imminent hazard’’ means the existence of a condition related to pipelines or pipeline operations that presents a substantial

likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur.

Sed. 9. Accident and Incident Notification.

(a) Revision of regulations.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall revise regulations issued under sections 191.5 and 195.52 of title 49, Code of Federal Regulations, to establish specific time limits for telephonic or electronic notice of accidents and incidents involving pipeline facilities to the Secretary and the National Response Center.

(b) Minimum requirements.—In revising the regulations, the Secretary, at a minimum, shall—
(1) establish time limits for telephonic or electronic notification of an accident or incident to require such notification at the earliest practicable moment following confirmed discovery of an accident or incident and not later than 1 hour following the time of such confirmed discovery;
(2) review procedures for owners and operators of pipeline facilities and the National Response Center to provide thorough and coordinated notification to all relevant State and local emergency response officials, including 911 emergency call centers, for the jurisdictions in which those pipeline facilities are located in the event of an accident or incident, and revise such procedures as appropriate; and
(3) require such owners and operators to revise their initial telephonic or electronic notice to the Secretary and the National Response Center with an estimate of the amount of the product released, an estimate of the number of fatalities and injuries, if any, and any other information determined appropriate by the Secretary within 48 hours of the accident or incident, to the extent practicable.

(c) Updating of reports.—After receiving revisions described in subsection (b)(3), the National Response Center shall update the initial report on an accident or incident instead of generating a new report.

Sec. 13. Cost Recovery for Design Reviews.

(b) Guidance.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue guidance to clarify the meaning of the term “new or novel technologies or design” as used in section 60117(n)(1)(B)(ii) of title 49, United States Code, as amended by subsection (a) of this section.

Sec. 16. Study of Transportation of Diluted Bitumen.

Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall complete a comprehensive review of hazardous liquid pipeline facility regulations to determine whether the regulations are sufficient to regulate pipeline facilities used for the transportation of diluted bitumen. In conducting the review, the Secretary shall conduct an analysis of whether any increase in the risk of a release exists for pipeline facilities transporting diluted bitumen. The Secretary shall report the results of the review to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives.

Sec. 17. Study of Nonpetroleum Hazardous Liquid Transported by Pipeline.

The Secretary of Transportation may conduct an analysis of the transportation of nonpetroleum hazardous liquids by pipeline facility for the purpose of identifying the extent to which pipeline facilities are currently being used to transport nonpetroleum hazardous liquids, such as chlorine, from chemical production

facilities across land areas not owned by the producer that are accessible to the public. The analysis should identify the extent to which the safety of the pipeline facilities is unregulated by the States and evaluate whether the transportation of such chemicals by pipeline facility across areas accessible to the public would present significant risks to public safety, property, or the environment in the absence of regulation. The results of the analysis shall be made available to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives.

Sec. 20. Administrative Enforcement Process.

(a) Issuance of regulations.—
(1) In general.—Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation shall issue regulations—
(A) requiring hearings under sections 60112, 60117, 60118, and 60122 of title 49, United States Code, to be convened before a presiding official;
(B) providing the opportunity for any person requesting a hearing under section 60112, 60117, 60118, or 60122 of such title to arrange for a transcript of the hearing, at the expense of the requesting person;
(C) ensuring expedited review of any order issued pursuant to section 60112(e) of such title;
(D) implementing a separation of functions between personnel involved with the investigation and prosecution of an enforcement case and advising the Secretary on findings and determinations; and
(E) prohibiting ex-parte communication relevant to the question to be decided in such a case by parties to a investigation or hearing.
(2) Presiding official.—The regulations issued under this subsection shall—
(A) define the term ‘‘presiding official’’ to mean the person who conducts any hearing relating to civil penalty assessments, compliance orders, safety orders, or corrective action orders; and
(B) require that the presiding official be an attorney on the staff of the Deputy Chief Counsel of the Pipeline and Hazardous Materials Safety Administration that is not engaged in investigative or prosecutorial functions including the preparation of notices of probable violations, notices relating to civil penalty assessments, notices relating to compliance, or notices of proposed corrective actions.
(3) Expedited review.—The regulations issued under this subsection shall define the term ‘‘expedited review’’ for the purposes of paragraph (1)(C).

Sec. 21. Gas and Hazardous Liquid Gathering Lines.

(a) Review.—The Secretary of Transportation shall conduct a review of existing Federal and State regulations for gas and hazardous liquid gathering lines located onshore and offshore in the United States, including within the inlets of the Gulf of Mexico.

(b) Report to Congress.
(1) In general.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review.
(2) Recommendations.—The report shall include the Secretary’s recommendations with respect to—
(A) the sufficiency of existing Federal and State laws and regulations to ensure the safety of gas and hazardous liquid gathering lines;
(B) the economic impacts, technical practicability, and challenges of applying existing Federal regulations to gathering lines that are not currently subject to Federal regulation when compared to the public safety benefits; and

(C) subject to a risk-based assessment, the need to modify or revoke existing exemptions from Federal regulation for gas and hazardous liquid gathering lines.

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Sec. 25. Pipeline Safety Training for State and Local Government Personnel.

(a) In general.—To further the objectives of chapter 601 of title 49, United States Code, the Secretary of Transportation may provide the services of personnel from the Pipeline and Hazardous Materials Safety Administration to provide training for State and local government personnel at a pipeline safety training facility that is established and operated by an agency or instrumentality of the United States, a unit of State or local government, or an educational institution.

(b) Reimbursements for training expenditures.—
(1) In general.—Notwithstanding any other provision of law, the Secretary may require reimbursement from and local government personnel under subsection (a), including salaries, expenses, transportation for Pipeline and Hazardous Materials Safety Administration personnel, and the cost of training materials.
(2) Authorization of appropriations.—Amounts collected as reimbursement under paragraph (1) are authorized to be appropriated for the purposes set forth in chapter 601 of title 49, United States Code.

Sec. 26. Report on Minority-owned, Woman-owned, and Disadvantaged Businesses.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States, based upon available information, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives a comprehensive report assessing the levels and types of participation and methods of facilitating the participation of minority-owned business enterprises, woman-owned business enterprises, and disadvantaged business enterprises in the construction and operation of pipeline facilities in the United States.

Sec. 27. Report on Pipeline Projects.

(a) Study. —The Comptroller General of the United States shall conduct a comprehensive study regarding the process for obtaining Federal and State permits for projects to construct pipeline facilities.

(b) Evaluation.—In conducting the study, the Comptroller General shall evaluate how long it takes to issue permits for pipeline construction projects, the relationship between the States and the Federal Government in issuing such permits, and any recommendations from the States for improving the permitting process.

(c) Consultation.—In conducting the study, the Comptroller General shall consult with the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(d) Report.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

Sec. 29. Seismicity.

In identifying and evaluating all potential threats to each pipeline=segment pursuant to parts 192 and 195 of title 49, Code of Federal Regulations, an operator of a pipeline facility shall consider the seismicity of the area.

Sec. 30. Tribal Consultation for Pipeline Projects.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall develop and implement a protocol for consulting with Indian tribes to provide technical assistance for the regulation of pipelines that are under the jurisdiction of Indian tribes.

Sec. 31. Pipeline Inspection and Enforcement Needs.

(a) Inspection and enforcement needs.—Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that provides information on—

(1) the total number of full-time equivalent positions for pipeline inspection and enforcement personnel at the Pipeline and Hazardous Materials Safety Administration;

(2) out of the total number of such positions, how many of the positions are not filled and the reasons why the positions are not filled;

(3) the actions the Administrator of the Pipeline and Hazardous Materials Safety Administration is taking to fill the positions; and

(4) any additional inspection and enforcement resource needs of the Pipeline and Hazardous Materials Safety Administration.

(b) Staffing.—Subject to the availability of funds, the Secretary may increase the number of positions for pipeline inspection and enforcement personnel at the Pipeline and Hazardous Materials Safety Administration by 10 full-time equivalent employees, if—

(1) on or before September 30, 2014, the Secretary fills the 135 full-time equivalent positions for pipeline inspection and enforcement personnel specified in section 18(e) of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (120 Stat. 3498); and

(2) in preparing the report under subsection (a), the Secretary finds that additional pipeline inspection and enforcement personnel are necessary.

Uncodified Mandates from Act of 2016

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Sec. 2. Authorization Of Appropriations.

(b) Operational Expenses.—There are authorized to be appropriated to the Secretary of Transportation for the necessary operational expenses of the Pipeline and Hazardous Materials Safety Administration the following amounts:

(1) $21,000,000 for fiscal year 2016.
(2) $22,000,000 for fiscal year 2017.
(3) $22,000,000 for fiscal year 2018.
(4) $23,000,000 for fiscal year 2019.

Sec. 3. Regulatory Updates.

(a) Publication.—

(1) IN GENERAL.—The Secretary of Transportation shall publish an update on a publicly available Web site of the Department of Transportation regarding the status of a final rule for each outstanding regulation, and upon such publication notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives that such publication has been made.

(2) DEADLINES.—The Secretary shall publish an update under this subsection not later than 120 days after the date of enactment of this Act, and every 90 days thereafter until a final rule has been published in the Federal Register for each outstanding regulation.

(b) Contents.—The Secretary shall include in each update published under subsection (a)—

(1) a description of the work plan for each outstanding regulation;
(2) an updated rulemaking timeline for each outstanding regulation;
(3) current staff allocations with respect to each outstanding regulation;
(4) any resource constraints affecting the rulemaking process for each outstanding regulation;
(5) any other details associated with the development of each outstanding regulation that affect the progress of the rulemaking process; and
(6) a description of all rulemakings regarding gas or hazardous liquid pipeline facilities published in the Federal Register that are not identified under subsection (c).

(c) Outstanding Regulation Defined.—In this section, the term “outstanding regulation” means—

(1) a final rule required under the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Public Law 112–90) that has not been published in the Federal Register; and
(2) a final rule regarding gas or hazardous liquid pipeline facilities required under this Act or an Act enacted prior to the date of enactment of this Act (other than the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Public Law 112–90)) that has not been published in the Federal Register.

Sec. 4. Natural Gas Integrity Management Review.

(a) Report.—Not later than 18 months after the date of publication in the Federal Register of a final rule regarding the safety of gas transmission pipelines related to the notice of proposed rulemaking issued on April 8, 2016, titled “Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines” (81 Fed. Reg. 20721), the Comptroller General of the United States shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report regarding the integrity management programs for gas pipeline facilities required under section 60109(c) of title 49, United States Code.

(b) Contents.—The report required under subsection (a) shall include—

(1) an analysis of stakeholder perspectives, taking into consideration technical, operational, and economic feasibility, regarding ways to enhance pipeline facility safety, prevent inadvertent releases from pipeline facilities, and mitigate any adverse consequences of such inadvertent releases, including changes to the definition of high consequence area, or expanding integrity management beyond high consequence areas;

(2) a review of the types of benefits, including safety benefits, and estimated costs of the legacy class location regulations;

(3) an analysis of the impact pipeline facility features, including the age, condition, materials, and construction of a pipeline facility, have on safety and risk analysis of a particular pipeline facility;

(4) a description of any challenges affecting Federal or State regulators in the oversight of gas transmission pipeline facilities and how the challenges are being addressed; and

(5) a description of any challenges affecting the natural gas industry in complying with the programs, and how the challenges are being addressed, including any challenges faced by publicly owned natural gas distribution systems.

(c) Definition Of High Consequence Area.—In this section, the term “high consequence area” has the meaning given the term in section 192.903 of title 49, Code of Federal Regulations.

Sec. 5. Hazardous Liquid Integrity Management Review.

(a) Report.—Not later than 18 months after the date of publication in the Federal Register of a final rule regarding the safety of hazardous liquid pipeline facilities related to the notice of proposed rulemaking issued on October 13, 2015, titled “Pipeline Safety: Safety of Hazardous Liquid Pipelines” (80 Fed. Reg. 61610), the Comptroller General of the United States shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report regarding the integrity management programs for hazardous liquid pipeline facilities, as regulated under sections 195.450 and 195.452 of title 49, Code of Federal Regulations.

(b) Contents.—The report required under subsection (a) shall include—

(1) taking into consideration technical, operational, and economic feasibility, an analysis of stakeholder perspectives on—

(A) ways to enhance hazardous liquid pipeline facility safety;

(B) risk factors that may warrant more frequent inspections of hazardous liquid pipeline facilities; and

(C) changes to the definition of high consequence area;

(2) an analysis of how surveying, assessment, mitigation, and monitoring activities, including real-time hazardous liquid pipeline facility monitoring during significant flood events and information sharing with Federal agencies, are being used to address risks associated with rivers, flood plains, lakes, and coastal areas;

(3) an analysis of the impact pipeline facility features, including the age, condition, materials, and construction of a pipeline facility, have on safety and risk analysis of a particular pipeline facility and what changes to the definition of high consequence area could be made to improve pipeline facility safety; and

(4) a description of any challenges affecting Federal or State regulators in the oversight of hazardous liquid pipeline facilities and how those challenges are being addressed.

(c) Definition Of High Consequence Area.—In this section, the term “high consequence area” has the meaning given the term in section 195.450 of title 49, Code of Federal Regulations.

Sec. 7. Inspection Report Information.

(b) Notification.—Not later than October 1, 2017, and each fiscal year thereafter for 2 years, the Administrator shall notify the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of—

(1) the number of times a deadline under section 60108(e) of title 49, United States Code, was exceeded in the prior fiscal year; and

(2) in each instance, the length of time by which the deadline was exceeded.

Sec. 8. Improving Damage Prevention Technology.

(a) Study.—The Secretary of Transportation, in consultation with stakeholders, shall conduct a study on improving existing damage prevention programs through technological improvements in location, mapping, excavation, and communications practices to prevent excavation damage to a pipe or its coating, including considerations of technical, operational, and economic feasibility and existing damage prevention programs.

(b) Contents.—The study under subsection (a) shall include—

(1) an identification of any methods to improve existing damage prevention programs through location and mapping practices or technologies in an effort to reduce releases caused by excavation;

(2) an analysis of how increased use of global positioning system digital mapping technologies, predictive analytic tools, public awareness initiatives including one-call initiatives, the use of mobile devices, and other advanced technologies could supplement existing one-call notification and damage prevention programs to reduce the frequency and severity of incidents caused by excavation damage;

(3) an identification of any methods to improve excavation practices or technologies in an effort to reduce pipeline damage;

(4) an analysis of the feasibility of a national data repository for pipeline excavation accident data that creates standardized data models for storing and sharing pipeline accident information; and

(5) an identification of opportunities for stakeholder engagement in preventing excavation damage.

(c) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives a report containing the results of the study conducted under subsection (a), including recommendations, that include the consideration of technical, operational, and economic feasibility, on how to incorporate into existing damage prevention programs technological improvements and practices that help prevent excavation damage.

Sec. 9. Workforce Management.

(a) Review.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a review of Pipeline and Hazardous Materials Safety Administration staff resource management, including—

(1) geographic allocation plans, hiring and time-to-hire challenges, and expected retirement rates and recruitment and retention strategies;

(2) an identification and description of any previous periods of macroeconomic and pipeline industry conditions under which the Pipeline and Hazardous Materials Safety Administration has encountered difficulty in filling vacancies, and the degree to which special hiring authorities,

including direct hiring authority authorized by the Office of Personnel Management, could have ameliorated such difficulty; and
(3) recommendations to address hiring challenges, training needs, and any other identified staff resource challenges.

(b) Direct Hiring.—Upon identification of a period described in subsection (a)(2), the Administrator of the Pipeline and Hazardous Materials Safety Administration may apply to the Office of Personnel Management for the authority to appoint qualified candidates to any position relating to pipeline safety, as determined by the Administrator, without regard to sections 3309 through 3319 of title 5, United States Code.

(c) Savings Clause.—Nothing in this section shall preclude the Administrator of the Pipeline and Hazardous Materials Safety Administration from applying to the Office of Personnel Management for the authority described in subsection (b) prior to the completion of the report required under subsection (a).

Sec. 10. Information-Sharing System.

(a) In General.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall convene a working group to consider the development of a voluntary information-sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing with the purpose of improving gas transmission and hazardous liquid pipeline facility integrity risk analysis.

(b) Membership.—The working group convened pursuant to subsection (a) shall include representatives from—
(1) the Pipeline and Hazardous Materials Safety Administration;
(2) industry stakeholders, including operators of pipeline facilities, inspection technology, coating, and cathodic protection vendors, and pipeline inspection organizations;
(3) safety advocacy groups;
(4) research institutions;
(5) State public utility commissions or State officials responsible for pipeline safety oversight;
(6) State pipeline safety inspectors;
(7) labor representatives; and
(8) other entities, as determined appropriate by the Secretary.

(c) Considerations.—The working group convened pursuant to subsection (a) shall consider and provide recommendations to the Secretary on—
(1) the need for, and the identification of, a system to ensure that dig verification data are shared with in-line inspection operators to the extent consistent with the need to maintain proprietary and security-sensitive data in a confidential manner to improve pipeline safety and inspection technology;
(2) ways to encourage the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;
(3) opportunities to share data, including dig verification data between operators of pipeline facilities and in-line inspector vendors to expand knowledge of the advantages and disadvantages of the different types of in-line inspection technology and methodologies;
(4) options to create a secure system that protects proprietary data while encouraging the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;
(5) means and best practices for the protection of safety- and security-sensitive information and proprietary information; and
(6) regulatory, funding, and legal barriers to sharing the information described in paragraphs (1) through (4).

(d) Publication.—The Secretary shall publish the recommendations provided under subsection (c) on a publicly available Web site of the Department of Transportation.

Sec. 11. Nationwide Integrated Pipeline Safety Regulatory Database.

(a) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the feasibility of establishing a national integrated pipeline safety regulatory inspection database to improve communication and collaboration between the Pipeline and Hazardous Materials Safety Administration and State pipeline regulators.

(b) Contents.—The report submitted under subsection (a) shall include—
(1) a description of any efforts underway to test a secure information-sharing system for the purpose described in subsection (a);
(2) a description of any progress in establishing common standards for maintaining, collecting, and presenting pipeline safety regulatory inspection data, and a methodology for sharing the data;
(3) a description of any inadequacies or gaps in State and Federal inspection, enforcement, geospatial, or other pipeline safety regulatory inspection data;
(4) a description of the potential safety benefits of a national integrated pipeline safety regulatory inspection database; and
(5) recommendations, including those of stakeholders for how to implement a secure information-sharing system that protects proprietary and security sensitive information and data for the purpose described in subsection (a).

(c) Consultation.—In implementing this section, the Secretary shall consult with stakeholders, including each State authority operating under a certification to regulate intrastate pipelines under section 60105 of title 49, United States Code.

(d) Establishment Of Database.—The Secretary may establish, if appropriate, a national integrated pipeline safety regulatory database—
(1) after submission of the report required under subsection (a); or
(2) upon notification to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the need to establish such database prior to the submission of the report under subsection (a).

Sec. 14. Safety Data Sheets.

(a) In General.—Each owner or operator of a hazardous liquid pipeline facility, following an accident involving such pipeline facility that results in a hazardous liquid spill, shall provide safety data sheets on any spilled hazardous liquid to the designated Federal On-Scene Coordinator and appropriate State and local emergency responders within 6 hours of a telephonic or electronic notice of the accident to the National Response Center.

(b) Definitions.—In this section:
(1) Federal On-Scene Coordinator.—The term “Federal On-Scene Coordinator” has the meaning given such term in section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).
(2) National Response Center.—The term “National Response Center” means the center described under section 300.125(a) of title 40, Code of Federal Regulations.
(3) Safety Data Sheet.—The term “safety data sheet” means a safety data sheet required under section 1910.1200 of title 29, Code of Federal Regulations.

Sec. 15. Hazardous Materials Identification Numbers.

Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall issue an advanced notice of proposed rulemaking to take public comment on the petition for rulemaking dated October 28, 2015, titled “Corrections to Title 49 CFR 172.336 Identification numbers; special provisions” (P–1667).

Sec. 18. Response Plans.

Each owner or operator of a hazardous liquid pipeline facility required to prepare a response plan pursuant to part 194 of title 49, Code of Federal Regulations, shall—

(1) consider the impact of a discharge into or on navigable waters or adjoining shorelines, including those that may be covered in whole or in part by ice; and
(2) include procedures and resources for responding to such discharge in the plan.

Sec. 19. Unusually Sensitive Areas.

(b) Unusually Sensitive Areas (USA) Ecological Resources.—The Secretary of Transportation shall revise section 195.6(b) of title 49, Code of Federal Regulations, to explicitly state that the Great Lakes, coastal beaches, and marine coastal waters are USA ecological resources for purposes of determining whether a pipeline is in a high consequence area (as defined in section 195.450 of such title).

Sec. 20. Pipeline Safety Technical Assistance Grants.

(b) Audit.—Not later than 180 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Secretary of Transportation, the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report evaluating the grant program under section 60130 of title 49, United States Code. The report shall include—

(1) a list of the recipients of all grant funds during fiscal years 2010 through 2015;
(2) a description of how each grant was used;
(3) an analysis of the compliance with the terms of grant agreements, including subsections (a) and (b) of such section;
(4) an evaluation of the competitive process used to award the grant funds; and
(5) an evaluation of—
(A) the ability of the Pipeline and Hazardous Materials Safety Administration to oversee grant funds and usage; and
(B) the procedures used for such oversight.

Sec. 21. Study Of Materials And Corrosion Prevention In Pipeline Transportation.

(a) In General.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a study on materials, training, and corrosion prevention technologies for gas and hazardous liquid pipeline facilities.

(b) Requirements.—The study required under subsection (a) shall include—
(1) an analysis of—

(A) the range of piping materials, including plastic materials, used to transport hazardous liquids and natural gas in the United States and in other developed countries around the world;
(B) the types of technologies used for corrosion prevention, including coatings and cathodic protection;
(C) common causes of corrosion, including interior and exterior moisture buildup and impacts of moisture buildup under insulation; and
(D) the training provided to personnel responsible for identifying and preventing corrosion in pipelines, and for repairing such pipelines;

(2) the extent to which best practices or guidance relating to pipeline facility design, installation, operation, and maintenance, including training, are available to recognize or prevent corrosion;
(3) an analysis of the estimated costs and anticipated benefits, including safety benefits, associated with the use of such materials and technologies; and
(4) stakeholder and expert perspectives on the effectiveness of corrosion control techniques to reduce the incidence of corrosion-related pipeline failures.

Sec. 22. Research and Development.

(a) In General.—Not later than 18 months after the date of enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Committee on Transportation and Infrastructure, the Committee on Energy and Commerce, and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report regarding the Pipeline and Hazardous Materials Safety Administration's research and development program carried out under section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note). The report shall include an evaluation of—

(1) compliance with the consultation requirement under subsection (d)(2) of such section;
(2) the extent to which the Pipeline and Hazardous Materials Safety Administration enters into joint research ventures with Federal and non-Federal entities, and benefits thereof;
(3) the policies and procedures the Pipeline and Hazardous Materials Safety Administration has put in place to ensure there are no conflicts of interest with administering grants pursuant to the program, and whether those policies and procedures are being followed; and
(4) an evaluation of the outcomes of research conducted with Federal and non-Federal entities and the degree to which such outcomes have been adopted or utilized.

Sec. 23. Active and Abandoned Pipelines.

Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall issue an advisory bulletin to owners and operators of gas or hazardous liquid pipeline facilities and Federal and State pipeline safety personnel regarding procedures of the Pipeline and Hazardous Materials Safety Administration required to change the status of a pipeline facility from active to abandoned, including specific guidance on the terms recognized by the Secretary for each pipeline status referred to in such advisory bulletin.

SEC. 24. State Pipeline Safety Agreements.

(a) Study.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall complete a study on State pipeline safety agreements made pursuant to section 60106 of title 49, United States Code. Such study shall consider the following:

(1) The integration of Federal and State or local authorities in carrying out activities pursuant to an agreement under such section.
(2) The estimated staff and other resources used by Federal and State authorities in carrying out inspection activities pursuant to agreements under such section.

(3) The estimated staff and other resources used by the Pipeline and Hazardous Materials Safety Administration in carrying out interstate inspections in areas where there is no interstate agreement with a State pursuant to such section.

Sec. 26. Study on Propane Gas Pipeline Facilities.

(a) In General.—The Secretary of Transportation shall enter into an agreement with the Transportation Research Board of the National Academies to conduct a study examining the safety, regulatory requirements, techniques, and best practices applicable to pipeline facilities that transport or store only petroleum gas or mixtures of petroleum gas and air to 100 or fewer customers, in accordance with the requirements of this section.

(b) Requirements.—In conducting the study pursuant to subsection (a), the Transportation Research Board shall analyze—

(1) Federal, State, and local regulatory requirements applicable to pipeline facilities described in subsection (a);
(2) techniques and best practices relating to the design, installation, operation, and maintenance of such pipeline facilities; and
(3) the costs and benefits, including safety benefits, associated with such applicable regulatory requirements and the use of such techniques and best practices.

(c) Participation.—In conducting the study pursuant to subsection (a), the Transportation Research Board shall consult with Federal, State, and local governments, private sector entities, and consumer and pipeline safety advocates, as appropriate.

(d) Deadline.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the results of the study conducted pursuant to subsection (a) and any recommendations for improving the safety of such pipeline facilities.

(e) Definition.—In this section, the term “petroleum gas” has the meaning given that term in section 192.3 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

Sec. 27. Standards For Certain Liquefied Natural Gas Pipeline Facilities.

(b) Update To Minimum Safety Standards.—The Secretary of Transportation shall review and update the minimum safety standards prescribed pursuant to section 60103 of title 49, United States Code, for permanent, small scale liquefied natural gas pipeline facilities.

(c) Savings Clause.—Nothing in this section shall be construed to limit the Secretary’s authority under chapter 601 of title 49, United States Code, to regulate liquefied natural gas pipeline facilities.

Sec. 28. Pipeline Odorization Study.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives that assesses—

(1) the feasibility, costs, and benefits of odorizing all combustible gas in pipeline transportation; and
(2) the affects of the odorization of all combustible gas in pipeline transportation on—
(A) manufacturers, agriculture, and other end users; and
(B) public health and safety.

Sec. 29. Report on Natural Gas Leak Reporting.

(a) In General.—Not later than 1 year after the date of the enactment of this Act, the Administrator of the Pipeline and Hazardous Materials Safety Administration shall submit to Congress a report on the metrics provided to the Pipeline and Hazardous Materials Safety Administration and other Federal and State agencies related to lost and unaccounted for natural gas from distribution pipelines and systems.

(b) Elements.—The report required under subsection (a) shall include the following elements:
(1) An examination of different reporting requirements or standards for lost and unaccounted for natural gas to different agencies, the reasons for any such discrepancies, and recommendations for harmonizing and improving the accuracy of reporting.
(2) An analysis of whether separate or alternative reporting could better measure the amounts and identify the location of lost and unaccounted for natural gas from natural gas distribution systems.
(3) A description of potential safety issues associated with natural gas that is lost and unaccounted for from natural gas distribution systems.
(4) An assessment of whether alternate reporting and measures will resolve any safety issues identified under paragraph (3), including an analysis of the potential impact, including potential savings, on rate payers and end users of natural gas products of such reporting and measures.

(c) Consideration of Recommendations.—If the Administrator determines that alternate reporting structures or recommendations included in the report required under subsection (a) would significantly improve the reporting and measurement of lost and unaccounted for gas and safety of natural gas distribution systems, the Administrator shall, not later than 1 year after making such determination, issue regulations, as the Administrator determines appropriate, to implement the recommendations.

Sec. 30. Review of State Policies Relating to Natural Gas Leaks.

(a) Review.—The Administrator of the Pipeline and Hazardous Materials Safety Administration shall conduct a State-by-State review of State-level policies that—
(1) encourage the repair and replacement of leaking natural gas distribution pipelines or systems that pose a safety threat, such as timelines to repair leaks and limits on cost recovery from ratepayers; and
(2) may create barriers for entities to conduct work to repair and replace leaking natural gas pipelines or distribution systems.

(b) Report.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the findings of the review conducted under subsection (a) and recommendations on Federal or State policies or best practices to improve safety by accelerating the repair and replacement of natural gas pipelines or systems that are leaking or releasing natural gas. The report shall consider the potential impact, including potential savings, of the implementation of such recommendations on ratepayers or end users of the natural gas pipeline system.

(c) Implementation of Recommendations.—If the Administrator determines that the recommendations made under subsection (b) would significantly improve pipeline safety, the Administrator shall, not later than 1 year after making such determination, and in coordination with the heads of other relevant agencies as appropriate, issue regulations, as the Administrator determines appropriate, to implement the recommendations.

Sec. 31. Aliso Canyon Natural Gas Leak Task Force.

(a) Establishment Of Task Force.—Not later than 15 days after the date of enactment of this Act, the Secretary of Energy shall lead and establish an Aliso Canyon natural gas leak task force.

(b) Membership Of Task Force.—In addition to the Secretary, the task force established under subsection (a) shall be composed of—

(1) 1 representative from the Department of Transportation;
(2) 1 representative from the Department of Health and Human Services;
(3) 1 representative from the Environmental Protection Agency;
(4) 1 representative from the Department of the Interior;
(5) 1 representative from the Department of Commerce;
(6) 1 representative from the Federal Energy Regulatory Commission; and
(7) representatives of State and local governments, as determined appropriate by the Secretary and the Administrator.

(c) Report.—

(1) In General.—Not later than 180 days after the date of enactment of this Act, the task force established under subsection (a) shall submit a final report that contains the information described in paragraph (2) to—

(A) the Committee on Energy and Natural Resources of the Senate;
(B) the Committee on Natural Resources of the House of Representatives;
(C) the Committee on Environment and Public Works of the Senate;
(D) the Committee on Transportation and Infrastructure of the House of Representatives;
(E) the Committee on Commerce, Science, and Transportation of the Senate;
(F) the Committee on Energy and Commerce of the House of Representatives;
(G) the Committee on Health, Education, Labor, and Pensions of the Senate;
(H) the Committee on Education and the Workforce of the House of Representatives;
(I) the President; and
(J) relevant Federal and State agencies.

(2) Information Included.—The report submitted under paragraph (1) shall include—

(A) an analysis and conclusion of the cause and contributing factors of the Aliso Canyon natural gas leak;
(B) an analysis of measures taken to stop the natural gas leak, with an immediate focus on other, more effective measures that could be taken;
(C) an assessment of the impact of the natural gas leak on—
(i) health, safety, and the environment;
(ii) wholesale and retail electricity prices; and
(iii) the reliability of the bulk-power system;
(D) an analysis of how Federal, State, and local agencies responded to the natural gas leak;
(E) in order to lessen the negative impacts of leaks from underground natural gas storage facilities, recommendations on how to improve—
(i) the response to a future leak; and
(ii) coordination between all appropriate Federal, State, and local agencies in the response to the Aliso Canyon natural gas leak and future natural gas leaks;
(F) an analysis of the potential for a similar natural gas leak to occur at other underground natural gas storage facilities in the United States;
(G) recommendations on how to prevent any future natural gas leaks;
(H) recommendations regarding Aliso Canyon and other underground natural gas storage facilities located in close proximity to residential populations;
(I) any recommendations on information that is not currently collected but that would be in the public interest to collect and distribute to agencies and institutions for the continued study and monitoring of natural gas storage infrastructure in the United States; and
(J) any other recommendations, as appropriate.

(3) Publication.—The final report under paragraph (1) shall be made available to the public in an electronically accessible format.
(4) Findings.—If, before the final report is submitted under paragraph (1), the task force established under subsection (a) finds methods to solve the natural gas leak at Aliso Canyon, finds methods to better protect the affected communities, or finds methods to help prevent other leaks, the task force shall immediately submit such findings to the entities described in subparagraphs (A) through (J) of paragraph (1).

Guidelines for States Participating in the Pipeline Safety Program – Interstate Agreement Guidance

Appendix B

Appendix B – Interstate Agreement Guidance Policy

Background

The PHMSA Underground Natural Gas Storage (UNGS) safety program is under development. PHMSA has the safety authority for the inspection and enforcement of the minimum federal regulations for Interstate UNGS Facilities. During the program development, PHMSA will be assessing the need for Interstate Agent Agreements providing qualifying State Agencies with the authority to inspect Interstate UNGS facilities to the minimum federal regulations and forward identified probable violations to PHMSA to take enforcement actions. If PHMSA identifies a need to enter into an Interstate Agent Agreement with a State for the UNGS safety program it will reach out to the State Agency to determine their interest in the program.

Project Specific Time Defined Cooperative Agreements

Project Specific Time Defined Cooperative Agreements allow PHMSA to partner with states for the inspection of specific interstate projects where PHMSA identifies needed support for the specific project, but not all other interstate activities within the state. These projects are typically construction, incident investigation, public complaints, and specialized inspections. The Agreements may be modified or extended by the Region Director as agreed upon by the Region and State. They may be issued on an annual basis, but typically are of a shorter duration. If there is a need, PHMSA will reach out to the State Agency to determine if the State Agency is willing to participate in a Project Specific Time Defined Cooperative Agreement.

APPENDIX C – UNGS TRAINING REQUIREMENTS

CY 2020 Training Requirements
Mandatory Training for Underground
Natural Gas Storage Inspectors

All mandatory courses must be completed within **3 years** from the completion date of the first course taken in the curriculum (successful completion within 5 years). An inspector has an additional 3 years, from the date training is added to the requirements to complete that specific training (successful completion within 5 years). If new training replaces previous required training and equivalency records are allowed for the new training, then no additional years are permitted.

	Course Code	Course Title	Date Added to Requirements
1	PHMSA-PL1325	*Safety Evaluation of Underground Storage Facilities*	Jan 2018
2	PHMSA-PL3DA	*Drug and Alcohol Testing for the Pipeline Industry WBT*	Jan 2018

1. PHMSA-PL1325 Safety Evaluation of Underground Storage Facilities

Prerequisites: PHMSA-PL 1325-DL Introduction to Underground Natural Gas Storage

Guidelines for States Participating in the Underground Storage Natural Gas Safety Program – NTSB MOU

Appendix D

Appendix D
Memorandum of Understanding Between Department of Transportation and National Transportation Safety Board

I. Purpose

The purpose of this Appendix is to establish the relationship between the Department of Transportation Pipeline and Hazardous Materials Safety Administration Office of Pipeline Safety (OPS) and the National Transportation Safety Board (NTSB) within the framework of the DOT-NTSB for the notification of underground natural gas storage failures, investigation of incidents, providing services, and program coordination.

II. Background

PHMSA is responsible for establishing and enforcing Federal safety regulations, including investigation of accidents, for the transportation of gas including the underground storage of natural gas per the 2016 Pipes Act. NTSB, by the Independent Safety Board Act of 1974, has responsibility for investigating and determining the probable cause(s) of any incident in which there is a fatality, substantial property damage (estimated $100,000), or any other accident which occurs which, in the judgment of the Board, is catastrophic.

This agreement then is established to minimize duplication in efforts and maximize exchange of information as both parties execute their respective investigatory responsibilities.

III. Notification of Underground Natural Gas Storage Failures

A representative of PHMSA will immediately notify, by telephone, NTSB of the occurrence of each Underground Natural Gas Storage accident which involves one or more fatalities or which causes substantial property damage estimated to be more than $100,000.

If, in the initial notification, the information regarding the incident is incomplete, PHMSA will provide follow-up information as appropriate.

IV. Investigation of Incidents

A. NTSB and PHMSA will coordinate and notify the other agency of incidents which it will investigate.

B. When one agency is investigating an incident and the other agency decides to investigate the same incident for its own purposes, the two agencies may jointly participate in the investigation.
C. In a joint investigation, PHMSA and NTSB will coordinate their investigative activities so as to avoid duplication of effort and in accordance with the interest and expertise of the agency representatives.
D. Each agency will be responsible for dealing with the operator, State, local officials and the press within its own area of responsibility.

V. Service

A. **Investigative.** The assistance of PHMSA personnel and any agents under contract to PHMSA may be requested by the NTSB in any investigation. When PHMSA assistance is required, NTSB will notify PHMSA as soon as practicable after receipt of initial notification of a underground natural gas storage incident and specify the assistance required. All data developed by PHMSA or its contractors in response to requests for assistance from NTSB will be provided to NTSB, and NTSB will be considered the office of record of public release of such data.

B. **Furnishing of Studies and Technical Investigations Reports.** The PHMSA will furnish to NTSB two copies of published studies and technical investigations concerning underground natural gas storage operations, design, maintenance, personnel training, and such other studies as are directly concerned with safety in underground natural gas storage and accident prevention. Likewise, NTSB will furnish OPS with two copies of all studies and technical investigations.

C. **Furnishing and Processing Underground Natural Gas Storage Safety Data.** Each party of this agreement will furnish underground natural gas storage safety data to the other party upon request.

D. **Furnishing of Accident Investigation and Hearing Reports.** The PHMSA will furnish NTSB with two copies of on-site or field investigation reports of those incidents of such significance as to prompt the completion of a report. NTSB will furnish PHMSA with two copies of incident reports at least 5 days in advance of the release of that report.

VI. Program Coordination

Each party of this agreement is invited to participate in or observe the hearings conducted by the other party. Whether the other party will participate or observe will be determined by the inviting party. Copies of the proceedings and subsequent reports will be furnished the invited party.

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program – State/Federal Incident Cooperation

Appendix E

Appendix - E
Federal/State Cooperation in Case of Incident

I. Background

Section 60117(i) of Chapter 601 requires the following:

PROMOTING COORDINATION - After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident. This would include incident/accidents involving underground natural gas storage facilities.

II. Definitions

State Agency—For the purpose of these procedures, a State or State agency means the agency participating in the pipeline safety program under Section 60105 certification or a Section 60106 agreement.

Pipeline and Hazardous Materials Safety Administration (PHMSA) —For the purpose of these procedures, PHMSA means the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration.

III. PHMSA and State Agency Role in Incident Investigation

Coordination of incident/accident investigations will be handled by PHMSA's Accident Investigation Division (AID). Due to the recent change in responsibility, from the PHMSA Region to the AID, the PHMSA Failure Investigation Policy is currently under review for revision. Appendix E will be amended once the revised policy is published.

PHMSA will notify the State agency when it receives a report of an incident of Underground Natural Gas Storage facilities in that State. Accident Investigation Division (AID) staff will relate all details of the incident provided to DOT in accordance with the reporting requirements under 49 CFR, Part 191. The State agency and AID staff should maintain close contact until the investigation is completed.

The State agency should communicate its plans for investigating the incident to the National Pipeline Incident Coordinator (NPIC) (888-719-9033) and provide updates as directed by the

NPIC. A contact list for AID is provided below for coordination:

AID Phone List			
Name	Office #	Work Cell #	Email
Peter Katchmar	(405) 686-2060	(303) 807-8458	peter.katchmar@dot.gov
Chris Ruhl	(405) 686-2069	(405) 590-3625	chris.ruhl@dot.gov
Brian Pierzina	(218) 752-1183	(816) 589-8293	brian.pierzina@dot.gov
Darren Lemmerman	(816) 807-2606	(816) 807-2606	darren.lemmerman@dot.gov
Gery Bauman	(740) 587-0275	(440) 725-7043	gery.bauman@dot.gov
Julie Halliday	(202) 389-2039	(202) 389-2039	julie.halliday@dot.gov

OPS Failure Investigation Policy
(Under Development)

Appendix F – State Program Certification/Agreement Status

CY2020

STATES PARTICIPATING IN THE FEDERAL/STATE UNDERGROUND NATURAL GAS SAFETY PROGRAM

State Agencies Under Section 60105(a) Certification (9)

Arkansas Oil and Gas Commission
Indiana Department of Natural Resources
Illinois Department of Natural Resources
Louisiana Department of Natural Resources
Minnesota Office of Pipeline Safety
Montana Public Service Commission
Oklahoma Corporation Commission
Oregon Public Utility Commission
Pennsylvania Public Utility Commission

State Agencies Under Section 60106(a) Agreement (3)

Alabama State Oil and Gas Board
California Division of Oil, Gas, and Geothermal Resources
Kansas Corporation Commission Oil and Gas Conservation Division

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program

Appendix G

FEDERAL REGISTER

Vol. 78 Thursday,
No. 248 December 26, 2013

Part III

Office of Management and Budget

2 CFR Chapter I, Chapter II, Part 200, et al.
Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Executive Office of the President, Office of Management and Budget (OMB).

ACTION: Final guidance.

SUMMARY: To deliver on the promise of a 21st-Century government that is more efficient, effective and transparent, the Office of Management and Budget (OMB) is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. These modifications are a key component of a larger Federal effort to more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. This guidance provides a governmentwide framework for grants management which will be complemented by additional efforts to strengthen program outcomes through innovative and effective use of grant-making models, performance metrics, and evaluation. This reform of OMB guidance will reduce administrative burden for non-Federal entities receiving Federal awards while reducing the risk of waste, fraud and abuse.

This final guidance supersedes and streamlines requirements from OMB Circulars A–21, A–87, A–110, and A–122 (which have been placed in OMB guidances); Circulars A–89, A–102, and A–133; and the guidance in Circular A–50 on Single Audit Act follow-up. Future reform efforts may eventually seek to incorporate the Cost Principles for Hospitals in Department of Health and Human Services regulations. Copies of the OMB Circulars that are superseded by this guidance are available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/*. The final guidance consolidates the guidance previously contained in the aforementioned citations into a streamlined format that aims to improve both the clarity and accessibility. This final guidance is located in Title 2 of the Code of Federal Regulations.

This final guidance does not broaden the scope of applicability from existing government-wide requirements, affecting Federal awards to non-Federal entities including state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations. Parts of it may also apply to for-profit entities in limited circumstances and to foreign entities as described in this guidance and the Federal Acquisition Regulation. This guidance does not change or modify any existing statute or guidance otherwise based on any existing statute. This guidance does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation.

DATES: *Effective Date:* This guidance is effective December 26, 2013.

Applicability Date: This guidance is applicable for Federal agencies December 26, 2013 and applicable for non-Federal entities as described in this guidance.

FOR FURTHER INFORMATION CONTACT: OMB will host an informational webcast with the Council on Financial Assistance Reform and key stakeholders. Please visit *www.cfo.gov/cofar* for further information on the time and date of the webcast and on the Council on Financial Assistance Reform. For general information, please contact Victoria Collin or Gil Tran at the OMB Office of Federal Financial Management at (202) 395–3993.

SUPPLEMENTARY INFORMATION:

I. Objectives and Background

A. Objectives

The goal of this reform is to deliver on the President's directives to (1) streamline our guidance for Federal awards to ease administrative burden and (2) strengthen oversight over Federal funds to reduce risks of waste, fraud, and abuse. Streamlining existing OMB guidance will increase the efficiency and effectiveness of Federal awards to ensure best use of the more than $500 billion expended annually.

This reform builds on two years of work by the Federal government and its non-Federal partners: state, and local governments, Indian tribes, institutions of higher education, nonprofit organizations, and the audit community to rethink and reform the rules that govern our stewardship of Federal dollars. The revised rules set standard requirements for financial management of Federal awards across the entire Federal government.

These reforms complement targeted efforts by OMB and a number of Federal agencies to reform overall approaches to grant-making by implementing innovative, outcome-focused grant-making designs and processes in collaboration with their non-Federal partners, in accordance with OMB guidance in M–13–17 ''Next Steps in the Evidence and Innovation Agenda''. This new guidance plays an important role in fostering these and other innovative models and cost-effective approaches by including many provisions that strengthen requirements for internal controls while providing administrative flexibility for non-Federal entities. These provisions include mechanisms such as ''fixed amount awards'' which rely more on performance than compliance requirements to ensure accountability, and allow Federal agencies some additional flexibility to waive some requirements (in addition to the longstanding option to apply to OMB to waive requirements) that impede their capacity to achieve better outcomes through Federal awards. This guidance will provide a backbone for sound financial management as Federal agencies and their partners continue to develop and advance innovative and effective practices.

This reform of OMB guidance will improve the integrity of the financial management and operation of Federal programs and strengthen accountability for Federal dollars by improving policies that protect against waste, fraud, and abuse. At the same time, this reform will increase the impact and accessibility of programs by minimizing time spent complying with unnecessarily burdensome administrative requirements, and so re-orients recipients toward achieving program objectives. Through close and sustained collaboration with Federal and non-Federal partners, OMB has developed ideas that will ensure that discretionary grants and cooperative agreements are awarded based on merit; that management increases focus on performance outcomes; that rules governing the allocation of Federal funds are streamlined, and that the Single Audit oversight tool is better focused to reduce waste, fraud, and abuse.

As set forth in Executive Order 13563 of January 18, 2011, on Improving Regulation and Regulatory Review (76 FR 3821; January 21, 2011; *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf*), each Federal agency must ''tailor its regulations to impose the least burden on society, consistent with regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.'' To that end, it is important that Federal agencies identify those ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome,'' and ''modify,

streamline, expand, or repeal them in accordance with what has been learned.'' This was reinforced in Executive Order 13579 of July 11, 2011 on Regulation and Independent Regulatory Agencies (76 FR 41587; July 14, 2011; *http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf*).

As in other areas involving Federal requirements, this guidance follows OMB's commitment to making government more accountable to the American people while eliminating requirements that are unnecessary and reforming those requirements that are overly burdensome. Eliminating unnecessary requirements will allow recipients of Federal awards to re-orient efforts spent on compliance with complex requirements towards achievement of programmatic objectives. In order to ensure that the public receives the most value, it is essential that these programs function as effectively and efficiently as possible, and that there is a high level of accountability to prevent waste, fraud, and abuse.

This reform streamlines the language from eight existing OMB circulars into one consolidated set of guidance in the code of Federal regulations. This consolidation is aimed at eliminating duplicative or almost duplicative language in order to clarify where policy is substantively different across types of entities, and where it is not. As a result, the guidance includes sections and parts of sections which are clearly delineated by the type of non-Federal entity to which they apply. For Federal agencies, auditors, and pass-through entities that engage with multiple types of non-Federal entities in the course of managing grants, this consolidation is intended to clarify where policies are uniform or differ across non-Federal entities, protecting variances in policy where required by the unique nature of each type of non-Federal entity. This clarification will make compliance less burdensome for recipients and reduce the number of audit findings that result more from unclear guidance than actual noncompliance. Section 200.101 Applicability outlines how each subpart of the proposed guidance will apply across types of Federal awards. Following the implementation of these reforms, OMB will continue to monitor their effects to evaluate whether (and the extent to which) the reforms are achieving their desired results, and will consider making further modifications as appropriate.

B. The Development of the Reform

This proposal reflects input from more than two years of work by the Federal and non-Federal financial assistance community led by the COFAR in response to the following two Presidential Directives:

1. February 28, 2011, Presidential Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, (Daily Comp. Pres. Docs.; *http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf*). This memorandum directs OMB to, with input from our partners and consistent with law, reduce unnecessary regulatory and administrative burdens and redirect resources to services that are essential to achieving better outcomes at lower cost. Specifically, the memorandum directs OMB to ''review and where appropriate revise guidance concerning cost principles, burden minimizations, and audits for state, local, and tribal governments in order to eliminate, to the extent permitted by law, unnecessary, unduly burdensome, duplicative, or low-priority recordkeeping requirements and effectively tie such requirements to achievement of outcomes.''

2. Executive Order 13520 on Reducing Improper Payments (74 FR 62201; November 25, 2009; *http://www.gpo.gov/fdsys/pkg/FR-2009-11-25/pdf/E9-28493.pdf*). Equally as essential to a 21st-Century government as reducing burdensome requirements that promote inefficiency is strengthening accountability by ''intensifying efforts to eliminate payment error, waste, fraud, and abuse'' in Federal programs, as required by EO 13520. Accordingly, Federal agencies must ''more effectively tailor their methodologies for identifying and measuring improper payments to those programs, or components of programs, where improper payments are most likely to occur.''

In response to the President's directives above, OMB worked with the Council on Financial Assistance Reform (COFAR, more information available at cfo.gov/COFAR) to publish the February 28, 2012 Advance Notice of Proposed Guidance (ANPG available at *www.regulations.gov* under docket number OMB–2012–0002) and the February 1, 2013 Notice of Proposed Guidance (NPG available at *www.regulations.gov* under docket number OMB–2013–0001) in the **Federal Register**. Through the COFAR's review of the comments received in response to the ANPG and the NPG, it has worked to formulate and further develop reform ideas to create the 21st-Century version of financial management policy for Federal awards. The COFAR continues to be committed to engaging in outreach efforts with both Federal and non-Federal stakeholders, with respect to this reform and beyond.

OMB has adopted changes from the NPG to the final guidance as recommended by the COFAR as described in the summary of major policy reforms (Part II) and the text of the final guidance (Part III). OMB will publish additional supporting materials on the OMB Web site at *http://www.whitehouse.gov/omb/grants_docs*.

II. Major Policy Reforms

In the ANPG and NPG, OMB invited comments from the public on all issues addressed in those notices, and further invited the public to make additional reform suggestions. The goal of both previous notices was to provide the broadest possible collection of stakeholders in the grants community with visibility on these ideas and the opportunity to participate in the discussion.

In response to each notice, OMB received more than 300 comments which were carefully considered in the development of this guidance. This section will discuss the policy reforms proposed in the NPG, the broad themes identified in the comments that were received across stakeholders, and the resulting reforms that OMB is implementing in this guidance. The vast majority of comments supported the idea of the consolidation itself and the structure of the guidance. As a result, this final guidance incorporates the proposed consolidation of eight previous sets of guidance into one. Conforming changes made throughout the document support streamlining and improve clarity of language; many of these were suggested by stakeholders during the comment period and have been incorporated, but are not specifically discussed in this preamble.

The objective of this reform is to reduce both administrative burden and risk of waste, fraud and abuse.

Reducing Administrative Burden and Waste, Fraud, and Abuse:

1. Eliminating Duplicative and Conflicting Guidance: By combining eight previously separate sets of OMB guidance into one, OMB has eliminated numerous overlapping duplicative and conflicting provisions of guidance that were written separately over many years. Beyond dealing with the administrative burden associated with understanding such guidance, non-Federal entities have faced risks of more restrictive oversight and audit findings that stem from inappropriate applications of the guidance caused by overlapping requirements. Streamlining

the guidance into one document improves consistency and eliminates of many duplicative provisions throughout. Further, as described in § 200.110 Effective Date, Federal agencies will implement this guidance in unison, which will provide non-Federal entities with a predictable, transparent, and governmentwide consistent implementation schedule. Finally, this completes a long-standing goal of co-locating all related OMB guidance into Title 2 of the Code of Federal Regulations.

2. Focusing on Performance over Compliance for Accountability: The final guidance includes provisions that focus on performance over compliance to provide accountability for Federal funds.

• Section 200.102 Exceptions notes that on a case-by-case basis, in accordance with OMB guidance in M–13–17, OMB will waive certain compliance requirements and approve new strategies for innovative program designs that improve cost-effectiveness and encourage effective collaboration across programs to achieve outcomes. The models described in OMB Memorandum 13–17 include tiered evidence grants, Pay for Success and other pay-for-performance approaches, and Performance Partnerships allowing braided and blended funding. The goals for these models include encouraging a greater share of funding to support approaches with strong evidence of effectiveness and building more evaluation into grant-making so we keep learning more about what works. In addition to these specific models, M–13–17 also encourages Federal agencies to pursue other strategies to increase cost-effectiveness in high-priority programs.

• Section 200.201 Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements, And Contracts includes provisions for fixed amount awards that minimize compliance requirements in favor of requirements to meet performance milestones.

• Section 200.301 Performance Measurement provides more robust guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones.

• Section 200.419 Cost Accounting Standards and Disclosure Statement, the threshold for IHEs to comply with Cost Accounting Standards is raised to align with the threshold in the Federal Acquisition Regulations and the process for Federal agency review of changes in accounting practices is streamlined to reduce risk of noncompliance.

• Section 200.430 Compensation—Personal Services strengthens the requirements for non-Federal entities to maintain high standards for internal controls over salaries and wages while allowing for additional flexibility in how non-Federal entities implement processes to meet those standards. In addition, it provides for Federal agencies to approve alternative methods of accounting for salaries and wages based on achievement of performance outcomes, including in approved instances where funding from multiple programs is blended to more efficiently achieve a combined outcome.

3. Encouraging Efficient Use of Information Technology and Shared Services: The final guidance updates provisions throughout to account for the efficient use of electronic information, as well as the acquisition and use of the information technology systems and services that permeate an effective and modern operating environment.

• Section 200.94 Supplies clarifies the threshold for defining personal property as a supply, and also that computing devices are subject to the less burdensome administrative requirements of supplies (as opposed to equipment) if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000.

• Section 200.303 Internal Controls requires non-Federal entities to take reasonable measures to safeguard protected personally identifiable information as well as any information that the Federal awarding agency or pass-through entity designates as sensitive.

• Section 200.318 General Procurement Standards paragraphs (d), (e), and (f) require non-Federal entity's procurement procedures to avoid duplicative purchases and encourage non-Federal entities to enter into inter-entity agreements for shared goods and services.

• In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, Section 200.335 Methods for Collection, Transmission and Storage of Information encourages non-Federal entities to, whenever practicable, collect, transmit and store Federal award-related information in open and machine-readable formats.

• Section 200.446 Idle Facilities and Idle Capacity allows for the costs of idle facilities when they are necessary to meet fluctuations in workload, as they often are when developing shared service arrangements.

• Section 200.449 Interest allows non-Federal entities to be reimbursed for financing costs associated with patents and computer software capitalized in accordance with GAAP on or after January 1, 2016.

4. Providing For Consistent and Transparent Treatment of Costs: The final guidance updates policies on direct and indirect cost to reduce administrative burden by providing more consistent and transparent treatment governmentwide.

• Section 200.306 Cost Sharing Or Matching clarifies policies on voluntary committed cost sharing to ensure that such cost sharing is only solicited for research proposals when required by regulation and transparent in the notice of funding opportunity. It may never be considered during the merit review.

• Section 200.331 Requirements For Pass-Through Entities requires pass-through entities to provide an indirect cost rate to subrecipients, which may be the de minimis rate described above, thereby further reducing potential barriers to receiving and effectively implementing Federal financial assistance.

• Section 200.413 Direct Costs makes consistent the guidance that administrative costs may be treated as direct costs when they meet certain conditions to demonstrate that they are directly allocable to a Federal award.

• Section 200.414 Indirect (F&A) Costs includes provisions that:

• Provide a de minimis indirect cost rate of 10% of MTDC to those non-Federal entities who have never had a negotiated indirect cost rate, thereby eliminating a potential administrative barrier to receiving and effectively implementing Federal financial assistance (sections 200.210 Information Contained in a Federal award, 200.331 Requirements for Pass-through entities, and 200.510 Financial Statements all require documentation of usage of this rate to allow for future evaluation of its effectiveness);

• Require Federal agencies to accept negotiated indirect cost rates unless an exception is required by statute or regulation, or approved by a Federal awarding agency head or delegate based on publicly documented justification;

• Allow for a one-time extension without further negotiation of a federally approved negotiated indirect cost rate for a period of up to 4 years.

• Section 200.433 Contingency Provisions clarifies the circumstances under which contingency costs may be included in Federal awards.

• Appendix III Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) includes provisions that extend to all IHEs the provisions previously extended only to a few that allow for recovery of increased utility costs associated with research.

5. Limiting Allowable Costs to Make Best Use of Federal Resources: The final guidance strengthens language in certain items of cost to appropriately limit costs under Federal awards.

• Section 200.432 Conferences clarifies allowable conference spending and requires conference hosts/sponsors to exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award.

• Section 200.437 Employee Health And Welfare Costs eliminates the existing allowance for ''morale'' cost.

• Section 200.464 Relocation Costs Of Employees limits the previously unlimited amount of time for which a Federal award may be charged for the costs of an employee's vacant home for up to six-months.

• Section 200.469 Student Activity Costs expands to all entities the limitation on student activity costs that previously applied only to IHEs.

6. Setting Standard Business Processes Using Data Definitions: The final guidance includes provisions that set the stage for Federal agencies to manage Federal awards via standardized business process and use of consistently defined data elements. This will reduce administrative burden on non-Federal entities that must navigate the processes of multiple Federal agencies as they manage information required to implement Federal awards.

• Subpart A—Acronyms and Definitions provides standard definitions of terms present not only throughout the document, but also throughout many approved Federal information collections used to manage Federal awards.

• Section 200.203 Notices Of Funding Opportunities provides a standard set of data elements to be provided in all Federal notices of funding opportunities. This will make such notices easier for non-Federal entities to compare and understand.

• Sections 200.206 Standard Application Requirements, 200.301 Performance Measurement, 200.327 Financial Reporting, and 200.328 Monitoring And Reporting Program Performance all require Federal awarding agencies to consistently use OMB-approved standard information collections in their management of Federal awards.

• Section 200.210 Information Contained In A Federal Award provides a standard set of data elements to be provided in all Federal awards. As a result, non-Federal entities will receive a consistent set of information for each Federal award they receive, which will reduce the administrative burden and costs associated with managing this information throughout the life of the Federal award.

• Section 200.305 Payment extends to non-Federal entities previously covered by OMB Circular A–102 the existing flexibility in OMB Circular A–110 to pay interest earned on Federal funds annually to the Department of Health and Human Services, rather than ''promptly'' to each Federal awarding agency.

• Section 200.407 Prior Written Approval (Prior Approval) provides both Federal agencies and non-Federal entities with a one-stop comprehensive list of the circumstances under which non-Federal entities should seek prior approval from the Federal awarding agency.

7. Encouraging Non-Federal Entities to Have Family-Friendly Policies: Provisions in the final guidance provide flexibilities that better allow non-Federal entities to have policies that allow their employees to balance their personal responsibilities while maintaining successful careers contributing to Federal awards. Specifically, these provisions allow for policies that ease dependent care costs when attending conferences- an issue that has been as one that prevents more women from maintaining careers in science.

• Section 200.432 Conferences provides that, for hosts of conferences, the costs of identifying (but not providing) locally available child-care resources are allowable.

• Section 200.474 Travel Costs provides that temporary dependent care costs that result directly from travel to conferences and meet specified standards are allowable.

8. Strengthening Oversight: The final guidance strengthens oversight over Federal awards by requiring Federal agencies and pass-through entities to review the risk associated with a potential recipient prior to making an award (including by making better use of available audit information where appropriate), requiring disclosures conflict of interest and relevant criminal violations, expressly prohibiting profit, requiring certifications of senior non-Federal entity officials, and providing Federal agencies with strong remedies to address non-compliance.

• Sections 200.112 Conflict of Interest and 200.113 Mandatory Disclosures require non-Federal entities to disclose to Federal agencies any instances of conflict of interest or relevant violations of Federal criminal law.

• Sections 200.204 Federal Awarding Agency Review of Merit of Proposals and 200.205 Federal Awarding Agency Review of Risk Posed by Applicants combined with section 200.207 Specific Conditions require Federal awarding agencies to evaluate the merit and risks associated with a potential Federal award and to impose specific conditions where necessary to mitigate potential risks of waste, fraud, and abuse, before the money is spent.

• Section 200.303 Internal Controls moves guidance that previously was only discussed in audit requirements (which are often only considered after the funds have been spent) into the administrative requirements to encourage non-Federal entities to better structure their internal controls earlier in the process.

• Section 200.331 Requirements for Pass-Through Entities provides a similar requirement for pass-through entities to consider risks associated with subawards combined with flexibility to adjust their oversight framework based on that consideration of risk.

• Subtitle VII Remedies for Noncompliance and Subtitle VIII Closeout of Subpart D—Post Federal Award Requirements respectively provide Federal agencies with clear tools to manage non-compliance and efficiently closeout Federal awards.

• Section 200.400 Policy Guide expressly prohibits the non-Federal entity from earning or keeping profit resulting from Federal financial assistance unless expressly authorized by the terms and conditions of the Federal award.

• Section 200.415 Required Certifications strengthens non-Federal entity accountability by providing explicit and consistent language for required certifications that includes awareness of potential penalties under the False Claims Act.

9. Targeting Audit Requirements on Risk of Waste, Fraud, and Abuse: The final guidance right-sizes the footprint of oversight and Single Audit requirements to strengthen oversight and focus audits where there is greatest risk of waste, fraud, and abuse of taxpayer dollars. It improves transparency and accountability by making single audit reports available to

the public online, and encourages Federal agencies to take a more cooperative approach to audit resolution in order to more conclusively resolve underlying weaknesses in internal controls.

• Section 200.501 Audit Requirements raises the Single Audit threshold from $500,000 in Federal awards per year to $750,000 in Federal awards per year. This reduces the audit burden for approximately 5,000 non-Federal entities while maintaining Single Audit coverage over 99% of the Federal dollars currently covered.

• Section 200.512 Report Submission requires publication of Single Audit Reports online with safeguards for protected personally identifiable information and an exception for Indian tribes in order to reduce the administrative burden on non-Federal entities associated with transmitting these reports to all interested parties.

• Section 200.513 Responsibilities requires Federal awarding agencies to designate a Senior Accountable Official who will be responsible for overseeing effective use of the Single Audit tool and implementing metrics to evaluate audit follow-up. This section also encourages Federal awarding agencies to make effective use of cooperative audit resolution practices in order to reduce repeated audit findings.

• Section 200.518 Major Program Determination focuses audits on the areas with internal control deficiencies that have been identified as material weaknesses. Future updates to the Compliance Supplement will reflect this focus as well.

The specific reform ideas and the responses to public comments received are outlined below in three main categories:

Section A: Subparts A–E: Reforms to Administrative Requirements (the governmentwide Common Rule implementing Circular A–102; Circular A–110; and Circular A–89)

Section B: Subpart F: Reforms to Cost Principles (Circulars A–21, A–87, and A–122)

Section C: Subpart G: Reforms to Audit Requirements (Circulars A–133 and A–50

In addition, conforming changes and those for linguistic clarity are shown in supporting materials provided on the OMB Web site with this proposal (available at *http://www.whitehouse.gov/omb/grants_docs#final)*.

Section A: Subparts A–E Reforms to Administrative Requirements (The Common Rule Implementing Circular A–102); Circular A–110; and Circular A–89

This section discusses changes to the governmentwide common rule implementing Circular A–102 on Grants and Cooperative Agreements with State and Local Governments; Circular A–110 on Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (2 CFR part 215); and Circular A–89 on Catalog of Federal Domestic Assistance. The following are major policy changes included in the final guidance.

Subpart A—Acronyms and Definitions

Subpart A lists definitions and acronyms for key terms found throughout the document. Because these terms, like the rest of the guidance, originated in eight different sets of guidance, there are many conforming changes made to harmonize the definitions with the terms that are used throughout the guidance. Some definitions reflect policy decisions as follows:

200.18 Cognizant Agency for Audit and 200.73 Oversight Agency for Audit

Commenters suggested that instead of defining the cognizant or oversight agency for audit as the Federal awarding agency that provides the most direct funding, it should be defined as the one that provides the most total funding. The suggestion that this would eliminate a potentially burdensome process of changing cognizance to allow for situations where a non-Federal entity receives most of its funding indirectly from one Federal agency, and only a small portion from another agency directly.

The COFAR considered this, but noted that even where significant portions of Federal funds are passed-through to subrecipients, the Federal agency retains a direct relationship only with a direct recipient, and relies on the pass-through entity to oversee the subaward. Further, the COFAR understands these instances to be relatively few, and in those cases where they have preferred to have a cognizant or oversight relationship, they have not found the process of negotiating a change to be burdensome. Contrary to comments reflecting a belief that the current OMB policy requires any change to be made within 30 days, changes have always been permissible at any time with notification to the Federal Audit Clearinghouse within 30 days of the change. As such, the COFAR did not recommend a change to this definition.

200.23 Contractor

Some commenters suggested that the term ''vendor'' is more appropriate and, in line with the Federal Acquisition Regulation, should be used throughout the final guidance in place of the proposed ''contractor''. The COFAR considered this but determined that contractor is more accurate in the context of guidance on how to distinguish between a contract and a grant. The COFAR believes that framing the distinction this way will better encourage Federal agencies to appropriately apply the guidance to awards for financial assistance regardless of the term they currently use to describe those awards. The COFAR recommended continued use of the term ''contractor'' throughout. As used in this guidance, the term ''contractor'' includes entities that, in other contexts, may be referred to as ''vendors''.

200.54 Indian Tribe (or ''Federally Recognized Indian Tribe'')

Existing guidance, including NPG, included Indian Tribes in the definition of a state. With the streamlined merging of the circulars and the inclusion of some guidance that is clearly intended only for either states or Indian Tribes, and in response to comments received, the COFAR found that this inclusion is no longer appropriate. As a result, the COFAR recommended that Indian Tribes, including Alaskan Natives, be separately defined as they are under existing statute.

200.94 Supplies

The definition of supplies in existing guidance includes all tangible personal property that fall below the prescribed threshold for equipment. Since, as technology improves, computing devices (inclusive of accessories) increasingly fall below this threshold, the proposed guidance made explicit that when they do, they shall be treated consistently with all other items below this level. Many commenters were highly supportive of this clarification in the proposal and indicated that it would greatly help in minimizing administrative burden. Other commenters recommended that because of the high value of the information on computing devices and because of their attractiveness to potential thieves, they should be subject to the more prescriptive oversight requirements of equipment that falls above the threshold.

The COFAR considered both views and determined that the sensitive information on computing devices could more efficiently be protected through guidance specifically on internal controls for sensitive information, rather than through prescriptive requirements for the devices themselves. Further, the COFAR considered that the prescriptive requirements that are appropriately in place for equipment over the threshold of $5,000 would create an administrative burden the cost of which would outweigh any benefits achieved by reducing the potential attractiveness of these devices to thieves. To guard against the costly burden that treating these devices as equipment would create, the COFAR recommended retaining the definition of supplies as proposed. To protect the sensitive information on these devices, the COFAR recommended new specific language on internal controls governing sensitive information (see section 200.303 Internal Controls).

200.33 Equipment

Commenters advocated for a higher threshold for equipment than $5,000. Comments suggested that particularly for large state governments with high amounts of Federal awards, and with state policies of higher capitalization thresholds in place, a higher threshold, possibly in line with the non-Federal entity's own capitalization threshold, would be more appropriate. The COFAR considered and determined that even though entities may view higher thresholds as appropriate for their own purposes, maintaining the threshold at $5,000 is important to protect the assets purchased with taxpayer dollars under Federal awards. The COFAR did not recommend raising the threshold.

2. Subchapter B: General Provisions

200.101 Applicability

Some commenters suggested at a minimum that this section in the proposal needed to be revised for clarity, and some proposed significant changes to applicability of the guidance beyond what had been proposed.

The COFAR reviewed these and recommended changes for clarity. The guidance maintains existing language stating that this guidance does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation. In various sections throughout the guidance, commenters noted that it would be helpful to note a policy was ''except as provided in statute''. The COFAR recommended that this language be included once in the beginning as applicable throughout.

200.102 Exceptions

Commenters suggested that this section should reflect a more active role for OMB as an arbiter of situations where non-Federal entities encounter policies that deviate from this guidance and do not appear to conform to the list of exceptions articulated. The COFAR considered this feedback, but determined that Federal agencies are responsible for implementing their programs under authorities provided specifically by statute, and are further responsible for responding to any potential concerns from their particular recipients. OMB, as the entity responsible for promulgating the governmentwide guidance, is responsible for ensuring that the policies best meet the desired goals and for providing assistance where it is needed in interpreting the guidance. As reflected in section 200.108 Inquiries, non-Federal entities should address their specific concerns to the Federal awarding agency, cognizant agency for indirect costs, or cognizant or oversight agency for audit. OMB will periodically review the guidance for effectiveness and will provide assistance interpreting the guidance upon request. In addition, new language in paragraph (d) notes that on a case-by-case basis, in accordance with OMB guidance in M–13–17, OMB will waive certain compliance requirements and approve new strategies for innovative program designs that improve cost-effectiveness and encourage effective collaboration across programs to achieve outcomes.

200.111 Effective Date

Commenters requested that OMB and the COFAR orchestrate the implementation of the final guidance in a manner that results in a smooth transition for entities that are required to comply. The COFAR considered these requests as well as past implementations of OMB guidance and recommended that Federal agencies coordinate under OMB's guidance to issue regulations or OMB-reviewed guidance in unison, which will be effective one year from the publication of this final guidance. As a result, upon implementation, this guidance will be in effect for all Federal awards or funding increments provided after the effective date. Non-Federal entities wishing to implement entity-wide system changes to comply with the guidance after the effective date will not be penalized for doing so.

The COFAR further recommended that provisions of Subpart F—Audit Requirements be effective for non-Federal entity fiscal years beginning on or after the effective date of this guidance. An auditee that conducts a biennial audit and has a biennial period beginning before the effective date of this guidance should apply the provisions of OMB Circular A–133. The requirements of Subpart F—Audit Requirements apply to any biennial periods beginning on or after the effective date of this guidance. Federal agencies must submit draft implementing regulations to OMB no later than six months from the date of publication of this guidance unless different provisions are required by statute or approved by OMB.

200.112 Conflict of Interest

Commenters suggested that the guidance is missing a broad general statement requiring standards of conduct that mitigate potential conflicts of interest in the administration of Federal awards. The COFAR concurred, but noted that many Federal agencies have specific policies on this that are appropriately tailored to the specific nature of their programs. As a result, the COFAR recommended adding language that requires Federal agencies to have policies on conflict of interest in Federal awards (in case there are any that do not) and requires non-Federal entities to disclose in writing any potential conflicts of interest (in accordance with applicable policies) to the Federal awarding agency or pass-through entity.

200.113 Mandatory Disclosures

Commenters suggested that requirements in procurement regulations for non-Federal entities to disclose in writing any violations of Federal criminal law involving fraud, bribery, or gratuity violations in Title 18 of the United States Code have been effective measures to help prevent or prosecute instances of waste, fraud, and abuse. These commenters recommended that a similar provision be added to this guidance. The COFAR concurred with the recommendation.

Commenters also suggested that requiring two signatures on all certifications would be a similarly effective measure to guard against waste, fraud, and abuse. The COFAR considered this, but determined that due to the extensive responsibility for having expert knowledge of the non-Federal entities' cost accounting that is required in order to make the certifications as they are required now, adding this requirement for an additional person would be a significant source of administrative burden. The

COFAR did not recommend the addition.

3. Subpart C—Pre-Award Requirements

Content in the NPG from Subchapters previously designated as C—Notice of Federal Awards and D—Terms and Conditions of Federal Awards was reorganized to provide more streamlined guidance on information that is required to be provided to a non-Federal entity upon receipt of a Federal award.

200.201 Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements, and Contracts

In order to broaden a best practice within many Federal agencies' existing policy and to facilitate implementation of M–13–17, a recently published policy encouraging evidence-based programs, and drawing on existing policies and practices from several Federal agencies, new language has been added to the final guidance to allow for ''Fixed amount'' awards that rely more on performance than compliance for accountability. (See also Section 200.102 Exceptions and 200.430 Compensation—Personal Services.)

200.202 Requirement To Provide Public Notice of Federal Financial Assistance Programs

Comments suggested that, in order to facilitate auditor's ability to ensure that programs are correctly evaluated during audits, this section include the existing requirement for Federal agencies to include in the Catalog of Federal Domestic Assistance whether or not the particular program is subject to Single Audit Requirements in Subpart F. The COFAR recommended this change. The COFAR further recommended that due to uncertain timing regarding the integration of the Catalog of Federal Domestic Assistance into the System for Award Management, the name be left unchanged instead of changed to Catalog of Federal Financial Assistance as proposed.

200.203 Notices of Funding Opportunities

As discussed in the ANPG and NPG, the bulk of this section is not a policy change, but rather incorporates the existing requirement for certain categories of information to be published in announcements of public funding opportunities. See OMB Memorandum M–04–01 of October 15, 2003 (*http://www.whitehouse.gov/omb/memoranda_fy04_m04-01*), announcing the **Federal Register** notice that OMB published at 68 FR 58146 (October 8, 2003).

Commenters did note that the policy change providing a minimum timeframe of 30-days for applications to be available was a helpful idea, but that the proposed timeframe was too short to be of use. Federal agencies had previously indicated that the 90-day timeframe proposed in the ANPG was too long to be practicable given the constraints they often operate under.

The COFAR considered these perspectives and recommended the final guidance require all funding opportunities to be available for application for at least 60 days, with an exception for Federal awarding agencies to make a determination to have a less than 60 day availability period but no funding opportunity should be available for less than 30 days. The recommended policy would assure a minimum timeframe that is useful to applicants, and while many Federal agencies would likely continue best practices of a longer application period, they would have the exceptions that they require under exigent circumstances.

200.204 Federal Awarding Agency Review of Merit of Proposals

The proposed guidance required that unless prohibited by Federal statute for competitive grants and cooperative agreements, Federal awarding agencies must design and execute a merit review process for applications. This section left the design of the process to the Federal awarding agencies in order to leave as much flexibility as possible to incorporate the requirements of specific programs.

This reform was received positively in the proposal, with the comment that it should be separated out from the financial risk review discussed in the following section. The COFAR considered the feedback and recommended the suggested change in organization.

200.205 Federal Awarding Agency Review of Risk Posed by Applicants

As proposed, the guidance provides latitude for Federal awarding agencies to design this review as appropriate for the program. As noted in Section 200.101 Applicability, since nothing in this guidance can supersede the requirements of Federal statute, flexibilities such as those enshrined in the Indian Self-Determination and Education Assistance Act (ISDEAA) would not be contravened by this policy. Comments suggested that this section be structured to require a ''framework'' for reviewing risk, rather than an award-by-award review, where some programs have long histories and a strong understanding of the risks associated with frequent applicants. Evidence from comments suggests that Federal agencies would likely design their risk-based framework to make best use as possible of existing resources such as Single Audit reports—which aligns with comments indicating a preference for use of existing resources from the non-Federal entity community.

The COFAR considered the comments and recommended the suggested changes. In addition, the COFAR recommended that the final guidance clarify that, as a baseline for their review, Federal awarding agencies are required by 31 U.S.C. 3321 and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as Federal Awardee Performance and Integrity Information System (FAPIIS), Dun and Bradstreet, or ''Do Not Pay'', and also to comply with suspension and debarment requirements at 2 CFR part 180.

200.206 Standard Application Requirements

As proposed in the NPG, the guidance includes the requirement that Federal awarding agencies may only use those application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulation in 5 CFR part 1320. Comments were generally in favor of maintaining this longstanding requirement and strengthening enforcement. In addition, OMB and the COFAR have been working closely with the Government Accountability and Transparency Board to identify opportunities for greater standardization of information collections governmentwide.

Though this is not a policy change, the COFAR endorsed it as an indicator of work by the COFAR and broader financial assistance community to further standardize governmentwide information collections. It is a further indicator of OMB's intent to authorize exceptions only on a limited basis.

200.207 Specific Conditions

This section of the final guidance was revised in response to comments received to include the list of examples of specific conditions from existing guidance that may be applied to a Federal award.

4. Subpart D—Post-Award Requirements

Subtitle I Standards for Financial and Program Management

200.301 Performance Measurement

In this section, commenters expressed concern about the longstanding requirement to relate performance to financial information whenever practicable. This language was not a change from existing policy, but in response to concerns, the COFAR recommended clarifications that this requirement will be met through use of governmentwide standard information collections, and notes that further requirements are as appropriate in accordance with those collections. This means that, for the research community where there are standard information collections for performance that, in accordance with the ''where practicable'' aspect of the guidance, do not relate financial information to performance data, there will be no such requirement.

200.302 Financial Management

Some commenters suggested that to strengthen financial management, non-Federal entities should be required to maintain separate bank accounts for each Federal award. The COFAR considered this but determined that doing so would be excessively administratively burdensome for non-Federal entities, and is not necessary to assure accountability as long as non-Federal entities have appropriate records that meet the standards as described in the guidance. The COFAR recommended further edits to better streamline this section of the guidance on financial management that was previously more scattered throughout the guidance, such as incorporating documentation standards previously in the audit requirements into this section.

200.303 Internal Controls

In response to comments that suggested that efforts to mitigate risks of waste, fraud, and abuse would be strengthened by a more explicit reference to existing internal control requirements issued by the Government Accountability Office (GAO) and the Committee of Sponsoring Organizations of the Treadway Commission (COSO), the COFAR recommended including this new section of the guidance which makes explicit non-Federal entity's responsibilities with regard to effective internal controls. In response to comments expressed regarding controls over sensitive information, the COFAR recommended adding language to make explicit a non-Federal entity's responsibility for safeguarding protected personally identifiable information (PII) and information designated as sensitive. This new language will result in stronger policies for protecting this information across Federal awards.

200.305 Payment

Comments noted with concern that the proposal included language from OMB Circular A–102 which required entities to remit interest payments due to Federal agencies promptly across multiple agencies. The final guidance reinstates and expands applicability of existing language from OMB Circular A–110 that instructs non-Federal entities to remit interest earned on Federal awards annually to the Department of Health and Human Services Payment Management System. This will result in a much less burdensome annual payment process.

In addition, this section has been revised to more accurately reflect the requirements in 31 U.S.C. chapter 65 and implementing Treasury Department regulations in 31 CFR Part 205 Rules And Procedures For Efficient Federal-State Funds Transfers. All requirements for payments to states are set forth in 31 CFR Part 205. Accordingly, the payment section now covers payments to states in paragraph (a) and refers to the Treasury requirements. Payment requirements for other non-Federal entities are set forth in the rest of the section.

200.306 Cost Sharing or Matching

Many comments were supportive of the proposed language stating that voluntary committed cost sharing is not expected under Federal research proposals and is not to be used as a factor in the review of applications or proposals. Federal agencies recommended adding that such cost sharing may be considered when in accordance with regulation and included in the notice of funding opportunity. In addition, commenters suggested that the final guidance incorporate existing guidance that only mandatory cost sharing or cost sharing specifically submitted in the project budget shall be included in the organized research base for computing indirect (F&A) costs for research projects. The COFAR considered the feedback and recommended the addition.

Subtitle III Procurement Standards

Subtitle III Procurement Standards takes the majority of the language from OMB Circular A–102. In the NPG, OMB requested comments on whether the inclusion of this language would be administratively burdensome for non-Federal entities currently subject to A–110. Responses indicated that it could be, and pointed to a few specific areas recommending refinement. The COFAR recommended keeping the A–102 language over the A–110 language because it considered this language to be better able to mitigate the risk of waste, fraud, and abuse. In response to the comments received, the COFAR recommended the specific changes described as follows.

200.318 General Procurement Standards

Commenters were concerned about possible administrative burden resulting from the requirement in paragraph (b) to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions and specifications of their contracts and delivery orders. The COFAR considers this to be a requirement that already exists in OMB Circular A–110, just perhaps not recognized due to different language. The COFAR recommended clarifying the language to require non-Federal entities to maintain ''oversight'' rather than a ''system'' to eliminate potential confusion over the standards of the system and to conform more explicitly to existing guidance.

Commenters recommended that the conflict of interest language found in paragraph (c) of this section be expanded to provide guidance on conflicts of interest for Federal awards more broadly. The COFAR considered this, but found that many Federal agencies already have conflict of interest policies, and these are fairly specific and vary by Federal agency. The COFAR recommended treating conflict of interest more broadly separately as described in section 200.112 Conflict of Interest, and also recommended expanding the conflict of interest guidance in this section to include organizational conflict of interest. This expansion will require non-Federal entities to have strong policies preventing organizational conflicts of interest which will be used to protect the integrity of procurements under Federal awards and subawards.

Commenters were concerned that language in the NPG requiring a review of proposed procurement methods by Federal awarding agencies would add an unnecessary layer of administrative burden to the process. The COFAR concurred and recommended that the language be removed from the final guidance.

Language in paragraphs (d), (e), and (f) is longstanding language which has always encouraged state and local governments subject to A–102 to avoid duplicative purchases and to enter into common procurements to promote efficient use of Federal awards. Comments recommended strengthening the language in light of OMB's 2012 Shared Services Strategy for Federal agencies encouraging the use of ''shared services'' for increased efficiency. The COFAR recommended strengthening the language in line with comments received. Additional changes as noted below in the cost principles are further intended to facilitate these types of arrangements.

Commenters were concerned that the requirement in paragraph (i) requiring the maintenance of records sufficient to detail the history of performance would similarly create administrative burden. The COFAR considered this requirement to be an important one for documenting the integrity of the transaction and recommended it be retained.

Commenters were concerned that language in the NPG, which required information concerning any protests of a procurement to be provided to the Federal awarding agency, would create an unnecessary layer of administrative burden to that process. The COFAR concurred, and that language has been removed from the section.

200.319 Competition

Commenters were concerned that language this section, which prohibits the use of geographic preference in solicitations, would put some non-Federal entities in conflict with the requirements of state law in some cases where state laws require such preferences. The COFAR considered this, but ultimately determined that such preferences could result in the non-Federal entity not making the most efficient possible use of the funds received under a Federal award, and so recommended the language remain unchanged. Where there is a conflict between state or tribal law and this guidance as implemented in regulation with respect to the administration of a Federal award, this Federal guidance prevails.

200.320 Methods of Procurement To Be Followed

Commenters were concerned that the methods of procurement this section might be overly proscriptive and might prevent entities from making purchases from specific contractors where such purchases were necessary, especially for example, for the integrity of a research project. The COFAR considered the language and recommended that with minor clarifications these methods, which include sole source procurements with justification, be retained as they should be inclusive enough to account for such situations.

200.322 Procurement of Recovered Materials

The COFAR also recommended including language in paragraph (f) on the procurement of recovered material to reiterate non-Federal entities' obligations under section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Subtitle IV Performance and Financial Monitoring and Reporting

200.328 Monitoring and Reporting Program Performance

Some language in this section that had been included in the NPG aligning requirements with those in OMB Circular A–11 were found by Federal agencies to be overly broad, and have instead been replaced by more narrow language in section 200.102 Exceptions. The more specific language is designed to encourage evidence based program design.

The final guidance also includes language from existing guidance that had been dropped from the NPG noting that reporting should not be required more frequently than quarterly. In addition, similar language to that in section 200.501 on Standards for Performance and Financial Management notes that performance reports are subject to the Paperwork Reduction Act requirements and should use OMB- approved governmentwide information collections.

200.329 Reporting on Real Property

The language in this section is based on the supplementary information provided in the purpose section of the Final Notice of the Real Property Status Report (RPSR) form SF–429 available at 75 FR 56540 published September 16, 2010.

Subtitle V Subrecipient Monitoring and Management

This section was proposed in the NPG as section 200.501, but the COFAR recommended it be reordered in the final guidance for a more logical flow of post-award requirements.

200.331 Requirements for Pass-Through Entities

Many commenters were concerned that this section could expand the monitoring requirements for subrecipients significantly and result in increased administrative burden. In addition to re-ordering certain elements of the NPG language for clarity as some commenters suggested, the COFAR recommended the following further modifications:

In paragraph (a), data elements that are required to be included in subawards are aligned with those required to be included by Federal awarding agencies in Federal awards in section 200.210 Information Contained In A Federal Award.

Comments on the proposed language requiring pass-through entities to include an indirect cost rate in the subaward were highly positive, but suggested that the de minimis rate as outlined in section 200.414 Indirect (F&A) Costs should be higher. Commenters were concerned that pass-through entities might decline to negotiate, and this would make the de minimis rate more likely a de facto rate for subrecipients. The COFAR considered this feedback but determined that as an automatic rate without any review of actual costs, the rate should remain at the conservative levels discussed in that section to protect the Federal government against excessive over reimbursement.

Comments noted concern that as stated the language broadened pass-through entity responsibility for monitoring subrecipients particularly with respect to audit follow-up. The COFAR recommended modifications to clarify that the required monitoring of subrecipients is limited to reviewing any performance and financial reports that the pass-through entity has decided to require in order to meet their own requirements under the terms and conditions of the Federal award, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits only when those findings pertain to Federal award funds provided to the subrecipient from the pass-through entity. This is consistent with existing requirements. Language is further modified to clarify that pass-through entities must only verify, rather than ensure, that a subrecipient has an audit as required by Subpart F Audit Requirements. As a result of these clarifications, the requirements for subrecipient monitoring are substantively unchanged from existing guidance.

Subtitle VI Record Retention and Access

200.333 Retention Requirements for Records

The final guidance maintains and clarifies the existing requirement that records be retained for three years from the date of submission of the final expenditure report. The COFAR considered alternative scenarios proposed by commenters, and recommended that the proposed language be retained. The COFAR noted that this length can be extended if required by statute or with an exception from OMB, but that in most cases it is sufficient.

200.335 Methods for Collection, Transmission and Storage of Information

In addition, in response to the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, as well as to comments requesting that the guidance in general be updated to reflect 21st century methods of communicating, the COFAR recommended a new paragraph be added. The new paragraph (c) adds language on methods for the collection, transmission, and storage of information, which combines language that had been previously scattered throughout the guidance to make clear that electronic, open, machine readable information is preferable to paper, as long as there are appropriate and reasonable internal controls in place to safeguard against any inappropriate alteration of records.

Subtitle VII Remedies for Noncompliance

200.338 Remedies for Noncompliance

Commenters suggested that this section, which was titled ''Termination and Enforcement'' in the NPG, should be expanded to more accurately describe the actions that could be taken under enforcement. The COFAR recommended this change.

200.339 Termination

Commenters suggested that language should be added to allow for Federal agency termination for cause, because situations often arise beyond the Federal agency's or non-Federal entity's control which may require awards to be terminated. This language would prove useful in situations like those encountered during implementation of the Recovery Act or Sequestration, where congressional mandates encouraged expedited performance, or changes to appropriated amounts require modifications to programs. The COFAR recommended these additions.

200.343 Closeout

The proposal included expanded guidance on closeout, to help strengthen Federal agencies policies for this process in line with OMB's July 2012 Controller Alert. Commenters recommended this language be modified to extend the closeout period for an award from 180 days to the more realistic timeframe of one year, in addition to the clarifying language that non-Federal entities have 90 days from the end date of the period of performance to submit all final reports, and also to clarify that the one-year period begins once final reports have been received from the non-Federal entity. The COFAR recommended the addition.

200.344 Post-Closeout Adjustments and Continuing Responsibilities

Commenters suggested that language be added to limit the period when Federal agencies may disallow costs to within the three-year record retention period required under section 506 Record Retention and Access. The COFAR recommended the addition.

200.345 Collection Of Amounts Due

As with section 200.343 Post-Closeout Adjustments and Continuing Responsibilities, commenters recommended language to limit the collection period to within the three-year record retention period required under section 200.333 Retention Requirements for Records. The COFAR noted that the Federal government has the right to collect amounts due at any point, and while recognizing that a determination of disallowance should be made within the record retention period, did not recommend the addition in this section.

Section B: Subpart E and Appendices III–VIII: Cost Principles. Reforms to Cost Principles (Circulars A–21, A–87, and A–122)

This section discusses proposed changes to the OMB cost-principle circulars that have been placed at 2 CFR Parts 220, 225, and 215 (Circulars A–21, Cost Principles for Educational Institutions; Circular A–87, Cost Principles for State, Local and Indian Tribal Governments; and Circular A–122, Cost Principles for Non-Profit Organizations). The COFAR considered adding the hospital cost principles to the guidance, but decided that doing so would require in depth further review that would be best done as part of a separate process at a later date.

200.400 Policy Guide

Commenters requested that the final guidance include language which was previously included in OMB Circular A–21 to address the dual role of students in research at IHEs. The COFAR recommended that a slightly updated version of the language be included.

Other commenters suggested that to better mitigate the risks of waste, fraud, and abuse, the final guidance include language to make explicit that non-Federal entities are not permitted to earn or keep any profit resulting from Federal awards, unless expressly authorized by the applicable award conditions. The COFAR recommended the language be included.

200.401 Application

At the suggestion of commenters, the COFAR recommended this section include additional language to clarify that when a non-Federal entity has a Cost Accounting Standards (CAS) covered contract subject to the requirements of 48 CFR 995, those requirements do not automatically extend beyond the covered contract to other awards, though the non-Federal entity is required to maintain consistent application of cost accounting standards.

200.407 Prior Written Approval (Prior Approval)

In response to comments, the COFAR recommended the title of this section be changed from ''Advance Understanding'' to more closely mirror the language used in the guidance. In addition, a list of instances of sections that discuss conditions under which prior approval is required is included to ensure that these requirements are transparent and to reduce burden by providing both Federal agencies and non-Federal entities a complete listing of where all these types of requirements may be found.

200.413 Direct Costs

Paragraph (d) includes the language in this section that was proposed as a change to clarify the circumstances under which it is allowable to directly charge administrative support Costs. This language was proposed in order to address an ongoing inconsistency in the definition of direct costs; which required administrative costs to be charged indirectly but otherwise provided that costs are direct when they may be specifically allocated to one award; regardless of what activities they support.

Many commenters were supportive of the change with some concerns about

the way it was proposed. Some commenters were concerned that the conditions as originally articulated were not sufficiently clear for auditors to determine whether a directly charged administrative cost was allowable or not. Other commenters were concerned that the requirement to have these costs approved in the budget was more restrictive than otherwise standard rebudgeting practices and would unduly constrain implementation. The COFAR considered the issue and recommended adding explicit language to clarify that when these costs are allowable, they must have the prior approval of the Federal awarding agency. Additional language was added to allow for this approval after the initial budget approval in order to allow for flexibility in implementation. The clarified language addresses both sets of concerns; clarifying conditions for allowability while providing additional flexibility in project management.

200.414 Indirect (F&A) Costs

In response to a wide range of feedback from diverse stakeholders, Section 615 Indirect Costs contained a number of proposals for making indirect costs more transparent and consistent for non-Federal entities. These were well received by most stakeholders who submitted comments, and have mostly been retained as proposed, with some modifications.

Language in paragraph (c) provides for the consistent application of negotiated indirect cost rates, and articulates the conditions under which a Federal awarding agency may use a different rate. These conditions include approval of the Federal awarding agency head (as delegated per standard delegations of authority) based on documented justification, the public availability of established policies for determinations to use other than negotiated rates, the inclusion of notice of such a decision in the announcement of funding opportunity, as well as in any pre-announcement outreach, and notification to OMB of the decision. Comments received regarding these proposals were mostly positive, and indicated that these provisions would likely lead to greater consistency, and transparency in the application of indirect cost rates governmentwide. Some commenters recommended that for even greater consistency decisions about the use of rates be subject to OMB approval rather than Federal agency approval. The COFAR considered this, but ultimately recommends that responsibility for administering Federal financial assistance programs continue to rest with the Federal awarding agencies, and that the conditions set by OMB for these determinations are stringent enough to ensure that they do not occur without strong justification. The COFAR did not recommend the change.

Language in paragraph (f) provides that any non-Federal entity that has never had a negotiated indirect cost rate may use a de minimis rate of 10% of modified total direct costs. Commenters recommended that this rate should be higher—either at 15% or 20% respectively. They were concerned that because for smaller organizations the capacity to conduct full negotiations is often out of reach, this rate will most likely be the de facto rate rather than the de minimis rate. The COFAR considered the possibility of raising this rate, but ultimately recommended that as an automatic de minimis rate without analysis of actual costs it should stay at a conservative level in order to minimize the possibility that the Federal government over reimburse for these costs. Additional comments also suggested that to further reduce burden for both recipients and the Federal government, this de minimis rate be allowable for use indefinitely, and the COFAR concurred.

Language in paragraph (g) provides an option for entities with an approved federally negotiated indirect cost rate to apply for a one-time extension without further negotiation subject to the approval of the negotiating Federal agency. Commenters responded positively to this option, though some suggested that the extension period be longer, or that additional extensions be allowable. The COFAR considered these, but found it important to renegotiate after an initial 4-year extension period to ensure that such rates continue to be based on actual costs. The COFAR recommended this provision remain as proposed.

200.415 Required Certifications

Comments recommended that in order to better mitigate risks of waste, fraud, and abuse, required certification language be strengthened to include specific language acknowledging the statutory consequences of false certifications. The COFAR concurred with the recommendation.

200.419 Cost Accounting Standards and Disclosure Statement

The NPG proposed deleting the requirements that apply only to IHEs to comply with the Federal Acquisition Regulation (FAR) Cost Accounting Standards (CAS) and to file a Disclosure Statement when their Federal awards total $25 million or more. Some commenters responded favorably that this would reduce a source of administrative burden, but others were concerned, stating that this disclosure statement was a critical tool to mitigating waste, fraud, and abuse and opposed its elimination. Since the most likely source of burden occurs when an entity crosses the threshold for the first time, the COFAR recommended reinstating the requirement at the new threshold of $50 million to be consistent with current FAR requirements.

The COFAR further noted that for most IHEs that have already passed the threshold, the biggest source of burden associated with these requirements arises from uncertainty when awaiting Federal agency approval for a submitted change in a Disclosure Statement. In response, instead of requiring Federal agency approval for changes, the COFAR recommended the final guidance require only that non-Federal entities submit their changes six months in advance of implementing a change. If they receive no indication of an extension of the review period or of concern from a Federal agency, they may proceed with the implementation without further delay. The COFAR's recommended solution would thus continue to require use a valuable tool for mitigating risks of waste, fraud, and abuse while eliminating key sources of administrative burden and uncertainty for non-Federal entities that can lead to unnecessary audit findings.

Subtitle VI General Provisions for Selected Items of Cost

Some commenters noted concern that the current item of cost for ''Communication costs'' had been deleted from the proposed guidance. The COFAR considered this, but considered communications costs to be straightforward enough to be easily covered by the guidance in Subtitle II: Basic Considerations. The COFAR notes that all items not specifically covered in the items of cost are subject to the guidance in Subtitle II Basic Considerations, and that this section should be read as a guiding framework for all specific discussions of cost in the section that follow.

200.421 Advertising and Public Relations

Commenters noted that it was important that costs relating to advertising and public relations allow for costs of advertising program outreach and other specific costs necessary to meet the requirements of the federal award. The COFAR recommended the addition.

200.422 Advisory Councils

Commenters were concerned that the proposed guidance disallowed previously allowable costs for documented advisory council costs that benefited a federal award.

The COFAR reviewed the language and noted that the revised language is clarifying in nature and does not substantively change the existing requirements, noting that these costs are still allowable with prior approval from the Federal awarding agency. The COFAR did not recommend a change.

200.425 Audit Services

Commenters recommended that this section be clarified to include reference to a non-Federal entity's fiscal year in noting that when Federal awards total less than $750,000 the non-Federal entity is exempted from having a single audit. The commenters wanted the addition of the fiscal year clause in order to be consistent with Subpart F. The COFAR recommended the addition.

Commenters noted concern for language which stated that other audit costs were allowable if included in an approved cost allocation plan or an indirect cost proposal, or if it was approved by the Federal awarding agency as a direct cost to the Federal award.

Upon further review, the COFAR notes that though this language allowing costs of other audits has been in place for years, it is not consistent with the Single Audit Act, and so recommended deleting it. Instead, the COFAR recommends language that allows the costs of a financial statement audit for a non-Federal entity that does not currently have a Federal award when included in the indirect cost pool as part of a cost allocation plan or indirect cost proposal. These audits may be useful to the Federal agency negotiating an indirect cost rate, and the COFAR does not believe them to be in conflict with the Single Audit Act.

The COFAR further recommends clarification that agreed-upon-procedures are defined in section 2(A) of the GAGAS attestation standards, and this section will be aligned with the types of compliance requirements in the compliance supplement once updated.

200.428 Collections of Improper Payments

The COFAR recommends that the last sentence of this section, which describes the collection of improper payments when time elapses between the collection of funds from entities and their expenditure, be deleted because it is redundant and duplicates what is said in section 200.305 Payment, which is also cross-referenced. The result is more streamlined language that articulates the requirement more clearly.

200.430 Compensation—Personal Services

The COFAR began review of these requirements under this reform effort based on feedback that the existing requirements had become extremely administratively burdensome, and as written, the guidance did not allow for advances in technology, record keeping, and internal controls, which allow non-Federal entities to document these costs in increasingly efficient and sophisticated ways. In addition, the COFAR considered the long-term goal of tying justification for salaries to the achievement of programmatic objectives rather than measurement of effort (hours) expended. Though such performance-oriented reporting is not currently possible across the diverse suite of Federal assistance programs, the advances noted above allow for alternatives to the current requirements that can provide an even higher standard of accountability without burdensome process requirements. The COFAR received many comments on this proposed language indicating that the changes had potential for positive impact but recommended modifications to the proposed language.

Comments suggested that language be added to include more detail as to the general explanation of what compensation for personal services is allowable.

The COFAR considered the current level of detail to be sufficient, especially since any personal services not listed in this section would be addressed in section 200.431 Compensation—Fringe Benefits.

Commenters suggested that compensation surveys providing data representative of the labor market involved were inferior to the other methods described in the NPG for evaluating the reasonableness of compensation for personal services. Others commented that with regard to the basis for salary rates, unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award should not exceed the proportionate share of the institutional base salary for the period during which the faculty member worked on the award.

The COFAR recommended additions to support both proposals.

Commenters recommended deleting the specific reference to conflict of interest policies, noting that there is no reason to highlight any one institutional policy in this section over others. They also recommended deleting the rest of the section allowing Federal agencies to negotiate alternative arrangements when non-Federal entity policy is deemed inadequate. Commenters also recommended the deletion language which provided special consideration in determining allowability for any change in the non-Federal entity's compensation policy because they found it redundant to other language describing the compensation for personal services and the reasonableness with which these services need to be proven in order for compensation to be expected.

The COFAR concurred with the recommended deletion of conflict of interest policy but did not recommended further changes on special considerations which they found to provide important provisions that mitigate the risks of waste, fraud, and abuse.

Another comment recommended deletion of language on allowable incentive compensation because the commenter believed this provision has resulted in cost disallowances and is burdensome. The COFAR disagreed and recommended that the section stay the way it was originally proposed.

Comments noted with concern that that nonprofit organizations are not subject to the same rules as other types of non-Federal entities. The COFAR considered that due to the unique facets of nonprofit organizations, these flexibilities are important, and recommended that paragraph (g) stay the way it was originally proposed.

Commenters proposed major changes to paragraph (h), which provides provisions specific to IHEs describing conditions that require special consideration and possible limitations in determining allowable compensation costs. They recommended re-organization of the section for clarity and an explicit recognition of Institutional Base Salary rate (a type of policy most IHEs have well defined) instead of references to a more loosely defined ''base rate''. The COFAR concurred and recommended most of the suggested changes.

Many diverse stakeholders submitted comments on paragraph (i) Standards for Documentation of Personnel Expenses (also known informally as ''time and effort reporting''). Many agreed on the need for clearer standards of the internal controls around these charges. Many commenters also requested additional flexibility in how these standards could be implemented, while others recommended stricter uniformity in the provision of specific

certification language that would better prevent and facilitate prosecution of fraud. Some commenters that allowance for costs based on estimates could result in a lack of sufficient documentation that the costs were in accordance with the work performed.

The COFAR agreed with the recommendations on the risks in this area and the need for a strong system of internal controls to document compliance. This final guidance requires non-Federal entities to comply with a stringent framework of internal control objectives and requirements. The guidance also requires that when interim charges are based on budget estimates, the non-Federal entity's system of internal controls must include processes to ensure necessary adjustments are made such that the final amount charged to Federal awards is proper.

The COFAR considered recommendations from commenters to include specific certification language, but was concerned that requiring specific language at this level would result in audit findings more likely to be based on incorrect documentation rather than uncovering weaknesses in internal control or instances of fraud. Further, the COFAR notes that other certifications included by recipients in their applications and indirect cost rate agreements provide a layer of assurance that can be used in preventing and prosecuting instances of fraud.

The COFAR believes this focus on overall internal controls provides greater accountability as the non- Federal entity must ensure that the total internal control system for documenting personal expenses provides proper accountability and the auditor must test these internal controls as part of the Single Audit requirements in Subpart F. While many non-Federal entities may still find that existing procedures in place such as personal activity reports and similar documentation are the best method for them to meet the internal control requirements, this final guidance does not specifically require them. The focus in this final guidance on overall internal controls mitigates the risk that a non-Federal entity or their auditor will focus solely on prescribed procedures such as reports, certifications, or certification time periods which alone may be ineffective in assuring full accountability.

While this approach may increase burden on non-Federal entities with weak internal controls, the COFAR believes overall it will reduce burden by providing non-Federal entities the ability to implement the internal control systems and business processes that best fit a non-Federal entity's needs. Also, placing requirements at the internal control objective level is consistent with the requirements in section 200.303 Internal Controls. Specifically, the COFAR recommended stating explicitly that charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. Further clarifications describe the required controls in more detail.

The COFAR received positive feedback on proposed language that provided for Federal agencies to approve alternative methods where proposals are submitted that are more performance oriented or in instances of approved blended funding and recommended it be retained.

The combined result of these changes is that non-Federal entities have clear high standards for maintaining a strong system of internal controls over their records to justify costs of salaries and wages, and also additional flexibility in the processes they use to meet these standards. This should allow them to be more accountable for these costs at less expense.

200.431 Compensation—Fringe Benefits

Commenters recommended eliminating a requirement for awarding agency pre-approval for insurance payments based on consistent entity policy for actual payments to or on behalf of employees or former employees for unemployment compensation or workers' compensation. The COFAR agreed and recommends removing the language.

Based on recommendations from diverse comments, the COFAR recommended clarification of the applicability of GAAP to entities using accrual based accounting. The COFAR also recommends that prior approval by the Federal awarding agency or cognizant agency be given before an indirect cost is charged to the Federal award for abnormal or mass severance pay.

Federal agencies recommended that all severance in excess of normal severance policy in accordance with institutional policy or other conditions for allowability discussed in the guidance should be unallowable, not just golden parachute packages. The COFAR recommended the proposed changes to prevent excessive severance payments.

Finally, many commenters commended the inclusion of family-related leave among the examples of types of leave that may be allowed according to the non-Federal entity's written policies. The COFAR recommended keeping this language as proposed.

200.432 Conferences

The language from the proposed item of costs for External Meetings and Conferences has been clarified to better articulate the limits on the types of gatherings for which these costs are allowable. In addition, the language clarifies that the costs of identifying, but not providing, locally available dependent care options for attendees are allowable. The result is that non-Federal entities have clear limits around conference spending which should limit these costs appropriately.

Further, without adding significant cost, the policy encourages family-friendly practices that will better enable employees of non-Federal entities with dependent care responsibilities to progress in their careers. This is an outcome which was noted in comments as one that is essential for advancing the careers of women in science, technology, engineering and math. Similar outcomes are supported by reforms to 200.474 Travel Costs and 200.431 Compensation—Fringe Benefits.

200.433 Contingency Provisions

Many commenters noted that this proposed section made positive and helpful clarifications which enable a better understanding of how contingency costs may be budgeted and charged. Some commenters recommended additional provisions for further clarity on the types of costs that are allowable for contingencies, and recommended additional controls on how Federal agencies provide oversight over these funds as part of their Federal awards. In particular, commenters suggested adding a requirement to track funds that are spent as contingency funds throughout the non-Federal entity's records.

The COFAR reviewed the language, and concluded that it does provide sufficient controls to Federal agencies to manage Federal awards. The COFAR noted that: (i) though a diversity of techniques are available to establish contingency estimates, the estimates must be based on broadly-accepted cost estimating methodologies, (ii) budgeted amounts would be explicitly subject to Federal agency approval at time of award, (iii) funds would not be drawn down unless in accordance with all the other applicable provisions of this guidance (such as Subtitle II Basic Considerations), and (iv) actual costs incurred must be verifiable from the non-Federal entity's records. The

COFAR considered this last requirement to be sufficient for tracking the use of funds, as contingency funds should most properly be charged not as ''contingency funds'' specifically, but according to the cost category into which they would naturally fall. The COFAR did not recommend any changes to the proposed language.

200.434 Contributions and Donations

Comments suggested that the value of a donated item, whether it is a good or a building, should not be charged to a Federal award as either a direct or indirect cost.

The COFAR concurred and recommended changes accordingly. The COFAR also recommended clarifying that depreciation on donated assets is permitted in accordance with 200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements. The COFAR also recommended consolidation of much this section with section 200.306 Cost Sharing Or Matching.

200.435 Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements

Commenters recommended that that all costs related to defense of criminal, civil, or administrative proceedings should be completely unallowable, regardless of disposition.

The COFAR considered this but recommended keeping the language as it was originally proposed in order to preserve a wrongly accused defendant's ability to charge the Federal award for legal costs related to charges or claims for which the defendant ultimately receives a favorable disposition.

200.436 Depreciation

Commenters suggested that allowable compensation for the use of their buildings, capital improvements, equipment, and software projects should be based on capitalization in accordance with GAAP instead of the Government Accounting Standards Board Statement Number 51.

The COFAR agreed and recommended changing the language to reflect this change. The COFAR also recommend adding clarification that an asset donated to the non-Federal entity by a third party will have its fair market value documented at the time of the donation and shall be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both.

Commenters noted that proposed language on depreciating assets donated by a third party would prevent recipients from recovering depreciation on assets that might be purchased under non-Federal awards, but nevertheless used at least in part to support a Federal award. This exclusion would discourage efficiencies to Federal awards that could otherwise be gained through shared use of these assets. The COFAR agreed and recommended the proposed change.

200.437 Employee Health and Welfare Costs

Commenters suggested that allowing costs to improve ''morale'' in this item as proposed would be difficult to distinguish from the language in the following item that disallows entertainment costs, potentially resulting in opportunities for waste, fraud, and abuse.

The COFAR concurred and, to better mitigate these risks recommended eliminating references to morale, limiting this item to those for Health and Welfare as established in the non-Federal entity's documented policies.

200.438 Entertainment Costs

Many diverse commenters noted the potential for conflicting guidance between this section as proposed and the guidance under 200.437 Employee Health And Welfare Costs, as well as confusion about exceptions for entertainment under the terms and conditions of the award.

In addition to the clarifications to 200.437 Employee Health And Welfare Costs, the COFAR recommended clarifying that any exceptions require a programmatic purpose as well as written prior approval from the Federal awarding agency.

200.439 Equipment and Other Capital Expenditures

Many diverse commenters noted opportunity for clarification in this section. The COFAR recommended addressing most of these either in consolidated definitions in the definitions section or through appropriate consolidations with the language in Subpart D—Post Federal Award Requirements, section Subtitle II Property Standards.

200.441 Fines, Penalties, Damages and Other Settlements

Commenters suggested that the list of laws under which failure to comply could result in costs of fines and other penalties should include Tribal law. The COFAR recommended the addition.

Commenters suggested that costs resulting from ''alleged violations'' and not just ''violations'' should be unallowable, except when they result directly from complying with the terms of a Federal award or are approved in advance by the Federal awarding agency. The COFAR recommended the addition.

200.444 General Costs of Government

Commenters suggested that to be consistent with current policy this item should include language that allows up to 50% of the portion of salaries and wages for the chief executive and his or her staff supporting Federal awards for Indian Tribes and Councils of Government to be allowable as indirect costs without further justification. The COFAR recommended the addition.

200.445 Goods or Services for Personal Use

Diverse stakeholders suggested additional types of costs that could be explicitly discussed under this item. The COFAR considered these but found them to be items either addressed elsewhere in the guidance or covered under Subpart II Basic Considerations. The COFAR did not recommend changes to this section.

200.446 Idle Facilities and Idle Capacity

Commenters requested further clarification on the circumstances under which costs of idle facilities are unallowable versus allowable. The COFAR recommended changes for clarification and to ensure sure that these fluctuations are allocated properly to all benefiting programs.

Other commenters suggested that the one year time limit that the guidance provides on funding idle facilities may be arbitrary, and noted that often the projects which require this flexibility are multi-year projects, where a two year horizon might be considered an extremely aggressive timeline.

The COFAR considered that the exact requirement is for a ''reasonable period of time, ordinarily not to exceed one year'', which provides some flexibility on the timeline when needed, while still setting expectations of limits. The COFAR did not recommend changes to this language.

200.447 Insurance and Indemnification

Commenters suggested that policy allowing Federal agencies to choose whether to participate in losses not covered by the recipient's self-insurance reserves is inappropriate and burdensome to entities, and also contradicts other provisions in the language.

The COFAR agreed and recommended that the sentence be deleted. The COFAR also recommended deleting

policy that the Federal government will participate in actual losses of a self-insurance fund that are in excess of the reserves, to protect the Federal government from inappropriate exposure to these types of costs.

Commenters recommended that language discussing fees paid to or on behalf of employees or former employees for worker's compensation, unemployment compensation, be moved to the section on fringe benefits. The COFAR recommended the language be moved.

200.448 Intellectual Property

One comment requested use of a more commonly understood phrase than ''searching the art'', which is currently used in the guidance.

The COFAR determined that this is a term of art and is the appropriate phrase for this guidance. The COFAR did not recommend a change.

200.449 Interest

Commenters noted that they preferred the organization of the language used in the A–21 circular, suggesting that this section begin with the general principle that costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds are unallowable, followed by exceptions. The COFAR recommended the change in organization.

Commenters responded positively to the more explicit inclusion of information technology in the definition of capital assets. They also recommended that the date for the provision to take effect be based on a non-Federal entity's fiscal year rather than a specific date. The COFAR recommended moving this and all other definitions to the streamlined definitions section and concurred with the adjustment to the effective date.

Some commenters suggested recipient's limits for claims for federal reimbursement of interest costs to the least expensive alternative and that criterion for the non-Federal entity to make an equity contribution of at least 25% of the purchase debt arrangements over a million dollars be removed. Other commenters suggested that these should remain in order to protect Federal government interests. The COFAR did not recommend removing these provisions.

Commenters suggested that extra criteria for nonprofit organizations is not appropriate and ask that all the conditions specifically for nonprofit organizations be removed. The COFAR recommended deleting all but one of specific conditions for nonprofit organizations. The COFAR recommended keeping the provision that requires that the non-profit organization had to have incurred the cost after September 29, 1995, in connection with acquisitions of capital assets that occurred after the data. The COFAR also recommended deleting any additional conditions for non-profit organizations that are duplicative of CAS.

Commenters suggested adding a provision to ensure that interest attributable to a fully depreciated asset is unallowable. The COFAR recommended the addition.

200.453 Materials and Supplies Costs, Including Costs Of Computing Devices

The COFAR recommended moving the definition of supplies to the definition section, and feedback on that definition is discussed there.

200.454 Memberships, Subscriptions, and Professional Activity Costs

Commenters noted that it was unclear what was meant by ''substantially engaged in lobbying''. The COFAR recommended substituting ''whose principal purpose is lobbying'' and adding a citation to section 200.450 Lobbying to clarify.

200.455 Organization Costs

Commenters recommended parity in application of this item across types of non-Federal entities. The COFAR recommended making this section applicable to all stakeholders.

200.456 Participant Support Costs

The proposed guidance included language on participant support costs that expands to all entities a provision which previously applied only to nonprofit entities, though moves the definition of these costs to the definition section. The proposal received mostly positive feedback from commenters. The COFAR recommended keeping this language and that treatment of participant support costs in the definition of modified total direct costs and appendices on indirect cost rates be modified in accordance with this guidance.

200.460 Proposal Costs

Many comments were supportive of the proposed language, though some were concerned that the language allowing for other than indirect treatment with prior Federal agency approval could lead to inconsistencies. The COFAR recommended deleting this language to improve consistency and allow proposal costs to be charged only as an indirect cost.

200.461 Publication and Printing Costs

Commenters suggested that language should be added to resolve a long-standing issue with charges necessary to publish research results, which typically occur after expiration, but are otherwise allowable costs of an award.

The COFAR concurred with the comments and recommended additional language to clarify that non-Federal entities may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

200.463 Recruiting Costs

Commenters suggested that since ''special emoluments, fringe benefits, and salary allowances'' that do not meet the test of reasonableness or do not conform with established practices of the entity would be unallowable regardless of where the personnel are currently employed; language should be clarified accordingly with the deletion of ''from other non-federal entities'' after the list of benefits that attract professional personnel. Commenters also noted that modifications were needed to clarify that when relocation costs incurred with the recruitment of a new employee have been funded in whole or in part as a direct cost to the federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit only the Federal share of such relocation costs to the Federal government. The COFAR concurred with the suggested change.

Commenters suggested that this section in its proposed form (and in existing guidance) fails to account for costs associated with obtaining critical foreign research skills and proposed additional language and standards to remediate the problem. Commenters recommended that costs associated with visas when critical skills are needed for a specific award should be allowed. The COFAR concurred with the recommended change.

200.464 Relocation Costs of Employees

Commenters suggested that the costs of the ownership of the vacant former home after the settlement or lease date of the employees new permanent home should only be paid for up to 6 months to eliminate excessive charges to the Federal government. The COFAR concurred with the recommended change.

200.465 Rental Costs of Real Property and Equipment

Commenters requested that an exception for Indian tribes to the provisions that allow ''less-than-arm's-length'' transactions only up to the actual costs of ownership. They suggest that this is a matter of tribal autonomy and a way to better support tribal enterprises. The COFAR considered the suggestion but determined that despite the unique government-to-government relationship with Indian tribes and the importance of tribal autonomy, allowing these transactions at higher than the costs of actual ownership would result in undue increases in costs to the Federal government. The COFAR did not recommend the change.

Commenters recommended that rental costs under ''sale and lease back'' arrangements should only be allowable up to the actual costs of ownership, and not up to the amount that would be allowed had the entity continued to own the property. They also commented that language explaining that for clarity rental costs under ''less-than-arm's length'' leases are allowable only up to the amount as explained in paragraph (2) need not include that the costs are allowable up to the amount had the title to the property vested in the institution.

Commenters suggested that the provisions of the General Accepted Accounting Principles should determine whether a lease is a capital lease or not. Commenters also suggested that language should be added prohibiting the charge of home office space and utilities charged to a Federal award.

The COFAR recommended these proposed changes.

200.466 Scholarships and Student Aid Costs

Commenters suggested that this section should reflect the dual role of students and that the language should make clear that voluntary committed cost sharing should not be used as a factor in the review of applications.

The COFAR concurred with the recommended clarifications, but recommended they be more appropriately added in section 200.400 Policy Guide, and section 200.306 Cost Sharing Or Matching, respectively.

200.467 Selling and Marketing Costs

Commenters suggested that a cross-reference to section 200.460 Proposal Costs should be added to the existing cross reference to section 200.421 Advertising and Public Relations as allowable exceptions to the otherwise unallowable costs covered by this section. The COFAR concurred with the recommendation.

200.468 Specialized Service Facilities

Commenters suggested introducing the concept of an ''equipment replacement fund''. Their concern is that when federally-funded equipment is being used, the depreciation charges on this equipment are not allowed to be included in the rates charged to users of the equipment. Consequently, this restricts the ability of the non-Federal entity to recover funds that could be used to replace the equipment in the future. Allowing non-Federal entities to establish an ''equipment replacement fund'' would help to ensure that institutions are in a position to fund future equipment without having to rely on equipment grants from research funding agencies. The COFAR considered this suggestion, but was concerned that allowing such costs would inappropriately increase costs under Federal awards and reduce the benefits intended to be achieved by the Federal award. The COFAR did not recommend the change.

Commenters suggested that examples of costs of services provided by highly complex or specialized facilities operated by the entity are not needed.

The COFAR considered the suggestion and although generally throughout the guidance has declined to include specific examples recommended that in this case the examples be kept as an important way to illustrate the intent of the language.

200.469 Student Activity Costs

Upon review of this section, the COFAR recommended that though it primarily applies to IHEs, expanding this language to all entities would further mitigate risks of waste, fraud, and abuse.

200.471 Termination Costs

Commenters suggested that the cross reference to an exception for reimbursement for a predetermined amount under proposed Subpart D—Post Federal Award Requirements, Subtitle II Property Standards did not exist in the document and recommended the cross-reference be deleted.

Commenters suggested that while there is no substantive change in the proposed guidance from the existing circulars, they are unsure why indirect costs are being specifically cited with regard to settlement expenses, and were concerned the citation could be misinterpreted as somehow limiting the allowable indirect costs to only a portion of termination costs. They propose deleting the reference.

The COFAR recommended making both proposed deletions.

200.472 Training and Education Costs

Commenters indicated concern that the language allowing the costs of training and education for employee development is too open-ended and recommended more restrictive language.

The COFAR considered the suggestion, but believes that the basic considerations for allowability in Subtitle II Basic Considerations provide adequate restrictions that will appropriately limit the risk of waste, fraud, and abuse. The COFAR did not recommend a change.

200.474 Travel Costs

Commenters suggested that the proposed language allowing temporary dependent care costs was too open-ended and could increase risks of waste, fraud, and abuse.

The COFAR concurred with the concerns raised and modified the language to provide more specific parameters for the conditions under which these costs are allowable. The result is language that provides, under specific and limited circumstances, a family-friendly policy that should allow for individuals with dependent care responsibilities to better balance their responsibilities to both their families and the Federal award.

200.475 Trustees

Commenters noted that this section reverses existing language from OMB Circulars A–21 and A–122 where travel and subsistence costs of trustees, or directors, are allowable under certain conditions. They proposed that past policy from A–21 and A–122 be reinstated.

The COFAR concurred and recommended that the costs for the nonprofit community and institutions be allowable, given those costs are also in line with section 200.474 Travel Costs.

Appendix III Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph B.4.c.

Commenters noted that while many of those who do not currently benefit from the 1.3% utility cost adjustment currently allowed under A–21 appreciated the proposed new language, they would further appreciate the opportunity to suggest alternative indices to measure ''effective square footage''.

The COFAR considered this, but determined that such open ended adjustments to costs would result in increased risk of waste, fraud, and abuse. Further, some commenters expressed concern about the total costs

to Federal agencies that could result from these charges, particularly given the lack of conclusive data available to accurately project these costs. The COFAR concurred with the concern, and so recommended that while these charges should be based on actual costs, the amount recoverable should be limited to an amount equal to 1.3% of the IHE's indirect cost rate until such time as OMB and Federal agencies can better understand the cost implications of full reimbursement of actual costs and the potential implication for Federal programs.

Appendix V State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans

Under existing requirements, any ''major local government'' is required to submit a Cost Allocation Plan to its cognizant agency for indirect cost on an annual basis in order to claim its central services costs against Federal awards. The ''major local governments'' subject to this requirement, along with each cognizant agency assignment, are listed in the **Federal Register** notice dated January 6, 1986 (available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/financial_pdf/fr-notice_cost_negotiation_010686.pdf*).

The proposed guidance set the definition of ''major local government'' at $100 million in order to more accurately reflect the updated universe of such governments which has changed since 1986, and also to provide a threshold that will remain in place as the sizes of individual local governments fluctuates over time. Commenters inquired whether the new definition supersedes the 1986 listing.

The COFAR noted the new definition of major local government does supersede the 1986 listing. The COFAR recommended adding this notice to the list of supersessions in section 200.104 Rescission and Supersession.

In addition, the COFAR recommended a change to the guidance on cognizant agencies. The policy would remain as it is for indirect cost rates, with cognizance being based on direct Federal awards. However, for local governments' central service cost allocation plans, the COFAR recommended that cognizance is best governed by total Federal awards, in order to avoid a situation where direct funding for one program (for example in housing) may result in a different outcome of cognizance than would otherwise be appropriate.

Section C: Subpart F Audit Requirements (Circulars A–133 and A–50)

This section discusses ideas for changes that would be made to the audit guidance that is contained in Circular A–133 on Audits of States, Local Governments, and Non-Profit Organizations and in Circular A–50 on Audit Follow-up. The following ideas for reform were discussed in the ANPG.

200.501 Audit Requirements

OMB received many comments on the appropriateness of the proposed threshold for the single audit requirement at $750,000, some of which recommended the threshold be raised to a higher level, others ambivalent, and some recommended it be kept at its current level of $500,000.

The COFAR considered the comments and the implications that raising the threshold to $750,000 would maintain Single Audit oversight over 99.7% of the dollars that are currently subject to the requirement and 87.1% of the entities that are currently subject to the requirement; eliminating the requirement for approximately 5,000 out of the 37,500 entities that currently receive a Single Audit. The COFAR also noted that an increase of $250,000 is in line with the previous adjustment to the threshold.

The COFAR considered that raising the threshold would allow Federal agencies to focus their audit resolution resources on the findings that put higher amounts of taxpayer dollars at risk, thus better mitigating overall risks of waste, fraud, and abuse across the government. Further, the COFAR notes that provisions throughout the guidance, including pre-award review of risks, standards for financial and program management, subrecipient monitoring and management, and remedies for noncompliance provide a strengthened level of oversight for non-Federal entities that would fall below the new threshold.

The COFAR recommended that the threshold be kept at the proposed level of $750,000.

200.503 Relation to Other Audit Requirements

Commenters recommended that language be added to this section to explicitly require Federal agencies or pass-through entities to review the Federal Audit Clearinghouse for existing audits submitted by the entities, and to rely on those to the extent possible prior to commencing an additional audit.

The COFAR concurred with the suggestion and recommended the addition in order to reduce duplication by better leveraging existing audit resources prior to initiating new engagements.

200.507 Program-Specific Audits

Commenters suggested that rather than requiring auditors to contact inspectors general for program specific audit guides, such guides should be listed in the annual compliance supplement. The COFAR recommended the addition to reduce administrative burden.

200.509 Auditor Selection

Comments recommended that peer reviews be added to the factors considered in selecting an auditor. The COFAR recommended the addition to strengthen audit quality and ensure that audit resources are used most effectively.

200.510 Financial Statements

Commenters suggested that the schedule of expenditures of Federal awards must include the total Federal awards expended as determined in accordance with section 200.502 Basis for Determining Federal Awards Expended, and also that for clusters of programs, the schedule of expenditures of Federal awards should include the cluster name and also include the Federal awarding agency name with the list of programs within the cluster. The COFAR recommended the addition to facilitate a more efficient and effective audit follow-up process.

200.511 Audit Findings Follow-Up

Commenters recommended restoring existing language from OMB Circular A–133 that lists the valid reasons for considering an audit finding as not warranting further action. The COFAR recommended the addition.

200.512 Report Submission

Commenters noted concern with the proposed language in this section that would make audit reports publicly available on the internet. Despite the fact that the non-Federal entity is already required to make the Single Audit report available for public inspection under the Single Audit Act, Indian Tribes were concerned that publishing them would expose sensitive confidential business information that would be harmful to the tribes. The COFAR considered this feedback including feedback from the Department of the Interior, which noted that even if a single audit report for an Indian Tribe were to be requested by a member of the public under the Freedom of Information Act, the confidential

business information would be redacted under exemption 4 under the Act.

To fully address this problem, the COFAR would need to explore with the audit community whether auditing standards could allow for financial statements that do not include this sensitive information in the first place. Since this solution is beyond the reach of the COFAR at this time, the COFAR recommended adding an option to allow Indian Tribes to opt out of having the Federal Audit Clearinghouse publish their reports. If an Indian tribe were to exercise this option, it would be responsible for providing its audit report to any pass-through entities as appropriate.

Commenters recommended additional language to make explicit that the Federal Audit Clearinghouse is the repository of record and authoritative source for single audit reports. Federal agencies, pass-through entities, and others interested should therefore obtain it by accessing the clearinghouse rather than requesting it directly from the non-Federal entity. The COFAR agreed that the proposed addition would likely reduce administrative burden and recommended the addition.

Commenters also recommended that the section include language to allow for exceptions to reporting deadlines particularly in cases of emergency. The COFAR considered this, but noted that such language would likely lead to an administratively burdensome process of frequent requests and denials of the extension period. In cases of true emergency, OMB and Federal agencies together often issue pre-emptive extensions of the deadline. The COFAR did not recommend further changes to the language.

Further comments noted possible confusion over the deadline for report submission if it falls on a holiday. The COFAR also recommended changes to clarify that if the due date falls on a Saturday, Sunday, or Federal legal holiday, the reporting package is due the next business day.

200.513 Responsibilities

Commenters recommended that the proposed language on quality control reviews be revised back to current OMB Circular A–133 for reviews that are risk based, which is more in line with agency capacity for reviews. The COFAR concurred with the recommendation. The COFAR further recommended further language to require a governmentwide audit quality project every six years similar to those done in the past to take a meaningful look at audit quality governmentwide and make substantive changes where needed.

Commenters noted that the responsibility to coordinate a management decision for cross-cutting findings is one that Federal agencies struggle to accomplish currently. The COFAR considered this and agreed, but recommended the language remain as an articulation of the best policy. The Single Audit resolution pilot project currently under supervision of the COFAR is aimed at addressing some of the difficulties currently found in implementation.

Commenters noted that the proposed requirement to submit management decisions to the Federal Audit Clearinghouse is one they concur with, but find that significant work would need to be done to coordinate the management decision process at a governmentwide level before this could feasibly be implemented. The COFAR concurred and struck the proposed language, as well as language that would allow other Federal agencies and pass-through entities to rely on cross-cutting management decisions from Cognizant or Oversight Agencies for Audit. The COFAR further notes that the Single Audit resolution pilot project currently under supervision of the COFAR will hopefully result in lessons learned and best practices that can facilitate the implementation of this policy in the future.

Commenters responded positively to new provisions that would strengthen the audit-follow-up process including the appointment of Senior Accountable Officials, implementation of metrics, and encouragement of cooperative audit resolution techniques. These revisions would effectively strengthen the follow-up process and reduce risk of repeated findings of waste, fraud, and abuse.

Some commenters posed questions about the role of the Senior Accountable Official for Audit and how it would align with responsibilities of the Office of Inspectors General. Similar questions were posed about the role of the designated key single audit coordinator. The COFAR considered these and recommended clarifications that the Senior Accountable Official is intended to be a policy official of the awarding agency who can be responsible for overseeing agency management's role in audit resolution. The COFAR also recommended the key single audit coordinator be renamed the key management single audit liaison, and notes that neither of these roles should in any way impact existing responsibilities of Inspectors General, but rather as the COFAR moves toward greater governmentwide coordination of the audit resolution process, these officials will be accountable for implementing that coordination and ensuring best results.

200.514 Scope of Audit

Several commenters indicated sections where they recommended further references to Generally Accepted Government Auditing Standards (GAGAS). The COFAR considered these but noted that language in this section states upfront that Single Audits shall be conducted in accordance with GAGAS, and recommends that further repetition of this language throughout the document be avoided as unnecessary. The COFAR further recommended conforming changes to eliminate duplicative references throughout the guidance.

200.515 Audit Reporting

Commenters recommended several minor technical edits throughout this section to align with auditing standards which the COFAR recommended. Commenters also recommended new language to note that nothing in this section should preclude combining of audit reporting required by this section with reporting required by section 200.512 Report Submission. The COFAR considered that such an addition would be useful if future advances in technology allow more consolidated reporting in the future, and recommended the addition.

200.516 Audit Findings

Some commenters requested that the proposed threshold for questioned costs of $25,000 be lowered, even below the existing threshold to a level of zero. Other commenters asked that it be raised higher than $25,000, and recommended that the level be set on a sliding scale as a percentage of total dollars awarded per program.

The COFAR considered these recommendations, and noted that for purposes of accountability, types of compliance requirements are reviewed with levels of materiality in mind. The questioned cost threshold serves in most cases to dramatically lower the level at which a finding would otherwise be considered material and be reported. The threshold is a valuable tool that provides assurance that questioned costs above it will under no circumstances go unreported regardless of materiality. Based on these considerations, the COFAR recommended that the proposed threshold of $25,000 be accepted.

200.718 Major Program Determination

The Government Accountability Office (GAO) commented that step 1 of the major program determination would be more easily understood if presented in a table. The COFAR concurred and recommended the new format for ease of comprehension among readers.

Commenters noted the inconsistency of the single audit threshold at $750,000, the Type A/B program threshold at $500,000, and the threshold for an entity to have a Type A program at $1,000,000. Commenters suggested that that the level of the threshold for major programs needed to be raised consistent with the threshold for the Single Audit as a whole at $750,000 to ensure consistent coverage. The COFAR recommended the modification that all three thresholds be the same at $750.000 consistent with the single audit threshold.

Commenters also recommended additional language to clarify the criteria under the step 2 determination of Type A programs which are low-risk. The COFAR recommended the addition.

200.520 Criteria for a Low-Risk Auditee

Members of the audit community and states commented on the criteria for a low-risk auditee that includes whether the financial statements were prepared in accordance with GAAP. Members of the audit community note that GAAP is the preferred method, and states note that state law sometimes provides for other methods of preparation. The COFAR considered this and recommended revised language to allow for exceptions where state law requires otherwise.

200.521 Management Decision

Upon review of the structure of the proposed guidance, the COFAR recommended that this section be moved to the end of the document.

Commenters suggested that auditees should be required to initiate corrective action as rapidly as possible, and not wait until audit reports are submitted. The COFAR recommended the addition. Commenters also noted that while they supported the ultimate publication of management decisions through the Federal audit clearinghouse, this is not a change that they are prepared to implement immediately. As a result, the COFAR recommended that this be added to the current Single Audit Resolution Pilot currently underway within the COFAR, and that based on the results of the pilot, the COFAR work with Federal agencies to begin implementation of publication of management decisions in 2016.

Appendix XI Compliance Supplement

While most commenters were in favor of the proposed reduction of the number of types of compliance requirements in the compliance supplement, many voiced concern about the process that would implement such changes. Comments questioned whether Federal agencies adding back provisions under special tests and provisions would result in increased administrative burden and requested that such fundamental changes be subject to a public notice and comment period. Since the Compliance Supplement is published as part of a separate process, no final changes are made at this time, but the COFAR recommended that any future changes to the compliance supplement be made based on available evidence on past findings and the potential impact of non-compliance for each type of compliance requirement. The COFAR further recommends that further public outreach be conducted prior to making any structural changes to the format of the compliance supplement to mitigate potential risks of an inadvertent increase in administrative burden.

List of Subjects in 2 CFR Parts 200, 215, 220, 225, and 230

Accounting, Auditing, Colleges and universities, State and local governments, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements.

Norman Dong,

Deputy Controller.

For the reasons stated in the preamble, under the Authority of the Chief Financial Officer Act of 1990 (31 U.S.C. 503), the Office of Management and Budget amends 2 CFR Chapters I and II as set forth below:

Chapter I—Office Of Management and Budget Governmentwide Guidance for Grants and Agreements

■ 1. Remove the subchapter headings for Subchapters A through G from Chapter I.

Chapter II—Office of Management and Budget Guidance

■ 2. The heading of chapter II is revised to read as set forth above.

■ 3. Add part 200 to read as follows:

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Acronyms

Sec.

Authority: 31 U.S.C. 503

Subpart A—Acronyms and Definitions

Acronyms

§ 200.0 Acronyms.

ACRONYM TERM

CAS Cost Accounting Standards
CFDA Catalog of Federal Domestic Assistance
CFR Code of Federal Regulations
CMIA Cash Management Improvement Act
COG Councils Of Governments
COSO Committee of Sponsoring Organizations of the Treadway Commission
D&B Dun and Bradstreet
DUNS Data Universal Numbering System
EPA Environmental Protection Agency
ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301–1461)
EUI Energy Usage Index
F&A Facilities and Administration
FAC Federal Audit Clearinghouse
FAIN Federal Award Identification Number
FAPIIS Federal Awardee Performance and Integrity Information System
FAR Federal Acquisition Regulation
FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109–282, as amended by section 6202(a) of Public Law 110–252 (31 U.S.C. 6101)
FICA Federal Insurance Contributions Act
FOIA Freedom of Information Act
FR Federal Register
FTE Full-time equivalent
GAAP Generally Accepted Accounting Principles
GAGAS Generally Accepted Government Accounting Standards
GAO General Accounting Office
GOCO Government owned, contractor operated
GSA General Services Administration
IBS Institutional Base Salary
IHE Institutions of Higher Education
IRC Internal Revenue Code
ISDEAA Indian Self-Determination and Education and Assistance Act
MTC Modified Total Cost
MTDC Modified Total Direct Cost
OMB Office of Management and Budget
PII Personally Identifiable Information
PRHP Post-retirement Health Plans
PTE Pass-through Entity
REUI Relative Energy Usage Index
SAM System for Award Management
SFA Student Financial Aid
SNAP Supplemental Nutrition Assistance Program
SPOC Single Point of Contact
TANF Temporary Assistance for Needy Families
TFM Treasury Financial Manual
U.S.C. United States Code
VAT Value Added Tax

§ 200.1 Definitions.

These are the definitions for terms used in this Part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections.

§ 200.2 Acquisition cost.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in

accordance with the non-Federal entity's regular accounting practices.

§200.3 Advance payment.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

§ 200.4 Allocation.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

§ 200.5 Audit finding.

Audit finding means deficiencies which the auditor is required by § 200.516 Audit findings, paragraph (a) to report in the schedule of findings and questioned costs.

§ 200.6 Auditee.

Auditee means any non-Federal entity that expends Federal awards which must be audited under Subpart F—Audit Requirements of this Part.

§ 200.7 Auditor.

Auditor means an auditor who is a public accountant or a Federal, state or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

§ 200.8 Budget.

Budget means the financial plan for the project or program that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

§ 200.9 Central service cost allocation plan.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

§ 200.10 Catalog of Federal Domestic Assistance (CFDA) number.

CFDA number means the number assigned to a Federal program in the CFDA.

§ 200.11 CFDA program title.

CFDA program title means the title of the program under which the Federal award was funded in the CFDA.

§ 200.12 Capital assets.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

§ 200.13 Capital expenditures.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

§ 200.14 Claim.

Claim means, depending on the context, either:

(a) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(1) The payment of money in a sum certain;

(2) The adjustment or interpretation of the terms and conditions of the Federal award; or

(3) Other relief arising under or relating to a Federal award.

(b) A request for payment that is not in dispute when submitted.

§ 200.15 Class of Federal awards.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

§ 200.16 Closeout.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.343 Closeout.

§ 200.17 Cluster of programs.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.331 Requirements for pass-through entities, paragraph (a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518 Major program determination, and, with the exception of R&D as described in § 200.501 Audit requirements, paragraph (c), whether a program-specific audit may be elected.

§ 200.18 Cognizant agency for audit.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513 Responsibilities, paragraph (a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site.

§ 200.19 Cognizant agency for indirect costs.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(a) For IHEs: Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph C.10.

(b) For nonprofit organizations: Appendix IV to Part 200—Indirect (F&A) Costs Identification and

Assignment, and Rate Determination for Nonprofit Organizations, paragraph C.1.

(c) For state and local governments: Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans, paragraph F.1.

§ 200.20 Computing devices.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or ''peripherals'') for printing, transmitting and receiving, or storing electronic information. See also §§ 200.94 Supplies and 200.58 Information technology systems.

§ 200.21 Compliance supplement.

Compliance supplement means Appendix XI to Part 200—Compliance Supplement (previously known as the Circular A–133 Compliance Supplement).

§ 200.22 Contract.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this Part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see § 200.92 Subaward).

§ 200.23 Contractor.

Contractor means an entity that receives a contract as defined in § 200.22 Contract.

§ 200.24 Cooperative agreement.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

(b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) The term does not include:

(1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(2) An agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

§ 200.25 Cooperative audit resolution.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(a) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(b) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(c) A focus on current conditions and corrective action going forward;

(d) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(e) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

§ 200.26 Corrective action.

Corrective action means action taken by the auditee that:

(a) Corrects identified deficiencies;

(b) Produces recommended improvements; or

(c) Demonstrates that audit findings are either invalid or do not warrant auditee action.

§ 200.27 Cost allocation plan.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

§ 200.28 Cost objective.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E—Cost Principles of this Part. See also §§ 200.44 Final cost objective and 200.60 Intermediate cost objective.

§ 200.29 Cost sharing or matching.

Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). See also § 200.306 Cost sharing or matching.

§ 200.30 Cross-cutting audit finding.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

§ 200.31 Disallowed costs.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

§ 200.32 Data Universal Numbering System (DUNS) number.

DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify entities. A non-Federal entity is required to have a DUNS number in order to apply for, receive, and report on a Federal award. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at *http://fedgov.dnb.com/webform)*.

§ 200.33 Equipment.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also §§ 200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

§ 200.34 Expenditures.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(a) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(b) For reports prepared on a cash basis, expenditures are the sum of:
(1) Cash disbursements for direct charges for property and services;
(2) The amount of indirect expense charged;
(3) The value of third-party in-kind contributions applied; and
(4) The amount of cash advance payments and payments made to subrecipients.
(c) For reports prepared on an accrual basis, expenditures are the sum of:
(1) Cash disbursements for direct charges for property and services;
(2) The amount of indirect expense incurred;
(3) The value of third-party in-kind contributions applied; and
(4) The net increase or decrease in the amounts owed by the non-Federal entity for:
(i) Goods and other property received;
(ii) Services performed by employees, contractors, subrecipients, and other payees; and
(iii) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

§ 200.35 Federal agency.

Federal agency means an ''agency'' as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

§ 200.36 Federal Audit Clearinghouse (FAC).

FAC means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by Subpart F—Audit Requirements of this Part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is: *http://harvester.census.gov/sac/*. Any future updates to the location of the FAC may be found at the OMB Web site.

§ 200.37 Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

§ 200.38 Federal award.

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section: (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or
(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.
(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).
(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

§ 200.39 Federal award date.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

§ 200.40 Federal financial assistance.

(a) For grants and cooperative agreements, *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:
(1) Grants;
(2) Cooperative agreements;
(3) Non-cash contributions or donations of property (including donated surplus property);
(4) Direct appropriations;
(5) Food commodities; and
(6) Other financial assistance (except assistance listed in paragraph (b) of this section).
(b) For Subpart F—Audit Requirements of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:
(1) Loans;
(2) Loan Guarantees;
(3) Interest subsidies; and
(4) Insurance.
(c) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502 Basis for determining Federal awards *expended*, paragraph (h) and (i) of this Part.

§ 200.41 Federal interest.

Federal interest means, for purposes of § 200.329 Reporting on real property or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:
(a) Federal share of total project costs; and
(b) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

§ 200.42 Federal program.

Federal program means:
(a) All Federal awards which are assigned a single number in the CFDA.
(b) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose should be combined and considered one program.
(c) Notwithstanding paragraphs (a) and (b) of this definition, a cluster of programs. The types of clusters of programs are:
(1) Research and development (R&D);
(2) Student financial aid (SFA); and
(3) ''Other clusters,'' as described in the definition of Cluster of Programs.

§ 200.43 Federal share.

Federal share means the portion of the total project costs that are paid by Federal funds.

§ 200.44 Final cost objective.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also §§ 200.28 Cost objective and 200.60 Intermediate cost objective.

§ 200.45 Fixed amount awards.

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b) and 200.332 Fixed amount subawards.

§ 200.46 Foreign public entity.

Foreign public entity means:
(a) A foreign government or foreign governmental entity;
(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international

organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(c) An entity owned (in whole or in part) or controlled by a foreign government; or

(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

§ 200.47 Foreign organization.

Foreign organization means an entity that is:

(a) A public or private organization located in a country other than the United States and its territories that are subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(b) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(c) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(d) An organization located in a country other than the United States not recognized as a Foreign Public Entity.

§ 200.48 General purpose equipment.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also Equipment and Special Purpose Equipment.

§ 200.49 Generally Accepted Accounting Principles (GAAP).

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

§ 200.50 Generally Accepted Government Auditing Standards (GAGAS).

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

§ 200.51 Grant agreement.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) Does not include an agreement that provides only:

(1) Direct United States Government cash assistance to an individual;

(2) A subsidy;

(3) A loan;

(4) A loan guarantee; or

(5) Insurance.

§ 200.52 Hospital.

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

§ 200.53 Improper payment.

(a) *Improper payment* means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(b) *Improper payment* includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

§ 200.54 Indian tribe (or "federally recognized Indian tribe").

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

§ 200.55 Institutions of Higher Education (IHEs).

IHE is defined at 20 U.S.C. 1001.

§ 200.56 Indirect (facilities & administrative (F&A)) costs.

Indirect (F&A) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

§ 200.57 Indirect cost rate proposal.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) through Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals of this Part.

§ 200.58 Information technology systems.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also §§ 200.20 Computing devices and 200.33 Equipment.

§ 200.59 Intangible property.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

§ 200.60 Intermediate cost objective.

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also § 200.28 Cost objective and § 200.44 Final cost objective.

§ 200.61 Internal controls.

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;

(b) Reliability of reporting for internal and external use; and

(c) Compliance with applicable laws and regulations.

§ 200.62 Internal control over compliance requirements for Federal awards.

Internal control over compliance requirements for Federal awards means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards:

(a) Transactions are properly recorded and accounted for, in order to:

(1) Permit the preparation of reliable financial statements and Federal reports;

(2) Maintain accountability over assets; and

(3) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(b) Transactions are executed in compliance with:

(1) Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and

(2) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and

(c) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

§ 200.63 Loan.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of § 200.80 Program income.

(a) The term ''direct loan'' means a disbursement of funds by the Federal government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(b) The term ''direct loan obligation'' means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(c) The term ''loan guarantee'' means any Federal government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(d) The term ''loan guarantee commitment'' means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

§ 200.64 Local government.

Local government means any unit of government within a state, including a:

(a) County;

(b) Borough;

(c) Municipality;

(d) City;

(e) Town;

(f) Township;

(g) Parish;

(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(i) Special district;

(j) School district;

(k) Intrastate district;

(l) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and

(m) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

§ 200.65 Major program.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 Major program determination or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503 Relation to other audit requirements, paragraph (e).

§ 200.66 Management decision.

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

§ 200.67 Micro-purchase.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is $3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

§ 200.68 Modified Total Direct Cost (MTDC).

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first $25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward and subcontract in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

§ 200.69 Non-Federal entity.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

§ 200.70 Nonprofit organization.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

§ 200.71 Obligations.

When used in connection with a non-Federal entity's utilization of funds under a Federal award, *obligations* means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

§ 200.72 Office of Management and Budget (OMB).

OMB means the Executive Office of the President, Office of Management and Budget.

§ 200.73 Oversight agency for audit.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513 Responsibilities, paragraph (b).

§ 200.74 Pass-through entity.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

§ 200.75 Participant support costs.

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

§ 200.76 Performance goal.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

§ 200.77 Period of performance.

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§ 200.210 Information contained in a Federal award paragraph (a)(5) and 200.331 Requirements for pass-through entities, paragraph (a)(1)(iv)).

§ 200.78 Personal property.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

§ 200.79 Personally Identifiable Information (PII).

PII means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

§ 200.80 Program income.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See § 200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.

See also § 200.407 Prior written approval (prior approval). See also 35 U.S.C. 200–212 ''Disposition of Rights in Educational Awards'' applies to inventions made under Federal awards.

§ 200.81 Property.

Property means real property or personal property.

§ 200.82 Protected Personally Identifiable Information (Protected PII).

Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. (See also § 200.79 Personally Identifiable Information (PII)).

§ 200.83 Project cost.

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

§ 200.84 Questioned cost.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(b) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

§ 200.85 Real property.

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

§ 200.86 Recipient.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also § 200.69 Non-Federal entity.

§ 200.87 Research and Development (R&D).

R&D means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. 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.

''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.

§ 200.88 Simplified acquisition threshold.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this Part, the simplified acquisition threshold is $150,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

§ 200.89 Special purpose equipment.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also §§ 200.33 Equipment and 200.48 General purpose equipment.

§ 200.90 State.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

§ 200.91 Student Financial Aid (SFA).

SFA means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070–1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

§ 200.92 Subaward.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

§ 200.93 Subrecipient.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

§ 200.94 Supplies.

Supplies means all tangible personal property other than those described in § 200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. See also
§§ 200.20 Computing devices and 200.33 Equipment.

§ 200.95 Termination.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

§ 200.96 Third-party in-kind contributions.

Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that—

(a) Benefit a federally assisted project or program; and

(b) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

§ 200.97 Unliquidated obligations.

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

§ 200.98 Unobligated balance.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

§ 200.99 Voluntary committed cost sharing.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.

Subpart B—General Provisions

§ 200.100 Purpose.

(a)(1) This Part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101 Applicability. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 Exceptions and 200.210 Information contained in a Federal award, or unless specifically required by Federal statute, regulation, or Executive Order.

(2) This Part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) Administrative requirements. Subparts B through D of this Part set

forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.

(c) Cost Principles. Subpart E—Cost Principles of this Part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) Single Audit Requirements and Audit Follow-up. Subpart F—Audit Requirements of this Part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.

(e) For OMB guidance to Federal awarding agencies on Challenges and Prizes, please see M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

§ 200.101 Applicability.

(a) General applicability to Federal agencies. The requirements established in this Part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(b)(1) Applicability to different types of Federal awards. The following table describes what portions of this Part apply to which types of Federal awards. The terms and conditions of Federal awards (including this Part) flow down to subawards to subrecipients unless a particular section of this Part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this Part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D—Post Federal Award Requirements of this Part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, but not any requirements in this Part directed towards Federal awarding agencies unless the requirements of this Part or the terms and conditions of the Federal award indicate otherwise.

The following portions of the Part:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards:
This table must be read along with the other provisions of this section		
Authority: 31 U.S.C. 503		
Subpart A—Acronyms and Definitions	—All.	
Subpart B—General Provisions, except for §§ 200.111 English *language,* 200.112 Conflict of *interest,* 200.113. Mandatory *disclosures*	—All.	
200.111 English *language,* 200.112 Conflict of *interest,* and 200.113.	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance.
Mandatory *disclosures*		—Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts.
Subparts C–D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies, and insurance. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts.
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles	—Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement subcontracts under these contracts in accordance with the FAR.	—Grant agreements and cooperative agreements providing food commodities. —Fixed amount awards. —Agreements for: loans, loan guarantees, interest subsidies, insurance. —Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).
Subpart F—Audit Requirements	—All.	

(2) Federal award of cost-reimbursement contract under the FAR to a non-Federal entity. When a non-Federal entity is awarded a cost-reimbursement contract, only Subpart D—Post Federal Award Requirements of this Part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards (in addition to any FAR related requirements for subaward monitoring), Subpart E—Cost Principles of this Part and Subpart F—Audit Requirements of this Part are incorporated by reference into the contract. However, when the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this Part except for Subpart F—Audit Requirements of this Part when they are in conflict. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR subpart 31.2 and subpart 31.603 are always unallowable. For requirements other than those covered in Subpart D—Post Federal Award Requirements of this Part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, Subpart E—Cost Principles of this Part and Subpart F—Audit Requirements of this Part, the terms of the contract and the FAR apply.

(3) With the exception of Subpart F—Audit Requirements of this Part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this Part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450–458ddd–2.

(c) Federal agencies may apply subparts A through E of this Part to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

(d) Except for § 200.202 Requirement to provide public notice of Federal financial assistance programs and §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards of Subpart D—Post Federal Award Requirements of this Part, the requirements in Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards, Subpart D—Post Federal Award Requirements of this Part, and Subpart E—Cost Principles of this Part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grant Awards for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary award program) and both the Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant Award (42 U.S.C. 300x–21 to 300x–35 and 42 U.S.C. 300x–51 to 300x64) and the Mental Health Service for the Homeless Block Grant Award (42 U.S.C. 300x to 300x–9) under the Public Health Services Act.

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858)

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858)

(e) Except for § 200.202 Requirement to provide public notice of Federal financial assistance programs the guidance in Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this Part does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance to Needy Families (title IV–A of the Social Security Act, 42 U.S.C. 601–619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Social Security Act, 42 U.S.C. 651–669b);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act, 42 U.S.C. 670–679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act, as amended); and

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (e)(1) of this section;

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e));

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753),

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755),

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a),

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761), and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772),

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773), and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. section 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. section 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. section 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. section 612c note.

§ 200.102 Exceptions.

(a) With the exception of Subpart F—Audit Requirements of this Part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this Part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Part will be permitted only in unusual circumstances. Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at *www.whitehouse.gov/omb*.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs except where otherwise required by law or where OMB or other approval is expressly required by this Part. No case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements of this Part.

(c) The Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, required by Federal statutes or regulations except for the requirements in Subpart F—Audit Requirements of this Part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of this Part, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this Part.

(d) On a case-by-case basis, OMB will approve new strategies for Federal awards when proposed by the Federal awarding agency in accordance with OMB guidance (such as M–13–17) to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across Federal programs. Proposals may draw on the innovative program designs discussed in M–13–17 to expand or improve the use of effective practices in delivering Federal financial assistance while also encouraging innovation in service delivery. Proposals submitted to OMB in accordance with M–13–17 may include requests to waive requirements other than those in Subpart F—Audit Requirements of this Part.

§ 200.103 Authorities.

This Part is issued under the following authorities.

(a) Subpart B—General Provisions of this Part through Subpart D—Post Federal Award Requirements of this Part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 31 U.S.C. 1111 (Improving Economy and Efficiency of the United States Government), 41 U.S.C. 1101–1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President''), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507), as well as The Federal Program Information Act (Public Law 95–220 and Public Law 98–169, as amended, codified at 31 U.S.C. 6101–6106).

(b) Subpart E—Cost Principles of this Part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101–1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503–504); Reorganization Plan No. 2 of 1970; and Executive Order No. 11541, ''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.''

(c) Subpart F—Audit Requirements of this Part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507).

§ 200.104 Supersession.

As described in § 200.110 Effective/applicability date, this Part supersedes the following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations:

(a) A–21, ''Cost Principles for Educational Institutions'' (2 CFR Part 220);

(b) A–87, ''Cost Principles for State, Local and Indian Tribal Governments'' (2 CFR Part 225) and also **Federal Register** notice 51 FR 552 (January 6, 1986);

(c) A–89, ''Federal Domestic Assistance Program Information'';

(d) A–102, ''Grant Awards and Cooperative Agreements with State and Local Governments'';

(e) A–110, ''Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations'' (codified at 2 CFR 215);

(f) A–122, ''Cost Principles for Non-Profit Organizations'' (2 CFR Part 230);

(g) A–133, ''Audits of States, Local Governments and Non-Profit Organizations,''; and

(h) Those sections of A–50 related to audits performed under Subpart F—Audit Requirements of this Part.

§ 200.105 Effect on other issuances.

For Federal awards subject to this Part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this Part must be superseded upon implementation of this Part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 200.102 Exceptions.

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in this Part. Federal agencies making Federal awards to non-Federal entities must implement the language in the Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this Part through Subpart F—Audit Requirements of this Part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

§ 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this Part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 200.108 Inquiries.

Inquiries concerning this Part may be directed to the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries should be addressed to the Federal awarding agency, cognizant agency for indirect costs, cognizant or

oversight agency for audit, or pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this Part at least every five years after December 26, 2013.

§ 200.110 Effective/applicability date.

(a) The standards set forth in this Part which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

(b) The standards set forth in Subpart F—Audit Requirements of this Part and any other standards which apply directly to Federal agencies will be effective December 26, 2013 and will apply to audits of fiscal years beginning on or after December 26, 2014.

§ 200.111 English language.

(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR Part 180 and 31 U.S.C. 3321).

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 200.200 Purpose.

(a) Sections 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts through 200.208 Certifications and representations. Prescribe instructions and other pre-award matters to be used in the announcement and application process.

(b) Use of §§ 200.203 Notices of funding opportunities, 200.204 Federal awarding agency review of merit of proposals, 200.205 Federal awarding agency review of risk posed by applicants, and 200.207 Specific conditions, is required only for competitive Federal awards, but may also be used by the Federal awarding agency for non-competitive awards where appropriate or where required by Federal statute.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.332 Fixed amount subawards, may use fixed amount awards (see § 200.45 Fixed amount awards) to which the following conditions apply:

(1) Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award with assurance that the non-Federal entity will realize no increment above actual cost. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the ''milestone'' or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal awarding agency must notify the public of Federal programs in the Catalog of Federal Domestic Assistance (CFDA), maintained by the General Services Administration (GSA).

(1) The CFDA, or any OMB-designated replacement, is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal government.

(2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission.

(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that

has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must submit the following information to GSA:

(1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A–11;

(2) Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) Projected total amount of funds available for the program. Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) Anticipated Source of Available Funds: The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));

(5) General Eligibility Requirements: The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and

(6) Applicability of Single Audit Requirements as required by Subpart F—Audit Requirements of this Part.

§ 200.203 Notices of funding opportunities.

For competitive grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) Summary Information in Notices of Funding Opportunities. The Federal awarding agency must display the following information posted on the OMB-designated governmentwide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Catalog of Federal Financial Assistance (CFDA) Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) Full Text of Funding Opportunities. The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I to Part 200—Full Text of Notice of Funding Opportunity to this Part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414 Indirect (F&A) costs, paragraph (b)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also § 200.205 Federal awarding agency review of risk posed by applicants. See also 2 CFR Part 27.

(6) Federal Award Administration Information. See also § 200.210 Information contained in a Federal award.

§ 200.204 Federal awarding agency review of merit of proposals.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this Part, Full text of the Funding Opportunity.) See also § 200.203 Notices of funding opportunities.

§ 200.205 Federal awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information, such as Federal Awardee Performance and Integrity Information System (FAPIIS), Dun and Bradstreet, and ''Do Not Pay''. See also suspension and debarment requirements at 2 CFR Part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.203 Notices of funding opportunities.

(c) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this Part;

(3) History of performance. The applicant's record in managing Federal

awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits performed under Subpart F—Audit Requirements of this Part or the reports and findings of any other available audits; and

(5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(d) In addition to this review, the Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR Part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

§ 200.206 Standard application requirements.

(a) Paperwork clearances. The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.207 Specific conditions.

(a) Based on the criteria set forth in § 200.205 Federal awarding agency review of risk posed by applicants or when an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award, or failure to meet expected performance goals as described in § 200.210 Information contained in a Federal award, or is not otherwise responsible, the Federal awarding agency or pass-through entity may impose additional specific award conditions as needed under the procedure specified in paragraph (b) of this section. These additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(b) The Federal awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

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

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable, and

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

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

§ 200.208 Certifications and representations.

Unless prohibited by Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 200.209 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458 Pre-award costs.

§ 200.210 Information contained in a Federal award.

A Federal award must include the following information:

(a) General Federal Award Information. The Federal awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match registered name in DUNS);

(2) Recipient's DUNS number (see § 200.32 Data Universal Numbering System (DUNS) number);

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see § 200.39 Federal award date);

(5) Period of Performance Start and End Date;

(6) Amount of Federal Funds Obligated by this action;

(7) Total Amount of Federal Funds Obligated;

(8) Total Amount of the Federal Award;

(9) Budget Approved by the Federal Awarding Agency;

(10) Total Approved Cost Sharing or Matching, where applicable;

(11) Federal award project description, (to comply with statutory requirements (e.g., FFATA));

(12) Name of Federal awarding agency and contact information for awarding official,

(13) CFDA Number and Name;

(14) Identification of whether the award is R&D; and

(15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs).

(b) General Terms and Conditions

(1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) Administrative requirements implemented by the Federal awarding agency as specified in this Part.

(ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the Web site at which the Federal awarding agency maintains the general terms and conditions.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(c) Federal Awarding Agency, Program, or Federal Award Specific Terms and Conditions. The Federal awarding agency may include with each

Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in § 200.203 Notices of funding opportunities) in addition to being included in a Federal award. See also § 200.206 Standard application requirements.

(d) Federal Award Performance Goals. The Federal awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The Federal awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A–11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the Federal awarding agency.

§ 200.211 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide Web site (at time of publication, *www.USAspending.gov*).

(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

Subpart D—Post Federal Award Requirements Standards for Financial and Program Management

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR Part 170 Reporting Subaward and Executive Compensation Information. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

§ 200.301 Performance measurement.

The Federal awarding agency must require the recipient to use OMB-approved governmentwide standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned governmentwide standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 200.210 Information contained in a Federal award. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made.

§ 200.302 Financial management.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450 Lobbying.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.327 Financial reporting and 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its

records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303 Internal controls.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305 Payment.

(7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this Part and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States and the ''Internal Control Integrated Framework'', issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

§ 200.304 Bonds.

The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal government.

(b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal government's interest.

(c) Where bonds are required in the situations described above, the bonds must 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.''

§ 200.305 Payment.

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 ''Rules and Procedures for Efficient Federal-State Funds Transfers'' and TFM 4A–2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302 Financial management paragraph (f). Except as noted elsewhere in this Part, Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this Part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and should comply with applicable guidance in 31 CFR Part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1601).

(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.207 Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient

working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§ 200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this Part, 200.338 Remedies for Noncompliance, or the following apply:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables.'' Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.342 Effects of suspension and termination.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.

(i) The non-Federal entity receives less than $120,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) 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.

(iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expense.

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. See also §§ 200.414 Indirect (F&A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under Subpart E—Cost Principles of this Part;

(5) Are not paid by the Federal government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal awarding agency; and

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

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with § 200.434 Contributions and donations. If a Federal awarding agency authorizes the non-Federal entity to donate

buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in (1) above at the time of donation.

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

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with § 200.414 Indirect (F&A) costs, paragraph (d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also § 200.420 Considerations for selected items of cost.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity 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 non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR Part 24.

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

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

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

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

§ 200.307 Program income.

(a) General. Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) Cost of generating program income. If authorized by Federal regulations or the Federal award, costs incidental 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 Federal award.

(c) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

(d) Property. Proceeds from the sale of real property or equipment are not program income; such proceeds will be handled in accordance with the requirements of Subpart D—Post Federal Award Requirements of this Part, Property Standards §§ 200.311 Real property and 200.313 Equipment, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) Use of program income. If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) Deduction. Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) Addition. With prior approval of the Federal awarding agency, program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income

must be used for the purposes and under the conditions of the Federal award.

(3) Cost sharing or matching. With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) Income after the period of performance. There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.343 Closeout.

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see § 200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

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

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

(3) The disengagement from the project 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 inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this Part or 45 CFR Part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,'' or 48 CFR Part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(5) The transfer of funds budgeted for participant support costs as defined in § 200.75 Participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the amount of approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB. See also §§ 200.102 Exceptions and 200.407 Prior written approval (prior approval).

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency are authorized, at their option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

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

(ii) The extension requires additional Federal funds.

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

(3) Carry forward unobligated balances to subsequent periods of performance.

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

(e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407 Prior written approval (prior approval)).

(g) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E—Cost Principles of this Part.

(4) No other prior approval requirements for budget revisions may be imposed unless a deviation has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to

obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 Period of performance.

A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance and any costs incurred before the Federal awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity.

Property Standards

§ 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) Use. Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§ 200.312 Federally-owned and exempt property.

(a) Title to federally-owned property remains vested in the Federal government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.

(b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, 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 Executive Order 12999, ''Educational Technology: Ensuring Opportunity for All Children in the Next Century.''). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt federally-owned property means property acquired under a Federal award the title based upon the explicit terms and conditions of the Federal award that indicate the Federal awarding agency has chosen to vest in the non-Federal entity without further obligation to the Federal government or under conditions the Federal agency considers appropriate. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt federally-owned property acquired under the Federal award remains with the Federal government.

§ 200.313 Equipment.

See also § 200.439 Equipment and other capital expenditures.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) Use.

(1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by

the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal government, provided that such use will not interfere with the work on the projects or
program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services 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.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

(2) Except as provided in § 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of $5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

§ 200.314 Supplies.

See also § 200.453 Materials and supplies costs, including costs of computing devices.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 Equipment, paragraph (e)(2) for the calculation methodology.

(b) As long as the Federal government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property (see § 200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must 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 must occur in accordance with the provisions in § 200.313 Equipment paragraph (e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.''

(d) The Federal government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e) Freedom of Information Act (FOIA).

(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal 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 must request, and the non-Federal entity must 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 Federal awarding 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 Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means 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. ''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.

(3) Research data means 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.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

Procurement Standards

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest 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 or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities 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 must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equivalent'' description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $3,000 (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§ 200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed,

the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this Part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this Part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a ''brand name'' product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this Part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) 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.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Performance and Financial Monitoring and Reporting

§ 200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

200.328 Monitoring and reporting program performance.

(a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.331 Requirements for pass-through *entities.*

(b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity

to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this Part if not needed.

§ 200.329 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

Subrecipient Monitoring and Management

§ 200.330 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See § 200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal Award Identification.

(i) Subrecipient name (which must match registered name in DUNS);

(ii) Subrecipient's DUNS number (see § 200.32 Data Universal Numbering System (DUNS) *number*);

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see § 200.39 Federal award date);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this Part), or a de minimis indirect cost rate as defined in § 200.414 Indirect (F&A) costs, paragraph (b) of this Part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance, and Subpart F—Audit Requirements of this Part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this Part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and programmatic reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this Part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.338 Remedies for noncompliance of this Part and in program regulations.

§ 200.332 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

Record Retention and Access

§ 200.333 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a

subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

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

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.334 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.335 Methods for collection, transmission and storage of information.

In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.336 Access to records.

(a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 200.337 Restrictions on public access to records

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315 Intangible property. Unless required by Federal, state, or local statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.338 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the

deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 200.339 Termination

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity for cause;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

§ 200.340 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.

(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR Part 77. See also the requirements for Suspension and Debarment at 2 CFR Part 180.

§ 200.341 Opportunities to object, hearings and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

§ 200.342 Effects of suspension and termination.

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

Closeout

§ 200.343 Closeout.

The Federal agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by or the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that is not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A–129 and see § 200.345 Collection of amounts due for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property.

(g) The Federal awarding agency or pass-through entity should complete all

closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.

Post-Closeout Adjustments and Continuing Responsibilities

§ 200.344 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following.

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F—Audit Requirements of this Part.

(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this Part, §§ 200.310 Insurance Coverage through 200.316 Property trust relationship.

(5) Records retention as required in Subpart D—Post Federal Award Requirements of this Part, §§ 200.333 Retention requirements for records through 200.337 Restrictions on public access to records.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

Collection of Amounts Due

§ 200.345 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

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

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR Parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Cost Principles

General Provisions

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See § 200.56 Indirect (facilities & administrative (F&A)) costs.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award. See also § 200.307 Program income.

§ 200.401 Application.

(a) General. These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also Subpart A—Acronyms and Definitions, §§ 200.45 Fixed amount awards and 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(4) Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).

(5) Other awards under which the non-Federal entity is not required to account to the Federal government for actual costs incurred.

(b) Federal Contract. Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR Part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR Parts 9904 or 9905 takes precedence over the cost principles in this Subpart E—Cost Principles of this Part with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the

cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of § 200.449 Interest. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) Exemptions. Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of this Part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

Basic Considerations

§ 200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this Part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of this Part.

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

§ 200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this Part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.439 Equipment and other capital expenditures.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this Part.

§ 200.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-

type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 Depreciation and 200.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this Part:

(a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(b) § 200.306 Cost sharing or matching;

(c) § 200.307 Program income;

(d) § 200.308 Revision of budget and program plans;

(e) § 200.332 Fixed amount subawards;

(f) § 200.413 Direct costs, paragraph (c);

(g) § 200.430 Compensation—personal services, paragraph (h);

(h) § 200.431 Compensation—fringe benefits;

(i) § 200.438 Entertainment costs;

(j) § 200.439 Equipment and other capital expenditures;

(k) § 200.440 Exchange rates;

(l) § 200.441 Fines, penalties, damages and other settlements;

(m) § 200.442 Fund raising and investment management costs;

(n) § 200.445 Goods or services for personal use;

(o) § 200.447 Insurance and indemnification;

(p) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(q) § 200.455 Organization costs;

(r) § 200.456 Participant support costs;

(s) § 200.458 Pre-award costs;

(t) § 200.462 Rearrangement and reconversion costs;

(u) § 200.467 Selling and marketing costs; and

(v) § 200.474 Travel costs.

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this Part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 200.412 Classification of costs through 200.415 Required certifications) of this subpart;

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 Cost allocation plans and indirect cost proposals and 200.417 Interagency service) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this Part, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance.

§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of

unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect (F&A) Costs

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) General. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) Application to Federal awards. Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) Minor items. Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454 Memberships, subscriptions, and professional activity costs.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 Advertising and public relations and 200.450 Lobbying.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432 Conferences.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431 Compensation—fringe benefits.

§ 200.414 Indirect (F&A) costs.

(a) Facilities and Administration Classification. For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the ''Administration'' category; for institutions of higher education, they are included in the ''Facilities'' category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than $10 million dollars in direct Federal funding.

(b) Diversity of nonprofit organizations. Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) Federal Agency Acceptance of Negotiated Indirect Cost Rates. (See also § 200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented

justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.331 Requirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans; and

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B) may elect to charge a de minimis rate of) 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a federally negotiated indirect cost rate may apply for a one-time extension of a current negotiated indirect cost rates for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate.

§ 200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).''

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414 Indirect (F&A) costs, paragraph (f), the Federal government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major corporation as defined in § 200.414 Indirect (F&A) costs, paragraph (a).

(d) See also § 200.450 Lobbying for another required certification.

Special Considerations for States, Local Governments and Indian Tribes

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in Appendices IV, V and VI to this part.

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200—State/Local Government and Indian Tribe- Wide Central Service Cost Allocation Plans.

Special Considerations For Institutions Of Higher Education

§ 200.418 Costs incurred by states and local government

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs, of this subpart;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this Part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal government.

§ 200.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling $50 million or more in Federal awards subject to this Part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR Part 30 (FAR Part 30).

(b) Disclosure statement. An IHE that receives aggregate Federal awards totaling $50 million or more subject to this Part during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS–2), which is reproduced in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). With the approval of the cognizant agency for indirect costs, an IHE may meet the DS–2 submission by submitting the DS–2 for each business unit that received $50 million or more in Federal awards.

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS–2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs six months in advance of a disclosed practices being changed to comply with a new or modified standard, or when practices are changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period. Amendments of a DS–2 may be submitted at any time. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

(3) Cost and funding adjustments. Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this Part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) Overpayments. Excess amounts paid in the aggregate by the Federal government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

(5) Compliant cost accounting practice changes. Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) Responsibilities. The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS–2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this Part.

(iii) Distribute to all affected Federal awarding agencies any DS–2 determination of adequacy or noncompliance.

General Provisions for Selected Items of Cost

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II. Basic Considerations of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 Factors affecting allowability of *costs*

must be applied in determining allowability. See also § 200.102 Exceptions.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463 Recruiting costs);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term ''public relations'' includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432 Conferences), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444 General costs of government, applicable to states, local governments and Indian tribes.

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 200.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), as implemented by requirements of this Part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and Subpart F—Audit Requirements of this Part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F—Audit Requirements of this Part because its expenditures under Federal awards are less than $750,000 during the non-Federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D—Post Federal Award Requirements of this Part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Subpart F—Audit Requirements of this Part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428 Collections of improper payments.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305 *Payment.*

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are

unallowable, except as provided for in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph (B)(9) Student Administration and Services, as student activity costs.

§ 200.430 Compensation—personal services.

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this Part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) Professional activities outside the non-Federal entity. Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) Unallowable costs.

(1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) Special considerations. Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) Nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) Institutions of higher education (IHEs).

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (h)(9) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the

period during which the faculty member worked on the award.

(3) Intra-Institution of Higher Education (IHE) consulting. Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) Periods outside the academic year.

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) Part-time faculty. Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) Sabbatical leave costs. Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn ''extra service pay'' in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) Standards for Documentation of Personnel Expenses

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, ''rolling'' time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non- Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

§ 200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) Leave. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable as indirect costs in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) Insurance. See also § 200.447 Insurance and indemnification, paragraphs (d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for

workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy and they are allocated as indirect costs.

(f) Automobiles. That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) Pension Plan Costs. Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the ''Cost Accounting Standard for Composition and Measurement of Pension Costs'' (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) Post-Retirement Health. Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the Federal government's contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the entity in the form of a refund, withdrawal, or other credit.

(i) Severance Pay.

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are

allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j)(1) For IHEs only. Fringe benefits in the form of tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate education under IRC Section 117(d) as amended, provided that the benefit does not discriminate in favor of highly compensated employees. Federal reimbursement of tuition or remission of tuition is also limited to the institution for which the employee works. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs of this subpart;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal government.

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

§ 200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (b)(1) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this Part (see also §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this Part and 200.403 Factors affecting allowability of costs); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity's ''contingency reserve'' or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 Compensation—fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 200.447 Insurance and indemnification.

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with § 200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished

to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not allowable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 200.306 Cost sharing or matching.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this Part. The value of the donations must be determined in accordance with §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) Definitions for the purposes of this section.

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

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (41 U.S.C. 1320a–7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) Costs.

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal government, a state, local government, or foreign government, or joined by the Federal government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award for default by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party,

either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal government must generally withhold payment of such costs. However, if in its best interests, the Federal government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices IV through VIII.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For this purpose, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, or where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

(a) See §§ 200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465 Rental costs of real property and equipment.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding, and prior approval by the Federal awarding agency. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460 Proposal costs.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413 Direct costs.

§ 200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 Depreciation and 200.439 Equipment and other capital expenditures.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 46*200.447 Insurance and indemnification.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 Insurance Coverage through 200.316 Property trust relationship.

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.474 Travel costs). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils Of Governments (COGs) (see § 200.64 Local government), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff is allowable. Up to 50% of these costs can be included in the indirect cost calculation without documentation.

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431 Compensation—fringe benefits). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and

severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

§ 200.448 Intellectual property.

(a) Patent costs.

(1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal government to be conveyed to the Federal government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459 Professional service costs).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal government.

(b) Royalties and other costs for use of patents and copyrights.

(1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed should not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

§ 200.449 Interest.

(a) General. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets is defined as noted in § 200.12 Capital assets. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) Conditions for all non-Federal entities.

(1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease

may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, ''initial equity contribution'' means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to ''full coverage'' under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201–2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), ''Cost of Money as an Element of the Cost of Facilities Capital'', and CAS 417 (48 CFR 9904.417), ''Cost of Money as an Element of the Cost of Capital Assets Under Construction''.

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, ''New Restrictions on Lobbying'' published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget ''Governmentwide Guidance for New Restrictions on Lobbying'' and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A)The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the

performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily
put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of ''lobbying'' or ''influencing legislation'' by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and ''grass roots'' lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§ 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911–2(c)(1)–(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413 Direct costs.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415 Required certifications.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 Financial management with respect to lobbying costs during any particular calendar month when:

(*1*) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(*2*) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this Part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is

lobbying are unallowable. See also § 200.450 Lobbying.

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.75 Participant support costs are allowable with the prior approval of the Federal awarding agency.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for routine and security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439 Equipment and other capital expenditures.

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal government. In addition, legal and related services are limited under § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§ 200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part as a direct cost to a Federal award, and the newly hired employee

resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal government. See also § 200.464 Relocation costs of employees.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and

(4) Meet the definition of ''direct cost'' as described in the applicable cost principles.

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this § 200.464 Relocation costs of employees, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under ''less-than-arm's-length'' leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430 Compensation—personal services, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431 Compensation—fringe benefits.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421 Advertising and public relations.) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406 Applicable credits.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal government are allowable.

(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal government. However, any interest actually paid or credited to an non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§ 200.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering

these items are set forth in this section. They are to be used in conjunction with the other provisions of this Part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 Equipment, paragraph (d), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D—Post Federal Award Requirements of this Part, §§ 200.338 Remedies for Noncompliance through 200.342 Effects of Suspension and termination); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414 Indirect (F&A) costs. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 200.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§ 200.474 Travel costs.

(a) General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432 Conferences.

(3) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, (''Travel and Subsistence Expenses; Mileage Allowances''), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(d) Commercial air travel.

(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(e) Air travel by other than commercial carrier. Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§ 200.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.474 Travel costs.

Subpart F—Audit Requirements

General

§ 200.500 Purpose.

This Part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

Audits

§ 200.501 Audit requirements.

(a) Audit required. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this Part.

(b) Single audit. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than $750,000. A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this Part.

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this Part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.330 Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this Part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 200.331 Requirements for pass-through entities.

§ 200.502 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when a Federal award is expended should be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards

including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at IHEs. When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this Part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this Part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this Part.

(g) Valuing non-cash assistance. Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this Part.

(i) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this Part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) Certain loans provided by the National Credit Union Administration. For purposes of this Part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§ 200.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this Part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this Part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this Part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) Federal agency to pay for additional audits. A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Request for a program to be audited as a major program. A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 Major program determination and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 200.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this Part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this Part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this Part biennially.

§ 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this Part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.338 Remedies for noncompliance.

§ 200.506 Audit costs.

See § 200.425 Audit services.

§ 200.507 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available.

(1) When a program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511 Audit findings follow-up, paragraph (b), and a corrective action plan consistent with the requirements of § 200.511 Audit findings follow-up, paragraph (c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 200.514 Scope of audit, paragraph (c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 200.514 Scope of audit, paragraph (d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 200.516 Audit findings.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this Part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the requirements of § 200.515 Audit reporting, paragraph (d)(3).

(c) Report submission for program-specific audits.

(1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 200.512 Report submission, paragraph (b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 200.512 Report submission, paragraph (b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) Other sections of this Part may apply. Program-specific audits are subject to:

(1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);

(2) 200.504 Frequency of audits through 200.506 Audit costs;

(3) 200.508 Auditee responsibilities through 200.509 Auditor selection;

(4) 200.511 Audit findings follow-up;

(5) 200.512 Report submission, paragraphs (e) through (h);

(6) 200.513 Responsibilities;

(7) 200.516 Audit findings through 200.517 Audit documentation;

(8) 200.521 Management decision, and

(9) Other referenced provisions of this Part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 200.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this Part in accordance with § 200.509 Auditor

selection, and ensure it is properly performed and submitted when due in accordance with § 200.512 Report submission.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510 Financial statements.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511 Audit findings follow-up, paragraph (b) and § 200.511 Audit findings follow-up, paragraph (c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this Part.

§ 200.509 Auditor selection.

(a) Auditor procurement. In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.317 Procurement by states through 20.326 Contract provisions of Subpart D- Post Federal Award Requirements of this Part or the FAR (48 CFR Part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR Part 42), as applicable.

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this Part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) Use of Federal auditors. Federal auditors may perform all or part of the work required under this Part if they comply fully with the requirements of this Part.

§ 200.510 Financial statements.

(a) Financial statements. The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this Part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514 Scope of audit, paragraph (a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 200.502 Basis for determining Federal awards expended. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. For a cluster of programs also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in § 200.502 Basis for determining Federal awards expended, paragraph (b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the non-Federal entity elected to use the 10% de minimis cost rate as covered in § 200.414 Indirect (F&A) costs.

§ 200.511 Audit findings follow-up.

(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 200.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

§ 200.512 Report submission.

(a) General. (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) Data Collection. The FAC is the repository of record for Subpart F—Audit Requirements of this Part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in Appendix X to Part 200—Data Collection Form (Form SF–SAC), which state whether the audit was completed in accordance with this Part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this Part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this Part, the data were prepared in accordance with this Part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

(2) Exception for Indian Tribes. An auditee that is an Indian tribe may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) Reporting package. The reporting package must include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510 Financial statements, paragraphs (a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511 Audit findings follow-up, paragraph (b);

(3) Auditor's report(s) discussed in § 200.515 Audit reporting; and

(4) Corrective action plan discussed in § 200.511 Audit findings follow-up, paragraph (c).

(d) Submission to FAC. The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) Requests for management letters issued by the auditor. In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) Report retention requirements. Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(g) FAC responsibilities. The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507 Program-specific audits, paragraph (c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) Electronic filing. Nothing in this Part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

Federal Agencies

§ 200.513 Responsibilities.

(a)(1) Cognizant agency for audit responsibilities. A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year thereafter. For example, audit cognizance for periods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. This governmentwide audit quality project must be performed once every 6 years beginning in 2018 or at such other interval as determined by OMB, and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.

(vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this Part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this Part.

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in § 200.30 Cross-cutting audit finding) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.73 Oversight agency for audit. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.210 Information contained in a Federal award):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this Part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the Federal awarding agency must:

(i) Issue a management decision as prescribed in § 200.521 Management decision;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see § 200.25 Cooperative audit resolution) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirement of § 200.513 Responsibilities and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.

(iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.

(vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the Federal awarding agency's single audit accountable official's mission.

Auditors

§ 200.514 Scope of audit.

(a) General. The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) Financial statements. The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) Internal control.

(1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) Compliance.

(1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this Part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should follow the compliance supplement's guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) Data Collection Form. As required in § 200.512 Report submission paragraph (b)(3), the auditor must complete and sign specified sections of the data collection form.

§ 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this Part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results

of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and report and internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or modified opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516 Audit findings paragraph (a);

(vii) An identification of major programs by listing each individual major program; however in the case of a cluster of programs only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518 Major program determination paragraph (b)(1), or (b)(3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 200.520 Criteria for a low-risk auditee.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516 Audit findings, paragraph (a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this Part precludes combining of the audit reporting required by this section with the reporting required by § 200.512 Report submission, paragraph (b) Data Collection when allowed by GAGAS and Appendix X to Part 200—Data Collection Form (Form SF–SAC).

§ 200.516 Audit findings.

(a) Audit findings reported. The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this Part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511 Audit findings follow-up, paragraph (b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail and clarity. Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action

plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable Federal award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 200.512 Report submission, paragraph (b) to allow for easy referencing of the audit findings during follow-up.

§ 200.517 Audit documentation.

(a) Retention of audit documentation. The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) Access to audit documentation. Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this Part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 200.518 Major program determination.

(a) General. The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section must be followed.

(b) Step one.

(1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
Equal to $750,000 but less than or equal to $25 million	$750,000.
Exceed $25 million but less than or equal to $100 million	Total Federal awards expended times .03.
Exceed $100 million but less than or equal to $1 billion	$3 million.
Exceed $1 billion but less than or equal to $10 billion	Total Federal awards expended times .003.
Exceed $10 billion but less than or equal to $20 billion	$30 million.
Exceed $20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal

awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 200.502 Basis for determining Federal awards *expended*.

(4) For biennial audits permitted under § 200.504 Frequency of audits, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) Step two.

(1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519 Criteria for Federal program risk paragraph (c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515 Audit reporting, paragraph (c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515 Audit reporting, paragraph (c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the Federal awarding agency to comply with 31 U.S.C. 3515. The Federal awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) Step three.

(1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 200.519 Criteria for Federal program risk. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 200.519 Criteria for Federal program risk paragraphs (b)(1), (b)(2), and (c)(1), a single criteria in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) Step four. At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) Percentage of coverage rule. If the auditee meets the criteria in § 200.520 Criteria for a low-risk auditee, the auditor need only audit the major programs identified in Step 4 (paragraph (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) Documentation of risk. The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) Auditor's judgment. When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this Part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

§ 200.519 Criteria for Federal program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience.

(1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities.

(1) Oversight exercised by Federal agencies or pass-through entities could

be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program.

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 200.430 Compensation—personal services, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518 Major program determination.

(a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512 Report submission. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515 Audit reporting, paragraph (c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515 Audit reporting, paragraph (c); or

(3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

Management Decisions

§ 200.521 Management decision.

(a) General. The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) Federal agency. As provided in § 200.513 Responsibilities, paragraph (a)(7), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 200.513 Responsibilities, paragraph (c)(3), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) Pass-through entity. As provided in § 200.331 Requirements for pass-through entities, paragraph (d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) Time requirements. The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) Reference numbers. Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516 Audit findings paragraph (c).

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.

A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include in Section I information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section III.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections I and III.1, as long as a potential applicant can find the information

quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (e.g., if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the ''substantial involvement'' that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in A. Program Description—Required or Federal award administration information in section D. Application and Submission Information). If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. *Eligible Applicants—Required.* Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section IV specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section IV.5 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section IV.5.

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 200.306 Cost sharing or matching of this Part. This section should refer to the appropriate portion(s) of section D. Application and Submission Information stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. *Other—Required, if applicable.* If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as ''responsiveness'' criteria, ''go-no go'' criteria, ''threshold'' criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. *Address to Request Application Package—Required.* Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers required or encouraged (see Section IV.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370h).

3. *Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM)—Required.*

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR § 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR § 25.110(d)) is required to: (i) Be registered in SAM before submitting its application; (ii) provide a valid DUNS number in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times—Required.* Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.203 Notices of funding opportunities of this Part).

Each type of submission should be designated as encouraged or required and, if required, any deadline date (or dates, if the Federal awarding agency plans more than one cycle of application submission, review, and Federal award under the announcement) should be specified. The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

ii. What the deadline means (e.g., whether it is the date and time by which the Federal awarding agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgement of receipt. This information should be displayed in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

5. *Intergovernmental Review—Required, if applicable.* If the funding opportunity is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' the notice must say so. In alerting applicants that they must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site. *www.whitehouse.gov/omb/grants/spoc.html.*

6. *Funding Restrictions—Required.* Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. *Other Submission Requirements—Required.* This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.[1]

E. Application Review Information

1. Criteria—Required. This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section III.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final

[1] With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. Anticipated Announcement and Federal Award Dates—Optional. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a ''rolling'' basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.210 Information contained in a Federal award.

2. Administrative and National Policy Requirements—Required. This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called ''general'') terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require.

G. Federal Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).

ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

i. Indicate whether this is a new program or a one-time initiative.

ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.

iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.

iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.

v. Include certain routine notices to applicants (e.g., that the Federal government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal government to the expenditure of funds).

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of ''federally assisted construction contract'' in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, ''Equal Employment Opportunity'' (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and implementing regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ''Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction''). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to

the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of ''funding agreement'' under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 Procurement of recovered materials.

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are ''unallowable''

to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1, Definition of Facilities and Administration. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, Identification and assignment of indirect (F&A) costs, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D, Simplified method for small institutions.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsections B.4.c Operation and maintenance expenses, may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1, Definitions of Facilities and Administration

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See § 200.414 Indirect (F&A) costs which provides the basis for this indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436 Depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, Selection of distribution method, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 200.449 Interest, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the ''effective square footage'' described in subsection (c)(2)(ii) of this section.

(ii) ''Effective square footage'' allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory ''Labs for the 21st Century'' benchmarking tool *http://labs21benchmarking.lbl.gov/CompareData.php* and the US Department of Energy ''Buildings Energy Databook'' and *http://buildingsdatabook.eren.doe.gov/CBECS.aspx*) were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6, Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C, Determination and application of indirect (F&A) cost rate or rates; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in

exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413 Direct costs, paragraph (c) and 200.468 Specialized service facilities.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 200.406 Applicable credits. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Subpart E—Cost Principles of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in paragraph B of this paragraph C.1 Identification and assignment of indirect (F&A) costs, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2, Criteria for distribution, and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1, Major functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses

to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect (F&A) costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of Federal awards performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. If a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect (F&A) costs, provisions should be made for a separate indirect (F&A) cost pool applicable to such work. The separate indirect (F&A) cost pool should be developed during the regular course of the rate determination process and the separate indirect (F&A) cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect (F&A) cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other Federal awards at the institution.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.68 Modified Total Direct Cost (MTDC). For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87–638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the ''indirect costs'' (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

Federal agencies must use the negotiated rates except as provided in paragraph (e) of § 200.414 Indirect (F&A) costs, must paragraph (b)(1) for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. ''Negotiated rates'' per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. ''Life'' for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in § 200.414 Indirect (F&A) costs, when an educational institution does not have a negotiated rate with the Federal government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, Identification and assignment of indirect (F&A) costs, and all other types of

expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection 1.a, an institution may elect to claim a fixed allowance for the ''Administration'' portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under ''Administration'' as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the ''Administration'' portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, General administration and general expenses, Section B.6, Departmental administration expenses, Section B.7, Sponsored projects administration, and Section B.9, Student administration and services.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination shall include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in Subpart A—Acronyms and Definitions.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See § 200.414 Indirect (F&A) costs.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Non-cognizant Federal agencies for indirect costs, which make Federal awards to an educational institution, must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

In order to provide mutually agreed upon information for management purposes, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of work covered by this Part at an institution does not exceed $10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of

capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB Web site here: *http://www.whitehouse.gov/omb/grants_forms.*

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729–3733 and 3801–3812)''.

2. Certification of Indirect (F&A) Costs

a. *Policy.* Cognizant agencies must not accept a proposed indirect cost rate must unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

(1) No indirect (F&A) cost rate must be binding upon the Federal government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate.* The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:
Signature: ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮
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Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 200.413 Direct costs paragraph (d) of this Part. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

''Major nonprofit organizations'' are defined in § 200.414 Indirect (F&A) costs. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect

costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 200.413 Direct costs, paragraph (e) of this Part.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such contracts or subawards for $25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.75 Participant support costs.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in section A.3 of this Appendix, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: ''Facilities'' and ''Administration,'' as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436 Depreciation.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 200.449 Interest.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the

basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in Subpart A—Acronyms and Definitions of Part 200, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.68 Modified Total Direct Cost (MTDC) of Part 200.

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: ''Facilities'' and ''Administration,'' as described in section A.3 of this Appendix.

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 Simplified allocation method of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards with an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414 Indirect (F&A) costs of Part 200.)

b. Except as otherwise provided in § 200.414 Indirect (F&A) costs paragraph (e) of this Part, a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 200.414 Indirect (F&A) costs paragraph (f) of this Part, organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the non-profit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

j. Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with Subpart E—Cost Principles of Part 200.

(3) This proposal does not include any costs which are unallowable under Subpart E—Cost Principles of Part 200 such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization: [redacted]
Signature: [redacted]
Name of Official: [redacted]
Title: [redacted]
Date of Execution: [redacted]

Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*.'' A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in § 200.19 Cognizant agency for indirect costs of this Part. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1, Negotiation and Approval of Central Service Plans.

5. *Major local government* means local government that receives more than $100 million in direct Federal awards subject to this Part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of

actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: [redacted]
Signature: [redacted]
Name of Official: [redacted]
Title: [redacted]
Date of Execution: [redacted]

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico),

state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a ''fixed with carry-forward'' basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This ''carry-forward'' procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in Subpart D—Post Federal Award Requirements, of Part 200.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VI to Part 200—Public Assistance Cost Allocation Plans

A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. *State public assistance agency* means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs

include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, Review of Implementation of Approved Plans, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16. Disputes involving only one funding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*'' A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals.

B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal government. The cognizant agency for indirect costs assignment is described in Appendix VI, section F, Negotiation and Approval of Central Service Plans.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or

future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a ''final'' rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of $25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subcontracts in excess of $25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a ''restricted rate'' is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental department or agency unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the

proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: [redacted]
Signature: [redacted]
Name of Official: [redacted]
Title: [redacted]
Date of Execution: [redacted]

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in § 200.420 Considerations for selected items of cost, of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit)should be guided by the requirements in Appendix VI relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or

governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/ Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado
21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other non-profit organizations as negotiated with Federal awarding agencies

Appendix IX to Part 200—Hospital Cost Principles

Based on initial feedback, OMB proposes to establish a review process to consider existing hospital cost determine how best to update and align them with this Part. Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR Part 74 Appendix E, entitled ''Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals,'' remain in effect.

Appendix X to Part 200—Data Collection Form (Form SF–SAC)

The Data Collection Form SF–SAC is available on the FAC Web site.

Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB Web site: (e.g. for 2013 here *http://www.whitehouse.gov/omb/circulars/)*

PARTS 215, 220, 225, and 230—[REMOVED]

■ 4. Remove parts 215, 220, 225, and 230.

[FR Doc. 2013–30465 Filed 12–19–13; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Friday,

No. 244 December 19, 2014

Part II

EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
2 CFR Parts 1, 25, 170, et al.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
2 CFR Part 300
45 CFR Parts 74, 75, and 92

DEPARTMENT OF AGRICULTURE
2 CFR Parts 400, 415, 416, et al.
Office of the Chief Financial Officer
7 CFR Parts 3015, 3016, 3018, et al.

Farm Service Agency
7 CFR Parts 761 and 785

Commodity Credit Corporation
7 CFR Parts 1407 and 1485

National Institute of Food and Agriculture
7 CFR Parts 3400, 3401, 3402, et al.

Rural Utilities Service
7 CFR Parts 1703, 1709, 1710, et al.

Rural Business-Cooperative Service
Rural Housing Service
Rural Utilities Service
Farm Service Agency
7 CFR Parts 1942, 1944, 1951, et al.

Rural Housing Service
7 CFR Parts 3570 and 3575

Rural Business-Cooperative Service
Rural Utilities Service
7 CFR Parts 4274, 4279, 4280, et al.

DEPARTMENT OF STATE
2 CFR Part 600
22 CFR Parts 135 and 145

AGENCY FOR INTERNATIONAL DEVELOPMENT
2 CFR Part 700
22 CFR Part 226

DEPARTMENT OF VETERANS AFFAIRS
2 CFR Part 802
38 CFR Parts 41 and 43

DEPARTMENT OF ENERGY
2 CFR Part 910
10 CFR Parts 602, 605, and 733

DEPARTMENT OF TREASURY
2 CFR Part 1000

DEPARTMENT OF DEFENSE
2 CFR Part 1103

DEPARTMENT OF TRANSPORTATION
2 CFR Part 1201
49 CFR Parts 18 and 19

DEPARTMENT OF COMMERCE
2 CFR Part 1327
15 CFR Parts 14 and 24

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2 CFR Part 1402
43 CFR Part 12

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2 CFR Part 1500
40 CFR Parts 30, 31, 33, et al.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
2 CFR Part 1800
14 CFR Parts 1260 and 1273

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
2 CFR Part 2205
45 CFR Parts 1235, 2510, 2520, et al.

SOCIAL SECURITY ADMINISTRATION
2 CFR Part 2300
20 CFR Parts 435 and 437

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
2 CFR Part 2400
24 CFR Parts 84 and 85

NATIONAL SCIENCE FOUNDATION
2 CFR Part 2500
45 CFR Part 602

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
2 CFR Part 2600
36 CFR Parts 1206, 1207, and 1210

SMALL BUSINESS ADMINISTRATION
2 CFR Part 2701
13 CFR Part 143

DEPARTMENT OF JUSTICE
2 CFR Part 2800
28 CFR Parts 66 and 70

DEPARTMENT OF LABOR
2 CFR Part 2900

DEPARTMENT OF HOMELAND SECURITY
2 CFR Part 3002

Federal Emergency Management Agency
44 CFR Parts 13, 78, 79, et al.

INSTITUTE OF MUSEUM AND LIBRARY SERVICES
2 CFR Part 3187

45 CFR Parts 1180 and 1183

NATIONAL ENDOWMENT FOR THE ARTS
2 CFR Part 3255

45 CFR Part 1157

NATIONAL ENDOWMENT FOR THE HUMANITIES
2 CFR Part 3374

45 CFR Part 1174

DEPARTMENT OF EDUCATION
2 CFR Part 3474

34 CFR Parts 74, 75, 76, et al.

EXECUTIVE OFFICE OF THE PRESIDENT
Office of National Drug Control Policy

2 CFR Part 3603

21 CFR Parts 1403, 1404, and 1405

GULF COAST ECOSYSTEM RESTORATION COUNCIL
2 CFR Part 5900

Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

2 CFR Parts 1, 25, 170, 180, and 200

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2 CFR Part 300

45 CFR Parts 74, 75, and 92

RIN 0991–ZA46

DEPARTMENT OF AGRICULTURE

2 CFR Parts 400, 415, 416, 418, and 422

Office of the Chief Financial Officer

7 CFR Parts 3015, 3016, 3018, 3019, 3022, and 3052

Farm Service Agency

7 CFR Parts 761 and 785

Commodity Credit Corporation

7 CFR Parts 1407 and 1485

National Institute of Food and Agriculture

7 CFR Parts 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, and 3431

Rural Utilities Service

7 CFR Parts 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779, 1780, 1782, and 1783

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1942, 1944, 1951, and 1980

Rural Housing Service

7 CFR Parts 3570 and 3575

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4274, 4279, 4280, 4284, 4285, and 4290

RIN 0505–AA15

DEPARTMENT OF STATE

2 CFR Part 600

22 CFR Parts 135 and 145

RIN 1400–AD57

AGENCY FOR INTERNATIONAL DEVELOPMENT

2 CFR Part 700

22 CFR Part 226

RIN 0412–AA73

DEPARTMENT OF VETERANS AFFAIRS

2 CFR Part 802

38 CFR Parts 41 and 43

RIN 2900–AP03

DEPARTMENT OF ENERGY

2 CFR Part 910

10 CFR Parts 602, 605, and 733

RIN 1991–AB94

DEPARTMENT OF TREASURY

2 CFR Part 1000

RIN 1505–AC48

DEPARTMENT OF DEFENSE

2 CFR Part 1103

RIN 0790–AJ25

DEPARTMENT OF TRANSPORTATION

2 CFR Part 1201

49 CFR Parts 18 and 19

RIN 2105–AE33

DEPARTMENT OF COMMERCE

2 CFR Part 1327

15 CFR Parts 14 and 24

RIN 0605–AA34

DEPARTMENT OF THE INTERIOR

2 CFR Part 1402

43 CFR Part 12

RIN 1090–AB08

ENVIRONMENTAL PROTECTION AGENCY

2 CFR Part 1500

40 CFR Parts 30, 31, 33, 35, 40, 45, 46, and 47

RIN 2030–AA99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1800

14 CFR Parts 1260 and 1273

RIN 2700–AE94

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

2 CFR Part 2205

45 CFR Parts 1235, 2510, 2520, 2541, 2543, 2551, 2552, and 2553

RIN 3045–AA61

SOCIAL SECURITY ADMINISTRATION

2 CFR Part 2300

20 CFR Parts 435 and 437

RIN 0960–0960–AH73

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 CFR Part 2400

24 CFR Parts 84 and 85

RIN 2501–AD54

NATIONAL SCIENCE FOUNDATION

2 CFR Part 2500

45 CFR Part 602

RIN 3145–AA57

provisions of Subpart B of this part governs the administrative requirements, cost principles, and audit requirements to be included in terms and conditions of DoD Components' new grant and cooperative agreement awards to:

(1) Institutions of higher education, hospitals, and other nonprofit organizations included in the definition of ''recipient'' in part 32 of the DoD Grant and Agreement Regulations (32 CFR part 32).

(2) States, local governments, and Indian tribal governments.

(b) The following class deviations from selected provisions of the DoD Grant and Agreement Regulations therefore are approved for DoD Components' new grant and cooperative agreement awards made on or after December 26, 2014:

(1) Awards to institutions of higher education, hospitals, and other nonprofit organizations included in the definition of ''recipient'' in part 32 of the DoD Grant and Agreement Regulations (32 CFR part 32) are not subject to the administrative requirements, cost principles, and audit requirements specified in 32 CFR part 32.

(2) Awards to States, local governments, and Indian tribal governments are not subject to the administrative requirements, cost principles, and audit requirements specified in part 33 of the DoD Grant and Agreement Regulations (32 CFR part 33).

(3) References in other parts of the DoD Grant and Agreement Regulations that cite part 32 or part 33 as the source of administrative requirements, cost principles, and audit requirements for awards to the types of recipient entities described in paragraphs (b)(1) and (2) of this section therefore do not apply to those new awards.

(c) Provisions of the DoD Grant and Agreement Regulations other than those listed in paragraph (b) of this section continue to be in effect, with applicability as stated in those provisions.

Subpart B—Pre-Existing Policies Continuing in Effect During Interim Implementation

§ 1103.200 Exception for small awards.

For small awards to institutions of higher education, hospitals, and other nonprofit organizations, DoD Components' terms and conditions may apply less restrictive requirements to recipients than the OMB guidance in 2 CFR part 200 specifies, except for requirements that are statutory. This exception maintains long-standing policy established in 32 CFR 32.4.

§ 1103.205 Timing of payments made using the reimbursement method.

In DoD Components' awards to institutions of higher education, hospitals, and other nonprofit organizations, the terms and conditions implementing the provisions of 2 CFR 200.305(b)(3) concerning timing of payments when the reimbursement method is used must specify that the DoD payment office generally makes payment within 30 calendar days after receipt of the request for reimbursement by the office designated to receive the request, unless the request is reasonably believed to be improper. This substitution of ''generally makes payment'' for ''must make payment'' maintains long-standing policy established in 32 CFR 32.22(e)(1).

§ 1103.210 Management of federally owned property for which a recipient is accountable.

In award terms and conditions implementing the guidance in 2 CFR 200.313(d) on procedural requirements for a recipient's equipment management system, DoD Components must:

(a) For any award to an institution of higher education, hospital, or other nonprofit organization, broaden the requirements of 2 CFR 200.313(d) to also apply to any federally owned property for which the recipient is accountable under its award. Doing so maintains long-standing policy established in 32 CFR 32.34(f).

(b) For any award to a State, local government, or Indian tribal government (as defined in 32 CFR part 33), specify that the recipient must manage federally owned equipment in accordance with the DoD Components' rules and procedures. Doing so maintains long-standing policy established in 32 CFR 33.32(f).

§ 1103.215 Intangible property developed or produced under an award or subaward.

In DoD Components' awards to institutions of higher education, hospitals, and other nonprofit organizations, the award terms and conditions implementing the guidance in 2 CFR 200.315(a) on intangible property must exclude intangible property developed or produced under an award or subaward. Doing so maintains long-standing policy established in 32 CFR 32.36(e).

§ 1103.220 Debarment and suspension requirements related to recipients' procurements.

In award terms and conditions implementing the guidance in 2 CFR 200.318(h) on awarding contracts only to responsible entities, DoD Components must require recipients to comply with DoD's implementation in 2 CFR part 1125 of OMB guidance on nonprocurement debarment and suspension (2 CFR part 180). Doing so maintains long-standing policy established in 2 CFR parts 180 and 1125 and in 32 CFR 32.44(d), as well as compliance with Executive Orders 12549 and 12689.

§ 1103.225 Debt collection.

In award terms and conditions implementing the guidance in 2 CFR 200.345 on collection of amounts due, DoD Components must inform recipients that DoD post-award administration offices follow procedures set forth in 32 CFR 22.820 for issuing demands for payment and transferring debts for collection, and that a recipient will be informed about specific procedures and timeframes affecting it through the written notices of grants officers' decisions and demands for payment. Doing so maintains long-standing policy established in 32 CFR 32.73(c).

Subpart C—Definitions of Terms Used in This Part

§ 1103.300 DoD Components.

The Office of the Secretary of Defense, the Military Departments, and all Defense Agencies, DoD Field Activities, and other entities within the Department of Defense that are authorized to award or administer grants, cooperative agreements, and other non-procurement transactions subject to the DoD Grants and Agreement Regulations.

§ 1103.305 DoD Grant and Agreement Regulations.

The regulations in Chapter I, Subchapter C of Title 32, Code of Federal Regulations, and Chapter XI of Title 2, Code of Federal Regulations.

§ 1103.310 Small award.

An award not exceeding the simplified acquisition threshold.

Patricia L. Toppings,

Office of the Secretary of Defense, Federal Register Liaison Officer, Department of Defense.

Department of Transportation

Office of the Secretary

For the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, 49 U.S.C. 322, and the authorities listed below, Part 1201 of title 2 of the Code of Federal Regulations is added, and Parts 18 and

19 of title 49 of the Code of Federal Regulations are removed, as follows:

Title 2—Grants and Agreements

CHAPTER XII—DEPARTMENT OF TRANSPORTATION

■ 1. Add Part 1201 to read as follows:

PART 1201—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

Authority: 49 U.S.C. 322(a); 2 CFR 200.106.

§ 1201.1 What does this part do?

Except as otherwise provided in this part, the Department of Transportation adopts the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). This part supersedes and repeals the requirements of the Department of Transportation Common Rules (49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19—Uniform Administrative Requirements—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), except that grants and cooperative agreements executed prior to December 26, 2014 shall continue to be subject to 49 CFR parts 18 and 19 as in effect on the date of such grants or agreements. New parts with terminology specific to the Department of Transportation follow.

§ 1201.2 Definitions.

Throughout this part, the term ''DOT Component'' refers to any Division, Office, or Mode (*e.g.,* the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Office of Inspector General (OIG), Office of the Secretary of Transportation (OST), Pipeline and Hazardous Materials Safety Administration (PHMSA), St. Lawrence Seaway Development Corporation (SLSDC), and the Surface Transportation Board (STB)) within the Department of Transportation awarding Federal financial assistance. In addition, the term ''DOT Headquarters'' refers to the Secretary of Transportation or any office designated by the Secretary to fulfill headquarters' functions within any office under the Secretary's immediate supervision.

§ 1201.80 Program income.

Notwithstanding 2 CFR 200.80, *program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See 2 CFR 200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them.

§ 1201.102 Exceptions.

DOT Headquarters may grant exceptions to Part 1201 on a case-by-case basis. Such exceptions will be granted only as determined by the Secretary of Transportation.

§ 1201.106 DOT Component implementation.

The specific requirements and responsibilities for grant-making DOT Components are set forth in this part. DOT Components must implement the language in this part unless different provisions are required by Federal statute or are approved by DOT Headquarters. DOT Components making Federal awards to non-Federal entities must implement the language in the Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this Part through Subpart F—Audit Requirements of this Part in codified regulations unless different provisions are required by Federal statute or are approved by DOT Headquarters.

§ 1201.107 DOT Headquarters responsibilities.

DOT Headquarters will review DOT Component implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by DOT Headquarters. Exceptions will only be made in particular cases where adequate justification is presented.

§ 1201.108 Inquiries.

Inquiries regarding Part 1201 should be addressed to the DOT Component making the award, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entities as appropriate. DOT Components will, in turn, direct the inquiry to the Office of Chief Financial Officer, Department of Transportation.

§ 1201.109 Review date.

DOT Headquarters will review this part at least every five years after December 26, 2014.

§ 1201.112 Conflict of interest.

The DOT Component making a financial assistance award must establish conflict of interest policies for Federal awards, including policies from DOT Headquarters. The non-Federal entity must disclose in writing any potential conflict of interest to the DOT Component or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 1201.206 Standard application requirements.

The requirements of 2 CFR 200.206 do not apply to formula grant programs, which do not require applicants to apply for funds on a project basis.

§ 1201.313 Equipment.

Notwithstanding 2 CFR 200.313, subrecipients of States shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award.

§ 1201.317 Procurements by States.

Notwithstanding 2 CFR 200.317, subrecipients of States shall follow such policies and procedures allowed by the

State when procuring property and services under a Federal award.

§ 1201.327 Financial reporting.

Notwithstanding 2 CFR 200.327, recipients of FHWA and NHTSA financial assistance may use FHWA, NHTSA or State financial reports.

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation

PART 18—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 18.

PART 19—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 19.

Anthony R. Foxx,

Secretary of Transportation.

Department of Commerce

Office of the Secretary

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. 301 and the authorities listed below, Part 1327 of Title 2, Chapter XIII of the Code of Federal Regulations is added, and Parts 14 and 24 of Title 15, Subtitle A of the Code of Federal Regulations are amended, as follows:

Title 2—Grants and Agreements

CHAPTER XIII—DEPARTMENT OF COMMERCE

■ 1. Add Part 1327, consisting of § 1327.101, to Chapter XIII to read as follows:

PART 1327—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 5 U.S.C. 301; 38 U.S.C. 501; 2 CFR part 200.

§ 1327.101 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Commerce adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

Title 15—Commerce and Foreign Trade

Subtitle A—Office of the Secretary of Commerce

PART 14—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 14.

PART 24—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 24.

Barry Berkowitz,

Director of Acquisition Management.

Department of the Interior

Office of the Secretary

For the reasons set forth in the common preamble, and under the authority of 5 U.S.C. part 301 and the authorities listed below, part 1402 in Chapter XIV of title 2 is added, and part 12 of title 43 of the Code of Federal Regulations is amended, as follows:

Title 2—Grants and Agreements

CHAPTER XIV—DEPARTMENT OF THE INTERIOR

■ 1. Add Part 1402 to Chapter XIV to read as follows:

PART 1402—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

Authority: 5 U.S.C. 301; 38 U.S.C. 501, 2 CFR part 200.

§ 1402.100 Purpose.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform guidance applies in full except as stated in §§ 1402.102 and 1402.103.

§ 1402.101 To whom does this part apply?

This part, and through it 2 CFR part 200, subparts A through E. applies to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI Federal financial assistance award, cooperative agreement or grant after the effective date of December 26, 2014.

§ 1402.102 Do DOI financial assistance policies include any exceptions to 2 CFR part 200?

This chapter applies to Federally recognized Indian tribal governments, except for those awards made pursuant to the authority of the Indian Self-Determination and Education Assistance Act (P.L. 93–638, 88 Stat. 2204), as amended. However, Sec. 9 of P.L. 93–638 does provide for use of a grant agreement or cooperative agreement when mutually agreed to by the Secretary of the Interior and the tribal organization involved.

§ 1402.103 Does DOI have any other policies or procedures award recipients must follow?

Award recipients must follow bureau/office program specific or technical merit policies and procedures that will be published in the **Federal Register**, Grants.gov, or bureau Web site.

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior

PART 12—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 12.

Kristen J. Sarri,

Principal Assistant Secretary for Policy, Management and Budget.

Environmental Protection Agency

For the reasons stated in the preamble, under the authority of 5 U.S.C. 301 and the authorities listed below, 2 CFR part 1500 and 40 CFR parts 33, 35, 40, 45, 46 and 47 are amended as follows:

Title 2—Grants and Agreements

CHAPTER XV—ENVIRONMENTAL PROTECTION AGENCY

■ 1. Part 1500 is added to chapter XV to read as follows:

PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions [Reserved]

Subpart B—General Provisions

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program

Appendix H

STATE UNDERGROUND NATURAL GAS STORAGE SAFETY MENTORING PROGRAM

Mission:
Provide a process by which state programs shall be able to take advantage of providing or receiving mentoring from or to other state Underground Natural Gas Storage safety programs or PHMSA.

Goals:
To provide supplemental information beyond that currently available to state Underground Natural Gas Storage Safety programs for the purpose of enhancing safety and to further the knowledge base of all state underground natural gas storage inspector(s) in the use of various inspection and investigation techniques, to exchange state training programs, to assist in promoting consistent enforcement of federal regulations at the state level, and to assist other state inspectors in their professional growth and improved knowledge of inspection techniques.

Objectives:

- Review discuss, and utilize inspection techniques;
- Develop and nurture relationships between state programs and their staff in order to provide for more opportunities to expand mentoring programs between both state programs and with PHMSA;

- Increase state-to-state inspection and enforcement consistency as applicable to federal underground natural gas storage safety regulations;
- Enhance critical thinking processes that apply to inspections of various size operators;
- Broaden a state's knowledge of the diversity of underground natural gas storage facilities in other states;
- Develop/review varying processes for relevant data collection;
- Develop successful processes for conducting accident and incident investigations as well as a review of supporting reporting documentation requirements.

Program Guidelines:

- Mentoring application will be submitted to the PHMSA Director of State Programs for approval;
- Invitational Travel (based on availability) will be provided by PHMSA after application approval;
- Mentoring sessions will be no longer than five working days;
- States shall have the ability to arrange their own mentoring sessions with other states without invitational travel, but the state will still need an approved application in order for travel and personnel costs to be recovered through their State Underground Natural Gas Storage Safety Base Grant;
- States that choose to arrange their own mentoring program without the approval of PHMSA shall be responsible for all cost associated with the mentoring and shall not be allowed to recover those cost through their Grant;
- The state providing and the state receiving approved mentoring shall both provide to the PHMSA Director of State Programs a post-session Action Report identifying the advantages, lessons learned and other relevant information acquired as a result of the mentoring session. A copy of this report will also be provided to the NAPSR Administrative Manager for posting on the private NAPSR web page.

Contact Information:

- Zach Barrett – Director of State Programs, 405-834-8344 zach.barrett@dot.gov
- Pat Gaume – UNGS State Liaison, 282-224-7132 Patrick.Gaume@dot.gov

Contact your PHMSA State Program liaison for further questions.

Instructions for Inspection Mentoring Applicants

August 6, 2014

1) **Discuss inspection mentoring with Program Manager and obtain their approval.**
2) **With Program Manager identify possible inspection mentoring opportunities (State or Federal) in accordance with the "Program Guidelines" in the "Underground Natural Gas Storage Safety Inspector Mentoring Program Outline" document.**
3) **Complete "Mentoring Application" Form and email to Don.Martin@dot.gov and copy Zach.Barrett@dot.gov**
4) Obtain an email approval from Don Martin, PHMSA State Coordinator or Zach Barrett, PHMSA Director of State Programs.
5) **Submit Invitational Travel Request through established Invitational Travel process**
6) **Provide feedback for improving inspection mentoring process in accordance with the "Program Guidelines".**

MENTORING APPLICATION

(Form to be completed by State Program Manager requesting mentoring)

Date of Request	**DD/MM/YYYY**
State Program (Requesting Mentoring)	Choose an item.

State Program (Providing Mentoring)	
Describe the Invitational Travel being requested Including dates, transportation, lodging, special needs, etc.	

Provide a brief synopsis of the goals / expectations of the mentoring to be received:

Provide a brief summary identifying the qualifications of the person who will be providing the mentoring: should Include all relevant experience:

List all courses completed in PHMSA's Training and Qualification Division if applicable to the proposed mentoring objectives:

- Has mentoring under this program been provided previously to the requesting state program? Circle One: Yes No

- Do travel restrictions exist for State Program providing the mentoring? List any blackout dates – TQ conflict dates – other dates not available within this calendar year:

Comments:

PHMSA UNDERGROUND NATURAL GAS STORAGE (UNGS) STATE PROGRAM EVALUATION – CY2019 CONDUCTED CY2020	
A – PROGRESS REPORT AND PROGRAM DOCUMENTATION REVIEW	9
B – PROGRAM INSPECTION PROCEDURES	14
C – PROGRAM PERFORMANCE	34
D – COMPLIANCE ACTIVITIES	21
E – INCIDENT INVESTIGATIONS	13
F – DAMAGE PREVENTION	4
G – FIELD INSPECTIONS	12
H - 60106 AGREEMENT STATE (if applicable)	6
TOTAL PROGRAM EVALUATION POINTS	113

PHMSA UNGS STATE PROGRAM EVALUATION – CY2018

	A – PROGRESS REPORT AND PROGRAM DOCUMENTATION REVIEW THIS SECTION ANALYZES ACCURACY AND COMPLETENESS OF ANNUAL PROGRESS REPORT	SCORE
1	Accuracy of Jurisdictional Authority and Operator/Inspection Units Data – Progress Report Attachment 1 (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
2	Review of Inspection Days for accuracy – Progress Report Attachment 2 (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
3	Accuracy verification of Operators and Operators Inspection Units in State – Progress Report Attachment 3 (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
4	Accuracy verification of Compliance Activities – Progress Report Attachment 5 (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
5	Were UNGS program files well-organized and accessible? - Progress Report Attachment 6 (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
6	Was employee listing and completed training accurate and complete? – Progress Report Attachment 7 (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
7	Verification of Part 192 and 199 Rules and Amendments – Progress Report Attachment 8 (Yes= 1 point, No= 0 Points) **Comments:**	1
8	List of Planned Performance - Did State describe accomplishments on Progress Report in detail – Progress Report Attachment 10 (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
9	**General Comments:**	9

B – PROGRAM INSPECTION PROCEDURES Does State Inspection Plan include procedures that address the following elements? (See Guidelines Section 5.1)		
1	Does State have written inspection procedures? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
2	Standard Inspections Do Standard Inspection procedures give guidance to State inspectors that insure consistency for inspections conducted by the State? The following elements should be addressed at a minimum. • Pre-Inspection Activities • Inspection Activities • Post Inspection Activities (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
3	Specialized Inspections Do Specialized Inspection procedures give guidance to State inspectors that insure consistency for inspections conducted by the State? The following elements should be addressed at a minimum. • Pre-Inspection Activities • Inspection Activities • Post Inspection Activities (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
4	Design, Testing, and Construction Inspections Do Design, Testing, and Construction Inspection procedures give guidance to State inspectors that insure consistency for Inspections conducted by the State? The following elements should be addressed at a minimum. • Pre-Inspection Activities • Inspection Activities • Post Inspection Activities (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1

5	Drug and Alcohol Inspections Do Drug and Alcohol Inspection procedures give guidance to State inspectors that insure consistency for Inspections conducted by the State? The following elements should be addressed at a minimum. • Pre-Inspection Activities • Inspection Activities • Post Inspection Activities (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
6	Does inspection plan address inspection priorities of each inspection unit, based on the following elements? • **Length of time since last inspection (Within five-year interval per inspection unit)** • **Operating history of operator/unit and/or location (includes leakage, incident and compliance activities)** • **Type of activity being undertaken by operators in inspection units (i.e. construction)** • **Locations of operator's inspection units being inspected - (HCA's, Geographic area, Population Density, etc.)** • **Process to identify high-risk inspection units considering integrity threats** • **Are inspection units broken down appropriately?** (Yes= 6 points, No= 0 Points, NI=1-5 points) **Comments:**	6
7	**General Comments:**	14

C – PROGRAM PERFORMANCE		
1	Was ratio of Total Inspection Person-Days to Total Person-Days acceptable? (Chapter 4.2) **A = Total Inspection Person Days (Attachment 2)** **B = Total Inspection Person Days Charged to the program (220 x Number of Inspection person years from Attachment 7)** **Ratio = A/B If Ratio >= .38 then score = 5 points. If Ratio < .38 then score = 0 points.** (Yes= 5 points, No= 0 Points) **Comments:**	5
2	Has each Inspector and Program Manager fulfilled the TQ Training Requirements? (See Guidelines Appendix C for requirements and Chapter 4.3.1) (Yes= 5 points, No= 0 Points, NI=1-4) **Comments:**	5
3	Does State use the PHMSA Inspection Assistant (IA) program to document inspections? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
4	Did records and discussions with Program Manager indicate adequate knowledge of PHMSA program and regulations? Chapter 4.1,8.1 (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
5	Did State respond to PHMSA's Evaluation Letter within 60 days and correct or address any noted deficiencies? Chapter 8.1 (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
6	Did State inspect all types of operators and inspection units in accordance with time intervals established in their written procedures? Chapter 5.1 (Yes= 5 points, No= 0 Points, NI=1-4 points) **Comments:**	5
7	Did State Inspection form(s) cover all applicable code requirements addressed on Federal Inspection form(s)? Chapter 5.1 (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
8	Did State complete all applicable portions of inspection forms? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
9	Has the State reviewed Operator Annual reports, along with Incident/Accident reports, for accuracy and analyzed data for trends and operator issues? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2

10	Is the State verifying operators are conducting drug and alcohol tests required by regulations? This should include verifying positive tests are responded to in accordance with program. 49 CFR 199 (Yes= 2 points, No= 0 Points, NI= 1 point) **Comments:**	2
11	Does the State have a mechanism for communicating with stakeholders regarding the inspection and enforcement program? (This should include making enforcement cases available to public). (Yes= 1 points, No= 0 Points, NI=.5 point) **Comments:**	1
12	Did State execute appropriate follow-up actions to Safety Related Condition (SRC) Reports? Chapter 6.3 (Yes= 1 points, No= 0 Points, NI=.5 point) **Comments:**	1
13	Did the State participate in/respond to surveys or information requests from PHMSA? (Yes= 1 points, No= 0 Points, NI=.5 point) **Comments:**	1
14	Did the State forward any potential waivers/special permits to PHMSA for review prior to issuing them to operators? (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
15	If the State has issued any waivers/special permits for any operator, has the State verified conditions of those waivers/special permits are being met? This should include having the operator amend procedures where appropriate. (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
16	**General Comments:**	34

D – COMPLIANCE ACTIVITIES		
1	Does the State have written procedures to identify steps to be taken from the discovery to resolution of a probable violation? Chapter 5.1 • **Procedures to notify an operator (company officer) when a noncompliance is identified** • **Procedures to routinely review progress of compliance actions to prevent delays or breakdowns** • **Procedures regarding closing outstanding probable violations** (Yes= 4 points, No= 0 Points, NI=1-3 points) **Comments:**	4
2	Did the State follow compliance procedures (from discovery to resolution) and adequately document all probable violations, including what resolution or further course of action is needed to gain compliance? Chapter 5.1 • Were compliance actions sent to company officer or manager/board member if municipal/government system? • Document probable violations • Resolve probable violations • Routinely review progress of probable violations • ; and (Yes= 4 points, No= 0 Points, NI=1-3 points) **Comments:**	4
3	Did State within 30 days of the end of an inspection conduct a post-inspection briefing with the owner or operator of the UNGS facility inspected outlining any concerns identified during the inspection? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
4	Did State within 90 days, to the extent practicable, provide the owner or operator with written preliminary findings of the inspection? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
5	Did the State issue compliance actions for all probable violations discovered? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
6	Did compliance actions give reasonable due process to all parties? Including "show cause" hearing if necessary. (Yes= 2 points, No= 0 Points) **Comments:**	2

7	Is the Program Manager familiar with State process for imposing civil penalties? (describe any actions taken) (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
8	Were civil penalties considered for repeat violations, violations which can't be corrected by other means, or violations resulting in incidents? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
9	Can the State demonstrate it is using their enforcement fining authority for safety violations? (Yes= 1 point, No= 0 Points, NI= .5 point) **Comments:**	1
10	**General Comments:**	21

E – INCIDENT INVESTIGATIONS		
1	Does the State have written procedures to address State actions in the event of an incident? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
2	Does State have adequate mechanism to receive and respond to operator reports of incidents, including after-hours reports? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
3	Did the State keep adequate records of Incident notifications received? (Yes= 2 points, No= 0 Points, NI=1 point) **Comments:**	2
4	If onsite investigation was not made, did State obtain sufficient information from the operator and/or by other means to determine the facts to support the decision to not go on-site? Chapter 6 (Yes= 1 point, No= 0 Points, NI= .5 point) **Comments:**	1
5	Were all incidents investigated, thoroughly documented, and with conclusions and recommendations? • **Observations and document review** • **Contributing Factors** • **Recommendations to prevent recurrences where appropriate** (Yes= 3 points, No= 0 Points, NI=1-2 points) **Comments:**	3
6	Did the State initiate compliance action for violations found during any incident investigation? (Yes= 1 point, No= 0 Points) **Comments:**	1
7	Did the State assist the Region Office or Accident Investigation Division (AID) by taking appropriate follow-up actions related to the operator incident reports to ensure accuracy and final report has been received by PHMSA? (validate report data from operators concerning incidents and investigate discrepancies) Chapter 6 (Yes= 1 point, No= 0 Points, NI= .5 point) **Comments:**	1
8	Does State share lessons learned from incidents with PHMSA? (Yes= 1 point, No= 0 Points) **Comments:**	1

9	**General Comments:**	13

F – DAMAGE PREVENTION		
1	Did the State inspector verify UNGS operators are following their written procedures pertaining to notification of excavation, marking, positive response and the availability and use of the one call system? (API 1171 Section 11.10 Public Awareness and Damage Prevention) (Yes= 2 points, No= 0 Points, NI=1 Point) **Comments:**	2
2	Did the State encourage and promote practices for reducing damages to all underground facilities to its regulated companies? (Common Ground Alliance Best Practices, support excavation damage prevention legislation, etc.) (Yes= 2 points, No= 0 Points, NI=1 Point) **Comments:**	2
3	**General Comments:**	4

G – FIELD INSPECTIONS		
1	Operator, Inspector, Location, Date and PHMSA Representative **Comments:**	
2	Was the operator or operator's representative notified and/or given the opportunity to be present during inspection? (Yes= 1 point, No= 0 Points) **Comments:**	1
3	Did the inspector use an appropriate inspection form/checklist and was the form/checklist used as a guide for the inspection? (Yes= 2 points, No= 0 Points, NI=1 Point) **Comments:**	2
4	Did the inspector thoroughly document results of the inspection? (Yes= 2 points, No= 0 Points, NI=1 Point) **Comments:**	2
5	Did the inspector check to see if the operator had necessary equipment during inspection to conduct tasks viewed? (Yes= 1 point, No= 0 Points) **Comments:**	1
6	Did the inspector adequately review the following during the field portion of the State Program Evaluation? • **Procedures** • **Records** • **Field Activities/Facilities** • **Other (please comment)** (Yes= 2 points, No= 0 Points, NI=1 Point) **Comments:**	2
7	Did the inspector have adequate knowledge of the UNGS safety program and regulations? (Evaluator will document reasons if unacceptable) (Yes= 2 points, No= 0 Points, NI=1 Point) **Comments:**	2
8	Did the inspector conduct an exit interview? (If inspection is not totally complete the interview should be based on areas covered during time of field evaluation) (Yes= 1 point, No= 0 Points) **Comments:**	1

9	During the exit interview, did the inspector identify probable violations found during the inspections? (if applicable) (Yes= 1 point, No= 0 Points) **Comments:**	1
10	**General Comments:** • **What did the inspector observe in the field? (Narrative description of field observations and how inspector performed)** • **Best Practices to Share with Other States - (Field - could be from operator visited or State inspector practices**) • **Other**	12
	Field Observation Areas Observed (check all that apply)	

H - 60106 AGREEMENT STATE (if applicable)		
1	Did the State use the current federal inspection form(s)? (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
2	Are results documented demonstrating inspection units were reviewed in accordance with State inspection plan? (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
3	Were any probable violations identified by State referred to PHMSA for compliance action? (NOTE: PHMSA representative has discretion to delete question or adjust points, as appropriate, based on number of probable violations; any change requires written explanation.) (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
4	Did the State immediately report to PHMSA conditions which may pose an imminent safety hazard to the public or to the environment? (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
5	Did the State give written notice to PHMSA within 60 days of all probable violations found? (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
6	Did the State initially submit adequate documentation to support compliance action by PHMSA on probable violations? (Yes= 1 point, No= 0 Points, NI=.5 point) **Comments:**	1
7	**General Comments:**	6

PHMSA Underground Natural Gas Storage Inspection Forms

Appendix J

Appendix J –
PHMSA UNGS IA Equivalent Inspection Forms

The Inspection Assistant (IA) equivalent inspection forms are available in Word and PDF versions at: https://www.phmsa.dot.gov/forms/phmsa-underground-natural-gas-storage-ia-question-set Prior to conducting an Inspection the State Agency should check the above link to assure they are using the latest PHMSA Inspection Forms for conducting Underground Natural Gas Storage (UNGS) Inspections.

Comprehensive Drug and Alcohol Inspection Forms are located at: https://www.phmsa.dot.gov/pipeline/drug-and-alcohol/drug-and-alcohol-inspection-forms Prior to conducting an Inspection the State Agency should check the above link to assure they are using the latest PHMSA Inspection Forms for conducting Underground Natural Gas Storage (UNGS) Inspections.

Guidelines for States Participating in the Pipeline Safety Program

Appendix K (Reserved)

Example
(The Progress Report for CY2019 Will Be Provided Through FedSTAR)
PHMSA Underground Natural Gas Storage Safety
2019 Grant Progress Report

for

(State UNGS Safety Authority Name)

Please follow the directions listed below:

1. Review the entire document for completeness.

2. Review and have an authorized signatory sign and date page 2.

3. Fasten all pages with a paper or binder clip - no staples please as this package will be scanned upon it's arrival at PHMSA.

4. Mail the entire document, including this cover page to the following:

ATTN: Angela Sung
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Pipeline Safety PHP-50
1200 New Jersey Avenue, SE Second Floor E22-321
Washington, D.C. 20590

PHMSA Underground Natural Gas Storage Safety
2019 Grant Progress Report

Office: (State UNGS Safety Authority Name)

_____

Authorized Signature

_____

Printed Name

_____

Title

_____

Date

PROGRESS REPORT ATTACHMENTS (UNGS)

PHMSA Form No. PHMSA F 999-92

INSTRUCTIONS:

These attachments request information either for the entire calendar year (CY 2019: January 1 through December 31, 2019) or as of (or on) December 31, 2019. Please report actual as opposed to estimated numbers on the attachments. Be careful to provide complete and accurate information since the PHMSA State Programs will be validating the attachments during the State's next annual onsite Program Evaluation.

Attachment 1: State Jurisdiction Status Over Facilities. Requires the State to indicate the underground natural gas storage operator types over which the State agency has jurisdiction under existing law. If the State does not have jurisdiction over an operator type, indicate why not in the column designated No, using the one alpha code (A or B) which best describes the determination. If the State agency has jurisdiction over an operator type, place an X in the column designated Yes and provide information on the number of operators, the number and percent of operators inspected, the number of inspection units, and the number and percent of inspection units inspected. If the jurisdiction over a type of operator is under a Section 60106 Agreement, indicate X/60106 in the column designated Yes. If you have either 60105 or 60106 partial safety authority for only some of the operators under an individual type, but not all operators designate by X/60105P or X/60106P. If the same operator/inspection unit is visited more than once during the year, count only once under number of operators inspected/number of inspection units inspected on Attachment 1. The multiple visits would, however, be reflected under total inspection person-days in Attachment 2. Use the Notes section to provide further details on operator types which you don't have safety authority or only partial safety authority.

Attachment 2: Total State Field Inspection Activity. Requires the State to indicate by operator type the number of Inspection Person-Days spent during CY 2019 conducting inspections and investigations for: standard comprehensive; specialized; design, testing, and construction; investigating incidents; investigating public complaints; drug and alcohol, and compliance follow-up. Counting "In Office" Inspection Time as an Inspection Person-Day: An inspector may choose to review company procedure manuals or records away from the company facility to effectively use onsite inspection time. The amount of time spent reviewing procedures and records may be counted as part of the inspection process. It is important an inspector only record time for activities that normally would be completed as part of an onsite inspection. For example, an inspector may attribute the three hours he or she spent reviewing an operator's procedure manual and records prior to an on-site inspection towards the total inspection time. Each supervisor must carefully review the reported time to ensure the time attributed is consistent with the activity completed and is carefully delineated from normal office duties.

Attachment 3: Facility Subject to State Safety Jurisdiction. States should only list the facilities that are jurisdictional to PHMSA (under Title 49 of the Pipeline Safety Act and Part 192) of which the State has safety authority over. Attachment 3 requires the business name and address of each person subject to the safety jurisdiction of the State agency as of December 31, 2019. The operator identification number (OPID) assigned by PHMSA must also be included on this attachment.

Attachment 5: State Compliance Actions. This requires a summary of State identified violations and compliance actions. In the Number of Compliance Actions Taken column, keep in mind one compliance action can cover multiple probable violations.

Attachment 6: State Record Maintenance and Reporting. Requires a list of records and reports maintained and required by the State agency.

Attachment 7: State Employees Directly Involved in the Underground Natural Gas Storage Safety Program. This attachment requires a list by name and title of each employee directly involved in the underground natural gas storage safety program. Be sure to include the percentage of time each employee has been involved in the underground natural gas storage safety program during 2019. If an employee has not been in the underground natural gas storage safety program the full year of 2019, please note the number of months working on the program. Indicate a Qualification Category (Currently N/A and Under Development) for each of the State's inspectors. Finally, provide in summary form the number of all staff (supervisors, inspectors/investigator, technical and clerical/administrative) working on the underground natural gas storage safety program and the person-years devoted to underground natural gas storage safety. Person-years should be reported in hundreds (e.g., 3.25).

Attachment 8: State Compliance with Federal Requirements. This requires the State to indicate whether it has adopted the applicable federal requirements for the Underground Natural Gas Storage Safety Program. If a regulation has been adopted, indicate the date adopted (e.g., 05/01/2017) in the appropriate column. If the regulation is applicable but has not been adopted indicate N in the Y/N/NA column and explain why not in the appropriate column (e.g., requires legislative action). If the State has not adopted the maximum penalty amounts of $200,000 per day up to $2,000,000 for a related series of violations please indicate civil penalty levels in effect in the State as of December 31, 2019. For State Adoption of Part 198 State One Call Damage Prevention Program if a State has any penalty amount for its damage prevention law please mark item 7.h as “Adopted but Different Dollar Amounts” and list the penalty amount in the Notes section. Note at the end of Attachment 8 we are requesting each State to indicate the frequency its legislature meets in general session. This information will be considered when determining if applicable federal regulations have been adopted within 24 months of the effective date or two general sessions of the State legislature.

DEFINITIONS:

Inspection Unit. An inspection unit is all or part of an operator's underground natural gas storage facilities that are under the control of an administrative unit that provides sufficient communication and controls to ensure uniform design, construction, operation, and maintenance procedures for the facilities. An inspection unit may be one storage facility or a group of wells representing a portion of a storage facility.

Inspection Person-Day. An inspection person-day is all or part of a day spent by a State agency representative, including travel, conducting an on-site evaluation or an on-site investigation of an underground natural gas storage facility to determine compliance with federal or State underground natural gas storage safety regulations. Time expended on such activities should be reported as one inspection person-day for each day devoted to safety issues, regardless of the number of operators visited during that day.

Probable Violation. A probable violation is a non-compliance with any section or, where a section is divided into subsections (a), (b), (c), etc., any subsection of federal or State pipeline regulations. Each numbered section should be counted separately. Multiple non-compliances of a numbered section discovered on the same inspection should be counted as one probable violation with multiple pieces of evidence.

Compliance Action. A compliance action is an action or series of sequential actions taken to enforce federal or State underground natural gas storage regulations. One compliance action can cover multiple probable violations. A compliance action may take the form of a letter warning of future penalties for continued violation, an administratively imposed monetary sanction or order directing compliance with the regulations, an order directing corrective action under hazardous conditions, a show-cause order, a criminal sanction, a court injunction, or a similar formal action.

Attachment 1: STATE JURISDICTION OVER UNGS FACILITIES AS OF DECEMBER 31, 2019

Operator Type	State Agency Jurisdiction/ Certification/Agreement Status		No. of Operators	Operators Inspected		No. of Inspection Units	Units Inspected	
	No[1]	Yes		#	%		#	%
Private								
Depleted Reservoir								
Salt Caverns								
Mined Caverns								
Aquifers								
Other								
Public Utility								
Depleted Reservoir								
Salt Caverns								
Mined Caverns								
Aquifers								
Other								
Municipal								
Depleted Reservoir								
Salt Caverns								
Mined Caverns								
Aquifers								

Other								
Other								
Depleted Reservoir								
Salt Caverns								
Mined Caverns								
Aquifers								
Other								
Total								

[1]Codes:

A - None in State and does not have jurisdiction;

B - State does not have jurisdictional authority (Provide current status or action being taken to obtain authority in notes section below)
X/60105P = Yes, I have Section 60105 (Certification) over some of the operator type (meaning: I have 60105 authority over some, but not all of this operator type and do not have a 60106 agreement with PHMSA to inspect them). These operators are identified in the notes below.

Other – UNGS Operators which do not fit into Private, Public Utility, Municipal, and Other, etc.

General Instructions - All above facilities should only include facilities as defined by federal pipeline regulations and should not include extended jurisdiction by State regulation. States should explain any special circumstances in the Notes section below.

Attachment 1 Notes:

Attachment 2: TOTAL STATE FIELD INSPECTION ACTIVITY AS OF DECEMBER 31, 2019

Operator Type	Standard Comprehensive	Design, Construction, Conversion and Decommissioning	Integrity Testing Maintenance	Investigating Incidents	Specialized Inspections	Compliance Follow-up	Drug and Alcohol	Other	Total
Private									
Depleted Reservoir									
Salt Caverns									
Mined Caverns									
Aquifers									
Other									
Public Utility									
Depleted Reservoir									
Salt Caverns									
Mined Caverns									
Aquifers									
Other									
Municipal									
Depleted Reservoir									
Salt Caverns									
Mined Caverns									
Aquifers									
Other									
Other									
Depleted Reservoir									
Salt Caverns									

Mined Caverns									
Aquifers									
Other									
Totals									

Attachment 2 Notes:

Attachment 3: List of Operators from January 1 to December 31, 2019

Operator Business Name Operator ID Address	**Operator Type (Inspection Units)**				**Storage Type (Number of Storage Fields)**					**Storage Type (Number of Wells)**				
	Private	**Public Utility**	**Muni**	**Other**	**Depleted Reservoir**	**Salt Cavern**	**Mined Cavern**	**Aquifer**	**Other**	**Depleted Reservoir**	**Salt Cavern**	**Mined Cavern**	**Aquifer**	**Other**
Barrett Storage 1 OPID: 123456 123 Maybe Street Somewhere, OK 12345														
Winslow Production OPID: 123457 122 Awesome Street Everywhere, OK 12346														
Evans Enterprises OPID: 123458 124 Excellent Street Myplace, OK 12349														
Totals														

Attachment 3 Notes:

Attachment 4: Incidents – Not sure this should be part of Progress Report as PHMSA will get Reportable Incidents from the Operator and it is redundant to have State send the information in again.

Attachment 5: - STATE COMPLIANCE ACTIONS -- CALENDAR YEAR (CY) 2019

Probable Violation Categories	**No. Violations**
Number of violations carried over from all previous CY's	
Number of violations found during CY	
Number of violations submitted for PHMSA action [60106 Agreement only]	
Number of violations corrected during CY (including carry over from previous year(s)	
Number of violations to be corrected at end of CY (including carry over)	
Number of Compliance Actions Taken (See Definition)[1]	
Civil Penalties	
Number of civil penalties assessed during CY	
Civil Penalty dollars assessed during CY	
Number of civil penalties collected during CY	
Civil Penalty dollars collected during CY	

[1]**Do not double count for a related series of actions.**

Attachment 5 Notes

Attachment 6 - UNGS STATE RECORD MAINTENANCE AND REPORTING DURING CY 2019

Records Maintained by the State Agency

Reports Required from Operators

Attachment 6 Notes

Attachment 7 - Staffing

STATE EMPLOYEES DIRECTLY INVOLVED IN THE UNGS SAFETY PROGRAM DURING CY 2019

Supervisor	Time (%)	Months(#)	Qualification
Supervisor Name. **Title**			
Supervisor Name. **Title**			
Inspector/Investigator			
Inspector/Investigator Name **Title**			
Inspector/Investigator Name **Title**			
Inspector/Investigator Name **Title**			
Clerical/Technical Support			
Clerical/Technical Support Name **Title**			

Employee Type	**No. of Staff**	**Person-Years**
Supervisor		
Inspector/Investigator		
Technical		
Clerical/Administrative		
Total:		

Attachment 8 - Compliance with Federal Regulations

STATE COMPLIANCE WITH FEDERAL REQUIREMENTS AS OF DECEMBER 31, 2019

No.	Rule Effective Date	Rule Description	Adoption Date	Adoption Status
190-17 Note[1]	4/27/2017	Maximum Penalties Substantially same as PHMSA ($205,638/$2,056,308). Provide State penalty amount in notes.		
	Part 192 Amendments			
192-122	01/18/2017	192.3 Definitions		
192-122	01/18/2017	192.7 Documents Incorporated by Reference Partly or Wholly in this Part		
192-122	01/18/2017	192.12 Underground Natural Gas Storage Facilities`		
Original Document	08/19/1970	192.15 Rules of Regulatory Construction		
	Part 199 - Drug Testing Amendments			
199-27 Note[1]	01/05/2015	[Part 199 and all Amendments through 199-27]		
	04/26/1996	State Adoption of Part 198 State One-Call Damage Prevention Program		
a. Note[1]	04/26/1996	Mandatory coverage of areas having pipeline facilities		

b. **Note[1]**	**04/26/1996**	**Qualification for operation of one-call system**		
c. **Note[1]**	**04/26/1996**	**Mandatory excavator notification of one-call center**		
d. **Note[1]**	**04/26/1996**	**State determination whether calls to center are toll free**		
e. **Note[1]**	**04/26/1996**	**Mandatory intraState pipeline operator participation**		
f. **Note[1]**	**04/26/1996**	**Mandatory operator response to notification**		
g. **Note[1]**	**04/26/1996**	**Mandatory notification of excavators/public**		
h. **Note[1]**	**04/26/1996**	**Civil penalties/injunctive relief substantially same as DOT**		

[1]If Adoption Status is No, Please provide an explanation

Attachment 8 Notes

Attachment 10 - Performance Questions

CALENDAR YEAR (CY) 2019

Planned Performance: What are your Planned Annual and Long-term goals for your Underground Natural Gas Safety Program?

Past Performance: What did the Underground Natural Gas Safety Program accomplish during the subject year (to this document) to contribute toward the program's annual and long-term goals?

Attachment 10 Notes:

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program - Grant Monitoring Checklist

Appendix M

Underground Natural Gas Storage (UNGS) Safety Grant (CFDA 20.725) Monitoring Checklist

Date(s) of Review	**From: xx/xx/2020**	**To: xx/xx/2020**
State Program	Choose an item.	
State Representative(s)		
PHMSA Representatives	Choose an item.	Choose an item.

General Notes:

Program costs shall clearly relate to and comply with the program budget submitted with the grant application. Program costs shall also be consistent with the following program and codified guidance:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Guidelines for States Participating in the Underground Natural Gas Storage Safety Program
- UNGS Safety Grant Monitoring Procedures
- All Terms and Conditions listed in Notice of Grant Award
- § 200.317 Procurements by states. When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including sub-recipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.

COMPENSATION FOR PERSONNEL - SALARY AND FRINGE BENEFITS

§ 200.430 Compensation—personal services (Salaries). • **Program Managers, Supervisors, Inspectors, Technical, Administrative, etc.** • **Review Program Organization Chart** • **Match personnel with information on Attachment 7 of Progress Report**	**YES**	**NO**	**N/A**
1. Are personnel listed directly involved in the UNGS program?	☐	☐	☐
2. If personnel are devoted to less than 100% UNGS safety activities is time and effort adequately documented?	☐	☐	☐
3. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES: Are costs included in this category reasonable and directly assignable to the UNGS program?			

§ 200.431 Compensation—fringe benefits • **Statewide service allocations should not be included (i.e. per employee payroll or IT costs, etc.)** • **Typically included are employee insurance, FICA, pensions, unemployment and other items established by state policy.**	**YES**	**NO**	**N/A**
1. Are fringe benefit costs standard among all agency employees?	☐	☐	☐
2. Are costs included in this category reasonable and directly assignable to the pipeline program?	☐	☐	☐
NOTES:			

UNGS SAFETY PROGRAM ACTIVITY COSTS

§ 200.425 Audit Services • **Audit costs required by the Single Audit Act are the only allowable audit costs unless preapproved in advance** • **There should rarely or never be costs in this category** • **Most audit costs are "statewide" and will be recovered in an indirect cost plan** • **This would be a good time to see if A-133 audit done by state included CFDA 20.725 for the** UNGS **safety grant. This should be listed on document submitted to clearinghouse.**	**YES**	**NO**	**N/A**
1. Was UNGS Safety Grant CFDA 20.725 included in Statewide A-133 audit?	☐	☐	☐
NOTES:			

Communication and Transportation Costs • **Communication has been deleted from "selected" items of cost and is subject to guidance in Subtitle II "Basic Considerations" in Subpart E – Cost Principles.** • **This category would be for all telephone and cell phone services, data plans, air-cards, postage and shipping** • **200.473 Transportation costs is area in new cost principles that discusses charges for freight, express, postage, etc.** • **Allocated costs from statewide or agency billings should only be collected as indirect costs**	**YES**	**NO**	**N/A**
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

§ 200.452 Maintenance and repair costs. • **Costs incurred for utilities, insurance, necessary maintenance, repair or upkeep of building and equipment** • **Any "allocated" or "pro-rated" costs are typically indirect and should not be included** • **Direct costs in this category are rare for any utilities, maintenance etc.**	**YES**	**NO**	**N/A**
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐

NOTES:

§ 200.454 Memberships, subscriptions, and professional activity costs. • Costs of memberships in business, technical, and professional organizations • Subscriptions to business, professional, and technical periodicals • Costs of membership in any civic or community organization are allowable with prior approval from PHMSA • Costs of membership in organization whose primary purpose is lobbying are unallowable • Agency memberships in NARUC or other national and regional regulatory or industry associations are not allowed as a direct cost	YES	NO	N/A
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

§ 200.459 Professional service costs. • Costs of professional and consultant services, contractual studies, etc. • There should be documented pre-approval of any contractual service agreements in either separate correspondence with PHMSA or detail outline in grant application for applicable year. Review SharePoint files.	YES	NO	N/A
1. Have any costs in this category been preapproved?	☐	☐	☐
2. Do costs applied in this category meet scope and intent of contract?	☐	☐	☐
NOTES:			

§ 200.461 Publication and printing costs. • Publication costs for electronic and print media. • Generally there are not large amounts charged in this category.	YES	NO	N/A

1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

§ 200.465 Rental costs of real property and equipment. • **Rental costs of building and equipment** • **Calculation of rental costs should be examined and should include a determination of reasonableness of square footage charged to grant.** • **There will typically be a property lease available that outlines costs per square foot or other document from state which outlines agency cost for building rental.** • **Lease costs cannot be included in any indirect cost plan if collected as a direct cost.**	**YES**	**NO**	**N/A**
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
2. Did program provide a detailed calculation on how costs were determined?	☐	☐	☐
NOTES:			

§ 200.472 Training and education costs. • **These are costs for training and education provided for employee development.** • **This would be costs for tuition, registration fees, training materials, etc.** • **Travel costs for training should not be included in this category.** • **§ 200.432 Conference Costs would be included in this category (Registration or other fees collected should be deducted).**	**YES**	**NO**	**N/A**
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

§ 200.474 Travel costs. • **Travel costs are expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on office business of** UNGS **program.** • **Costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs or a combination of the two provided the method used is applied to entire trip and not just selected days of the trip.** • **These are charges for travel including automobile expenses, auto leasing, costs billed per automobile by state central service offices.** • **Review travel vouchers, airline receipts, mileage statements.** • **Verify that costs were not reimbursed by another entity, such as PHMSA invitational travel.**	**YES**	**NO**	**N/A**
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
2. If program automobiles are shared with any other part of agency are charges separated and appropriately billed?	☐	☐	☐

NOTES:

MATERIAL, SUPPLIES AND EQUIPMENT COSTS

§ 200.453 Materials and supplies costs, including costs of computing devices. • **Also see § 200.314 Supplies.** • **Costs incurred for materials and supplies necessary to carry out Federal award** • **Any withdrawals from central storerooms or stockrooms should be charged at actual net costs – allocated costs of agency wide supplies would be collected under indirect costs.** • **These include things such as office supplies, safety clothing and any other general supplies used by program.** • **Office and Testing Equipment may very well apply to this category rather than equipment based on value.**	**YES**	**NO**	**N/A**
1. Are costs for **SUPPLIES** included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
2. Are costs for **SAFETY CLOTHING** included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

§ 200.439 Equipment and other capital expenditures. • **Also see §§ 200.33 Equipment, 200.48 General purpose equipment, etc.** • **Capital expenditures with a unit cost of $5000 or more must have prior approval of PHMSA. This information should be outlined on approved grant application or under separate correspondence typically found in SharePoint.** • **Individual invoices should be reviewed and inventory of previous purchased equipment over $5000 should be appropriately accounted for.** • **Office and Testing Equipment will likely fall under guidance of §§ 200.453 or 200.314 but review of various expenditures will not differ.**	**YES**	**NO**	**N/A**
1. Are costs for **MOTOR VEHICLES** included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
2. Are costs for **OFFICE EQUIPMENT** included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
3. Are costs for **TESTING EQUIPMENT** included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

OTHER COSTS

§ 200.xxx Various. • **Any costs applied in this category should be tied back to some part of 2 CFR Part 200 and should be listed in notes.** • **State program should be advised if cost listed could be applied to any of the sections above and asked to submit accordingly on future submissions.**	**YES**	**NO**	**N/A**
1. Are costs included in this category reasonable and directly assignable to the UNGS program?	☐	☐	☐
NOTES:			

INDIRECT COSTS

§ 200.414 Indirect Costs. • **Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.** • **Also see various other sections of 2 CFR 200, including §§ 200.415, 200.416.** • **State should have updated negotiated indirect rate on file with PHMSA and will likely be found in SharePoint folders. Advise program to submit current document if not.** • **Rate and dollar amount calculation should be verified.** • **Cost basis of calculation should be noted.** **State agency may use a de minimis rate of 10% of Modified Total Direct Costs (MTDC) N/A**	**YES**	**NO**	**N/A**
1. Are costs calculated in the category correct in accordance with either negotiated rate basis or use of de minimis rate?	☐	☐	☐
2. Is current rate documentation on file?	☐	☐	☐
NOTES:			

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program – Cost Principals and Procedures

Appendix N

A GUIDE FOR

STATE, LOCAL AND INDIAN TRIBAL

GOVERNMENTS

COST PRINCIPLES AND PROCEDURES FOR

DEVELOPING COST ALLOCATION PLANS AND

INDIRECT COST RATES FOR AGREEMENTS

WITH THE FEDERAL GOVERNMENT

IMPLEMENTATION GUIDE FOR

OFFICE OF MANAGEMENT AND BUDGET

CIRCULAR A-87

ASMB C-10

Cost Principles and Procedures for

Establishing Cost Allocation Plans and Indirect Cost Rates

for Agreements with the Federal Government

A GUIDE FOR STATE, LOCAL AND INDIAN TRIBAL GOVERNMENTS

This guide is intended to assist state, local, and Indian tribal governments in applying Office of Management and Budget Circular A-87, which provides principles and standards for determining costs applicable to Federal grants and contracts performed by state, local, and Indian tribal governments.

The procedures in this guide are applicable to grants and contracts awarded by all Federal agencies and have been developed in coordination with the Office of Management and Budget.

This document replaces "A Guide for State and Local Government Agencies" (OASC-10), published December 1976

8 April 1997

U.S. Department of Health and Human Services

This document can be ordered from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, 202-512-1800.

April 8, 1997

TO USERS OF OMB CIRCULAR A-87 - COST PRINCIPLES FOR STATE, LOCAL AND INDIAN TRIBAL GOVERNMENTS

Dear Colleague:

The Office of Management and Budget, in Circular A-87, mandates that the Department of Health and Human Services issue implementing material for that document on behalf of the Federal Government. The accompanying *Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government* reflects our efforts to satisfy that mandate. This brochure, last issued in 1976 under the reference OASC-10, is being assigned the new reference number ASMB C-10.

I want to acknowledge the efforts of the Office of Audit Resolution and Cost Policy, in the Office of Grants and Acquisition Management, who had the responsibility for developing this brochure. I also wish to thank the HHS staff, those of other Federal agencies, and OMB who provided much appreciated assistance on this project. Lastly, I would like to acknowledge Management Concepts, Inc., of Vienna, Virginia, who provided advice, layout, and editorial support.

As will be noted, the C-10 is issued in loose-leaf form. Users are encouraged to maintain a subscription with the Government Printing Office in order that they can receive up-dates and changes in the future. This document can also be accessed on HHS's GrantsNet: http://www.os.dhhs.gov/progorg/GrantsNet/index.html.

We welcome your comments and inquiries. Please address them to:

Director, Office of Audit Resolution and
Cost Policy
Rm. 1067 - Cohen Building
300 Independence Ave. S.W.
Washington, D.C. 20201

Sincerely,

Terrence Tychan
Deputy Assistant Secretary for
Grants and Acquisition Management

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PREFACE

This guide contains, by reference, Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*, and guidance for its interpretation and implementation. Circular A-87 provides both Federal agencies and Federal award recipients with a uniform approach to determining costs of Federally funded programs. This guide also presents information about the preparation, submission, review, and audit of cost allocation plans and indirect cost rate proposals by governmental units. Procedures in this guide are applicable to cost-based awards made by all Federal agencies unless specifically provided otherwise. This guide has been developed in coordination with OMB.

This guide provides clarification and procedural guidance to implement the Circular. It is intended to be consistent with the Circular and all other applicable policies. Circular A-87 is incorporated into this document as Appendix 1.

This guide consists of several parts, appendices, and a reference section. Each part of this guide focuses on a specific component of the Circular, e.g., Part 1 provides basic information about the Circular as well as details on information in the Circular, Part 2 focuses on Attachment A to the Circular, General Principles for Determining Allowable Costs, Part 3 deals with Attachment B, Selected Items of Cost, etc. The text discussion in each part is supplemented by a section on Highlights of Changes, as well as a Questions and Answers (Q&As) section intended to clarify issues relating to the respective component of the Circular. Each question is numbered and followed by a bracketed citation to the relevant section of the Circular, where applicable. On occasion, one Q&A may reference another by number.

The reference section provides a list of related publications and how to obtain them. The appendices include a copy of the May 4, 1995 revision of OMB Circular A-87 (to be provided by users), a list of cognizant agencies, and a sample indirect cost rate agreement. (At the time of this publication, OMB was in the process of revising the cognizant listing based on new criteria. When issued, it will be provided in the C-10 as Appendix 2.)

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PART 1

Basic Information

1.1 Background

1.1.1 The Cost Principles

Federal cost principles are policies used to determine which costs of an activity/project/program should be borne by the Federal Government. Over the years, various sets of governmentwide cost principles have been developed for reimbursing costs for different classes of recipients. These policy documents ensure the consistent treatment

of costs, regardless of whether reimbursement is received directly from the Federal Government or through another recipient of Federal funds.

1.1.2 Purpose and Significance of OMB Circular A-87

Office of Management and Budget (OMB) Circular A-87 is one of several circulars intended to achieve more efficient and uniform administration of Federal awards, and to foster better relationships between the Federal Government and states, local governments, and Federally recognized Indian tribal governments. It provides the foundation for greater uniformity in the costing procedures of nonfederal governments and in the reimbursement practices of Federal agencies. It should be used in conjunction with other applicable laws to provide comprehensive direction and accountability in Federal fund management.

Circular A-87 provides principles and standards for determining both direct and indirect costs applicable to Federal cost-based awards to governmental units. Parties using the A-87 cost principles include budget preparers, recipient personnel responsible for tracking costs charged against Federal awards, independent auditors, Federal awarding agency personnel reviewing budget requests and charges to the award, and cognizant agency and recipient personnel negotiating indirect cost rates and cost allocation plans.

1.1.3 Brief History of Circular A-87

1968 Circular A-87 issued by OMB

1974 Circular A-87 reissued as FMC 74-4

1981 Circular reissued as A-87, coverage extended to Indian tribal governments

1987 Interagency task force began review of Circular A-87

1988 First proposed revisions published

1993 Second proposed revisions published

1995 OMB issued significantly revised Circular A-87

1.1.4 Effective Date of the Revised Circular A-87

For indirect costs and costs covered by cost allocation plans described in Attachments C, D, and E of the Circular, the revision of Circular A-87 issued on May 4, 1995 must be applied to cost allocation plans and indirect cost rate proposals submitted or prepared for a governmental unit's fiscal year beginning on or after September 1, 1995. Therefore, for those governments with a fiscal year beginning October 1, 1995 - January 1, 1996, the revised version of Circular A-87 applies to the Central Service Plan for 1996. For all other governments, the revised Circular A87 applies to the 1997 plan. Effectively, two plans may be required for several years, i.e., those that would close out fiscal years 1994, 1995, or 1996 (as applicable), and another plan recognizing the new principles for the year that reflects the implementation of the revised Circular A-87.

For costs other than indirect costs and costs covered by the cost allocation plans described in Attachments C, D, and E of the Circular, the revised Circular A-87 applies to all awards and amendments, including continuation and renewal awards, made on or after September 1, 1995.

1.2 Role of the Office of Management and Budget

OMB is responsible for policy direction for Circular A-87 and for providing interpretations and assistance to assure effective implementation by Federal agencies and award recipients. OMB is also responsible for assigning Federal agencies to serve as cognizant for purposes of review and approval of cost allocation plans and indirect cost rates of states and certain local and Indian tribal governments. Except as provided by statute, any exceptions to the Circular are subject to OMB approval. The Office of Federal Financial Management is the responsible unit within OMB. In the interest of uniformity, exceptions are made only where adequate justification is presented.

1.3 Relationship of Circular A-87 to Other Cost Principles

Determining which cost principles apply to a particular recipient entity is governed by the type of recipient. The chart below illustrates the cost principles and their applicability, by recipient type.

For the Costs of a —	**Use the Cost Principles in —**
State, local, or Indian tribal government	OMB Circular A-87
Private nonprofit organization other than (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that Circular	OMB Circular A-122
Educational institution	OMB Circular A-21
For-profit organization other than a hospital or an organization named in OMB Circular A-122 as not subject to that Circular	48 CFR Part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency
Hospital	45 CFR Part 74, Subpart E, or other cost principles acceptable to the Federal agency, e.g. HIM-15

The applicability of the cost principles flows through to the subrecipient.

EXAMPLE:

The State of Macedonia receives a Federal award: A-87 applies
Macedonia subawards funds to Meerkat County: A-87 applies
Meerkat County subawards funds to ProYouth, a nonprofit: A-122 applies

In other words, the type of recipient or subrecipient determines the applicable cost principles, regardless of whether funds are received directly from the Federal Government or through a subaward from a primary recipient. The exception to the above is where statutory or regulatory provisions applicable to the prime recipient are more restrictive than the cost or administrative principles applicable to the subrecipient. For example, many awards to nonprofits permit the nonfederal share to be met through in-kind matching rather than matching actual expenditures. Where the matching of actual expenditures is required of the prime recipient, then subrecipients must also match in this same manner.

1.4 Relationship of Circular A-87 to Agency Regulations and Federal Statutes

OMB Circular A-87 is a directive to the heads of Federal executive departments and agencies instructing them concerning the cost principles to be applied in cost-based awards to state, local, and Indian tribal governments. The Circular directs agencies to issue implementing regulations. In general, agencies have done so by adopting Circular A-87 by reference in Section __.22 of the Common Rule accompanying OMB Circular A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*

Unless specifically required by statute or an exception granted by OMB, the Circular applies to awards to states, localities, and Indian tribal governments. Once implemented or otherwise adopted within Federal agency regulations, it has the force and effect of law. However, if a statute passed by Congress prescribes policies or procedures that differ from those in the Circular, the provisions of the statute govern. For example, it is not uncommon for Congress to enact legislation that restricts certain items of costs (i.e., limitations on indirect or administrative costs). When such a restriction exists, it is binding. Note: Statutes may differ as to how they define certain elements of cost and may further differ with definitions contained in Circular A-87. For example, the terms "indirect" and "administrative" are not necessarily synonymous. Accordingly, Federal agencies and recipients should exercise care in applying Circular A-87 definitions when making judgments about the effect of statutory limitations.

1.5 Governmentwide Guidance on Implementing the Cost Principles

Each type of organization performing under agreements with the Federal Government follows one of the sets of governmentwide cost principles. Various Federal agencies have developed implementation guidance for the different cost principles. These principles and guidance apply to awards received directly from the Federal Government, as well as to Federal funds passed through or awarded to the performing organization by another Federal fund recipient. The chart below summarizes the applicable cost principles and available governmentwide guidance by type of organization. The agency that developed the guidance is noted parenthetically.

Organization Type	Federal Cost Principle	Governmentwide Guidance
State, local, or Indian tribal governments	OMB Circular A-87	ASMB C-10 (HHS)
Nonprofit organizations	OMB Circular A-122	Various Funding Agency Guidelines
Colleges or universities	OMB Circular A-21	OASC-1 (HHS)
Commercial organizations and nonprofit organizations listed in Attachment C of A-122	Federal Acquisition Regulation, 48 CFR Part 31	none
Hospitals	45 CFR 74, Subpart E	OASC-3 (HHS)

1.6 Questions and Answers

1-1 What is Federal Management Circular 74-4 and does it have any relevance to current Federal cost policies?

Federal Management Circular (FMC) 74-4 was the designation for the Cost Principles for State and Local Governments during a period of the 1970s when the Circular was incorporated into the General Services Administration manual structure. There is no substantive difference between FMC 74-4 and OMB Circular A-87. FMC 74-4 was superseded in 1981 when OMB reissued the cost principles as Circular A-87, and is no longer applicable. However, some grant agreements and policy documents that contain references to FMC 74-4 may not have been edited to reflect the applicability of Circular A-87 and its most recent revision issued in May 1995.

1-2 What is OASC-10? Is it relevant to current Federal cost policies?

In 1976, the Department of Health, Education and Welfare issued "A Guide for State and Local Government Agencies – Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government (OASC-10)." OASC-10 is superseded and replaced by this guide, ASMB C-10, which reflects the policies in the revised Circular A-87. The guide is mandated by OMB in Circular A-87 and is a governmentwide document.

1-3 Have any Federal awarding agencies issued agency-specific implementations of Circular A-87?

Most agencies adopted Circular A-87 by reference in their applicable agency grants administration regulation. Generally, this reference appears in Section __.22 of agency regulations implementing the Common Rule issued pursuant to OMB Circular A-102 and in Section __.27 of agency regulations implementing OMB Circular A-110. However, a few Federal agencies have issued specific *Federal Register* notices concerning their implementation of the revised Circular A-87, to clarify issues such as effective dates or to codify the entire Circular into their regulations.

1-4 Circular A-87, prior to its revision on May 17, 1995, stated that "no provision for profit or increment above allowable cost is intended." The revised Circular changed this language to read: "Provision for profit or other increment above cost is outside the scope of this Circular." Has the policy changed?

No. Profit continues to be unallowable. In the Preamble to the Circular, OMB explains that the language was changed to be consistent with the wording in other Circulars. However, no change in policy was intended. [Circular, ¶ 5]

1-5 In the case of state-supervised, county-administered programs, which fiscal period controls the effective date for adoption of the revised A-87? [Circular, ¶ 11]

It must be the fiscal period of the specific unit of government. Therefore, if a state has a different fiscal period than a local government it supervises, each governmental unit would adopt the Circular in accordance with its individual fiscal period.

1-6 If predetermined indirect cost rates have already been approved that extend beyond the effective date for adoption of the revised Circular A-87 by a specific governmental component, does this change the effective date for that component? [Circular, ¶ 11]

For a governmental component that already has established predetermined cost rates beyond September 1, 1995, the effective date of the revised A-87 is the start of the first accounting period for which an indirect cost rate has not been established.

1-7 When are interest payments on equipment allowable for an internal service fund? Would the interest be allowable after September 1, 1995 or with the first fiscal year beginning after September 1, 1995? [Circular, ¶ 11]

Internal service funds are covered by Attachment C of A-87. The transmittal letter from OMB dated May 4, 1995 states that for costs charged indirectly or otherwise covered by the guidelines for cost allocation plans contained in Attachments C, D, and E, the effective date is the first fiscal year beginning after September 1, 1995.

PART 2

Attachment A — General Principles for Determining Allowable Costs

2.1 Objectives of the Circular

Office of Management and Budget (OMB) Circular A-87 establishes principles for determining the allowable costs incurred by state, local, and Federally recognized Indian tribal governments (hereinafter referred to as governmental units) under grants, cost-reimbursement contracts, and other agreements with Federal agencies (hereinafter referred to as Federal awards). The principles are for the purpose of cost determination only and are not intended to dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. Accordingly, they describe what may be reimbursed or recovered under a covered Federal award. They are designed to provide that the Federal Government bear its fair share of costs recognized, except where restricted or prohibited by law. Profit or other increment above cost in any Federal award is outside the scope of the Circular.

2.2 Governmental Unit Responsibilities

The Circular recognizes the responsibility and sovereignty of governmental units that receive and administer Federal awards. It reinforces the expectation contained in the law and in award agreements that these organizations will administer Federal funds properly and in a manner consistent with the sound management practices that they apply to their own revenues. Standards provided in the Common Rule issued pursuant to OMB Circular A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, reinforce this recipient responsibility for financial management, procurement, property management, and record retention.

2.3 Alternative Methods of Cost Recovery

The Circular permits Federal agencies to work with governmental units that wish to test alternative methods for cost recovery in all or a portion of a Federal award. Such methods include, where permitted, fixed-amount awards, fee-for-service arrangements, and predetermined indirect cost rates. Alternative methods must comply with the A-87 "benefits received" concept.

2.4 Applicability

2.4.1 What Types of Organizations Are Affected by Circular A-87?

Circular A-87 applies to governmental units generally, but definitions within the Circular further establish the entities that fall within that broad category. Under the Circular, the following entities are considered to be a ***state government***:

- any of the 50 states;

District of Columbia;

Commonwealth of Puerto Rico;

any territory or possession of the United States; and

any agency or instrumentality of a state, exclusive of local governments.

Circular A-87's definition of local government encompasses all general and special purpose governmental units. It defines the following entities as ***local governments***:

county;

municipality;

city;

town;

township;

local public authority;

school district;

special district;

intrastate district;

council of governments, regardless of incorporation status as a nonprofit corporation under state law;

any other regional or interstate, nonfederal government entity; and

any agency or instrumentality of a local government.

The Circular defines a ***Federally recognized Indian tribal government*** as the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group, including Alaskan native villages certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs. Components are agencies or divisions within a governmental unit.

2.4.2 What Types of Organizations Are Not Affected by Circular A-87?

For purposes of cost determination, Circular A-87 does not apply to public institutions of higher education. Those organizations are subject to OMB Circular A-21, *Cost Principles for Educational Institutions.* Circular A-87 also does not apply to public hospitals. They are subject to the requirements developed by their Federal sponsoring agencies, such as the

Health Care Financing Administration (HCFA). Generally, they follow cost principles issued by the Department of Health and Human Services at 45 CFR Part 74, Subpart E.

Note: Circular A-87 does affect public hospitals and institutions of higher education in one respect. All central service or departmental costs of a covered governmental unit that are allocated or billed to those institutions are subject to the A-87 requirements. In addition, indirect cost rates and cost allocation plans approved by a cognizant agency for the government component are to be accepted by all awarding agencies. Agency cost principles apply only to those costs not covered by these agreements.

2.4.3 Determining Whether Circular A-87 Applies to an Award

Circular A-87 applies uniformly to all cost-based awards made directly or indirectly to governmental units. ***Cost-based*** refers to those awards where the costs charged to the award form the basis for the amount reimbursed under the award. Therefore, the types of awards subject to the principles in Circular A-87 include:

- cost-reimbursement contracts;
- grants and cooperative agreements, which are cost-reimbursement type agreements, whether or not funds are provided in advance of expenditure; and
- subgrants and cost-reimbursement subcontracts awarded to governmental units under grants awarded to any type of Federal recipient.

Circular A-87 does not apply to fixed-price arrangements, unless projected costs are used in determining the amount to be awarded.

OMB occasionally elects to specifically exclude certain programs from mandatory coverage of the Circular. For example, in 1981, OMB instructed Federal agencies administering the nine block grants enacted under the Omnibus Budget Reconciliation Act of 1981 that they were not required to use the Circular as a policy governing awards under those programs. Instead, the agencies were to permit states to use “equivalent procedures of their own” to administer such programs.

2.5 Terms Used in Circular A-87

Because A-87 is a policy directive affecting what costs are allowable charges to Federal programs, what costs are not allowable, and how costs must be documented, it is important that users of the Circular and this guide become familiar with definitions of key terms and how they are used. Terms may have broader, narrower, or more precise meaning than ones that are in customary or colloquial use by financial or programmatic personnel who must rely on the Circular. In addition, such terms may not be defined in other authoritative literature on which readers might normally rely.

Definitions can be found in Section B of Attachment A to the Circular. The Circular is located in Appendix 1 of this guide.

2.6 The Cost Reimbursement Process

In the context of Circular A-87, the term "cost reimbursement" describes how the claims will be reviewed, accepted, and settled. Although the term cost reimbursement implies that

funding is received after-the-fact, the process of cost reimbursement under Federal awards has little to do with when cash is actually received. This is because, with few exceptions, assistance award recipients receive advance funding. Grant and cooperative agreement recipients are usually permitted to draw against their award amounts in advance, so long as they 1) limit their request for funds to the minimum amount needed, and 2) time the request as close as is administratively feasible to the actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. (See 31 CFR §205.20; §__.21, OMB Circular A-102 Common Rule.) In contrast, Federal cost-reimbursement contracts are generally paid after cost has been incurred and as progress is being made toward performance.

Note: While, for cash-need purposes, advance funding might be provided under grants and cooperative agreements, the advanced funds must be viewed by recipient organizations as an accounts payable to the Federal Government.

The cost principles have a role to play at most stages of the assistance award or contract life cycle. These stages, and the role of Circular A-87 at each stage, are summarized in the chart on the following page:

At this stage in the cycle...	Circular A-87 plays this role:
Soliciting applications and/or proposals from governmental units	Awarding agency announces the applicability of the A-87 cost principles.
Preparing proposals or plans for use of funds	Applicant governmental unit includes only costs allocable, reasonable, and allowable under Circular A-87.
Notifying recipient of award	Applicable assistance or procurement award document cites the applicability of Circular A-87.
Expending funds	Governmental unit incurs costs for expenditures that are eligible under applicable program legislation, as well as allowable under Circular A-87, under control procedures that allow proper determination.
Developing and retaining documentation	As costs are incurred, governmental unit generates documentation consistent with that generated for expenditure of own-source revenue and with any specific requirements of Circular A-87 (e.g., personnel activity reports) — documentation is maintained in a system of records for at least the minimum period of time provided under §__.42, OMB Circular A-102 Common Rule.
Preparing claims for direct costs and attributable indirect costs	At a frequency determined by the awarding agency and on authorized forms, governmental unit submits claims asserting that allowable and eligible costs have been incurred in accordance with A-87. Governmental unit is permitted to apply its indirect cost rate to those object class categories of expenditure to which the cognizant agency has agreed it should be applied.
Auditing Awards	Through test procedures, independent auditors or auditors representing awarding agencies review claims to determine whether incurred costs are appropriate under Circular A-87. Discrepancies are reported to awarding agencies as questioned costs requiring resolution.

2.7 Composition of Cost

The total amount claimable under a cost-based award covered by Circular A-87 equals the allowable direct costs, plus the allocable portion of allowable indirect costs, minus the applicable credits.

Total Amount Claimable =	allowable direct costs *plus* allocable portion of indirect costs *minus* applicable credits

The Circular makes clear that there is no universal rule for classifying costs as direct or indirect under every governmental accounting system. The essential difference is the degree of ease with which a cost can be readily assigned to a particular cost objective with a high degree of accuracy. Such readily assigned costs are ***direct costs***. ***Indirect costs*** are those that cannot be readily assigned to a particular cost objective without effort disproportionate to the benefits received. However, the Circular permits minor direct cost items to be treated as indirect costs for practicality, so long as consistent treatment of all such items is maintained.

Applicable credits are receipts or reductions of expenditure that offset or reduce costs allocable to Federal awards as direct or indirect costs. These are to be credited to the cost objective or the award, or refunded to the awarding agency, depending upon the circumstances and the timing of their accrual or receipt.

2.8 General Tests of Cost Allowability

Although Attachment B of Circular A-87 lists a number of selected items of cost, which frequently represent significant amounts in individual Federal awards or are costs for which there is a specific Federal policy, Attachment A establishes general tests of allowability that apply irrespective of whether a particular item of cost is specifically mentioned in Attachment B. These general tests frequently involve judgment and an assessment of the facts and circumstances in which the specific cost is incurred. The tests are not only listed in the Circular itself, but are frequently restated in compliance audit guidance that Federal and nonfederal auditors use to carry out field work and reporting.

2.8.1 Necessary and Reasonable Costs

The first general test of allowability is that the cost be necessary and reasonable for proper and efficient performance and administration of Federal awards. A cost is ***reasonable*** if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately Federally funded. In determining reasonableness of a given cost, consideration should be given to:

- whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award;

- the restraints or requirements imposed by such factors as sound business practices; arms-length bargaining; Federal, state, and other laws and regulations; and Federal award terms and conditions;

- market prices for comparable goods or services;

- whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government; and

- significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

2.8.2 Allocable Costs

The second general test of allowability is that the cost be allocable to Federal awards under the provisions of Circular A-87. A cost is ***allocable*** to a particular cost objective if the goods or services involved are chargeable or assignable to that cost objective according to the relative benefits received. All activities which benefit from the governmental unit's indirect costs, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

Any cost allocable to a particular Federal award or cost objective under the principles in Circular A-87 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. Such a practice constitutes unallowable cost shifting. However, this prohibition does not preclude governmental units from charging costs that are allowable and allocable under two or more awards, pursuant to existing program agreements. Such charges are viewed as "funding allocations" rather than cost allocations.

Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan or indirect cost rate agreement will be required as described in Attachments C, D, and E to Circular A-87.

2.8.3 The Other Tests of Allowability

In addition to reasonableness and allocability, the other general tests of allowability are that the cost:

- be authorized or not prohibited under state or local laws or regulations — a governmental unit may not accept and expend Federal funds to undertake an activity for which it does not have the authority under its own state or local law or which would constitute an illegal purpose;

- conform to any limitations or exclusions set forth in the cost principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items;

- be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit;

- be accorded consistent treatment — a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost;

- be determined in accordance with generally accepted accounting principles, except as otherwise provided for in Circular A-87;

- not be included as a cost or used to meet cost-sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation; be net of all applicable credits; and

be adequately documented.

In general, to meet the test of adequate documentation of charges under a Federal award, a governmental unit must document charges in a manner consistent with documenting expenditures of its own source revenue. However, certain provisions of Circular A-87 and the Common Rule issued pursuant to OMB Circular A-102 provide for specific standards for certain types of costs. For example, Circular A-87 addresses documentation for employee compensation, depreciation or use allowance for assets, and various types of allocated and billed indirect costs. The A-102 Common Rule establishes documentation requirements for purchase transactions (§__.36(b)(9)).

2.9 Required Government Certification

No cost allocation plan or indirect cost rate will be approved by the Federal Government unless the plan or rate proposal has been certified by the governmental unit. Except as noted below, no indirect costs will be reimbursed unless the governmental unit has an approved rate/plan or maintains on file a certified plan/rate, as appropriate.

The Federal Government may unilaterally establish such a cost allocation plan or indirect cost rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate will be established to ensure that potentially unallowable costs will not be reimbursed. [See also 4.5.6, Certification of CSCAPs, and 6.4.2, Required Certifications for state and local indirect cost rate proposals.]

2.10 Highlights of Changes Affecting Attachment A

Gives Federal agencies the authority to test alternative methods of reimbursement, such as fee-for-service. [Att. A, ¶ A.2.b]

Clarifies that, while government hospitals and educational institutions are subject to applicable requirements governing those organizations, the measurement of costs allocated or billed to them by other government departments must be made in accordance with Circular A-87 and must be accepted by all awarding agencies. [Att. A, ¶ A.3.a]

Clarifies that subawards are subject to the cost principles applicable to the type of organization receiving the award. [Att. A, ¶ A.3.b]

Circular A-87 is to be used as a guide in the pricing of fixed-price agreements. [Att. A, ¶ A.3.c]

For contracts, makes Cost Accounting Standards (CAS) applicable where required. [Att. A, ¶ A.3.d]

Expands the definition of "approval or authorization" of costs by the "awarding or cognizant agency." Clarifies that prior approval may be assumed where costs are allocated in accordance with an approved cost allocation plan. [Att. A, ¶ B.1]

Adds new definitions for:

— Award;

— Awarding Agency;

— Central Service Cost Allocation Plan;

— Claim;

— Cognizant Agency;

— Common Rule;

— Contract;

— Governmental Unit;

— Indirect Cost Rate Proposal;

— Public Assistance Cost Allocation Plan; and

— State.

[Att. A, ¶¶ B.1-18]

Clarifies that the definition of "cost" does not include transfers. [Att. A, ¶ B.9]

Deleted specific prohibition that "routine costs of government" are unallowable. [Att. A, ¶ C.1.a] However, see Highlights of Attachment B, Part 3 of this guide.

Adds a new section defining "reasonable costs" and criteria for measuring reasonableness. [Att. A, ¶ C.2]

Clarifies that costs must be allocated to all benefitting activities, including those that are unallowable, as well as donated services. [Att. A, ¶ C.3.b]

Clarifies when costs of activities allowable and allocable under multiple programs may be redistributed when funding ceilings for a given program are reached. (Note: not to be misconstrued as unallowable cost shifting.) [Att. A, ¶ C.3.c]

Clarifies that direct costs are those that can be identified specifically with a particular, final cost objective. [Att. A, ¶ E.1]

Adds a new section permitting the treatment of minor direct expenses as indirect. [Att. A, ¶ E.3]

Adds a new section referencing other new sections dealing with the development and submission of indirect cost rates and cost allocation plans. [Att. A, ¶F.2]

Previous sections dealing with the allocation of interagency costs have been combined into a new section (Attachment C) which has references to additional, new sections. The previous prohibition of charging general supervision, such as department heads, has been eliminated. In lieu of developing actual indirect costs associated with the allocated service, a standard 10% of direct salaries and wages may be used. This is applicable to services that are not included as billed or allocated services included in the state/local-wide cost allocation plan (SWCAP/LOCAP). [Att. A, § G]

Sections dealing with cost allocation plans (CAPs) have been expanded and relocated elsewhere as Attachments (C and D) in the Circular. A new section (Attachment E) is added detailing required certifications for indirect cost (IDC) agreements and cost allocation plans submitted by state/local officials. [Att. A, § H]

2.11 Questions and Answers on Attachment A

2-1 Circular A-87 now permits testing of alternative methods of reimbursement, such as fee-for-service. Under what circumstances may such alternative systems be used? [Att. A, ¶ A.2.b]

Alternative reimbursement systems for administrative costs might involve a rate system whereby a single rate is paid for outputs, such as the number of programmatic services performed. As with billed services, such alternatives are acceptable for payment purposes, provided that the payments are periodically reconciled to actual costs. Reimbursement systems not based on costs are only allowable where the Federal funding legislation permits such a practice. However, where it can be demonstrated clearly that an alternative system will result in less costs to the Federal Government, the cognizant/awarding agency may deem that such a system satisfies statutory language limiting reimbursement to "expenditures."

2-2 Some Federal programs use cost reports that apply to both proprietary and governmental organizations. These cost reports often dictate policies and/or provide for independent decisions different from what is prescribed in Circular A-87 or what has been approved by the cognizant agency with respect to cost allocation plans or indirect cost rates. Are governmental units so affected required to maintain separate reporting and accounting systems? [Att. A, ¶ A.3]

No. Governmental units and Federal awarding agencies in the above situations are to comply with the provisions of A-87 and the costing methodology approved by the cognizant agency with respect to state/local-wide central service costs, billed services from other support agencies, and the distribution of agency/departmental overhead to direct cost objectives/programs. These indirect, overhead, "home office," and general and administrative costs are to be accepted on the awarding agency's cost report without additional review or approval. For example, the governmental unit might have a capitalization threshold higher than that allowed by the HIM-15 (the reimbursement manual used by Medicare). The indirect cost rate will reflect the higher limit. The HIM-15 provisions would only apply to direct costs.

2-3 For awards to subrecipients, such as nonprofits or universities, must the governmental unit recognize an indirect cost rate established with the nonprofit

or university by the Federal cognizant agency? [Att. A, ¶ A.3]

No, although governmental units are encouraged to do so. Governmental units are required to reimburse and measure costs for these organizations in accordance with the applicable cost principles, in this case A-122 and A-21, respectively. As such, the full reimbursement of allowable direct and indirect costs is expected.

The above-referenced cost principles do provide various methods for measuring costs. For example, the cognizant agency may have used a salary and wage base for distributing cost centers, while the governmental unit might require a modified total direct cost base. If differing bases or methods are imposed upon the subrecipient, dual cost accounting systems will be required. In addition, the use of a combination of bases may result in the over/under recovery of costs. OMB is studying this issue and may promulgate policy requiring consistent application of negotiated rates.

2-4 Do the Circular A-87 principles apply to the block grant programs? [Att. A, ¶ A.3]

While the Circular does not apply to many block grants, governmental units should verify the applicability of A-87 with the Federal awarding agency. However, where a governmental unit or component operates both block grants and other Federal programs subject to the Circular, cost allocation plans and indirect cost proposals must be prepared in accordance with A-87 and include the block grants in appropriate bases/cost centers to assure a proper allocation of costs.

2-5 Does Circular A-87 apply to performance partnerships? [Att. A, ¶ A.3]

Yes, OMB Circular A-87 applies to performance partnership programs.

2-6 Attachment A, paragraph B.1 defines different methods constituting Federal "approval." Can this definition be read to mean that approval of an indirect cost rate or state-wide cost allocation plan (SWCAP) represents approval of costs contained by reference in such plans or revisions? [Att. A, ¶ B.1]

No. This definition only relates to those items that would require prior approval per Attachment B of Circular A-87. It is intended to facilitate the "prior approval" process whereby allocated costs do not require separate approval from every Federal agency affected. In addition, this prior approval concept would not override or make allowable a cost element that is specifically unallowable under another provision of A-87 or program statute. With respect to public assistance cost allocation plans, approval is for methodologies, not costs claimed under such plans.

2-7 Where prior approval is required for a selected item of cost, how is the approval to be handled where the cost is allocated or distributed to a number of programs/cost objectives? [Att. A, ¶ B.1]

Where such costs are part of an indirect cost agreement or cost allocation plan, e.g. SWCAP, for which a cognizant agency has been designated, the acceptance of the item of allowable cost by the cognizant agency shall represent prior approval for all Federal agencies.

2-8 How can I determine which Federal agency is cognizant for a particular governmental unit? [Att. A, ¶ B.6]

Appendix 2 is reserved for a future issuance of cognizant assignments pertaining to government agencies and local governments. At the time of this publication, OMB was in the process of revising the current document. The U.S. Department of Health and Human Services is cognizant for all state-wide cost allocation plans. For those entities not listed by OMB, cognizance is generally established based on the Federal agency providing the greatest dollar support that is subject to indirect cost rates.

2-9 In the revised Circular A-87 issued May 4, 1995, under the provisions concerning "Factors affecting allowability of costs," the prohibition of costs attributable to the routine activities of government has been deleted. Are such costs now allowable? [Att. A, ¶ C.1]

No. OMB omitted this prohibition under this section because it is now treated as a separate, unallowable cost element under "Selected Items of Cost" — Attachment B, paragraph 23. Such costs continue to be unallowable.

2-10 In the following examples, would a unit or component of government be in compliance with the "consistency" provisions of Attachment A, paragraphs C.1.e and f? [Att. A, ¶¶ C.1.e, f]

(1) A state with several data processing recharge centers, each using different billing systems and charging bases.

(2) Within a state, one department computes the indirect cost rate using a salaries and wages (S&W) base while another uses modified total direct costs (MTDC).

(3) One department computes a single rate for all divisions versus another that develops multiple rates.

Depending on the types of programs operated by the various departments and agencies, different methods of allocation may be required to achieve the most appropriate and equitable allocation results. Therefore, the use of different methods for allocating and distributing costs, as described, does not necessarily violate the intent of the A-87 provisions. It is the responsibility of the cognizant agency to assure that the method used in the negotiation and approval process results in the allocation of costs to all activities based on the concept of benefitting program or activity.

2-11 Circular A-87 stipulates that costs must be consistently treated as direct or indirect under like circumstances. Would this preclude, in the course of direct charging costs, a direct charge being made to an indirect cost center for those costs that are not assignable to a benefitting program, i.e., those that are truly of an indirect nature? [Att. A, ¶ C.1.f]

No. The requirement in the Circular is to prevent a practice where some of the costs

of a given activity are directly identified to programs/functions while other costs that could have also been charged as direct are treated as indirect. The distribution of a cost grouping or objective must include all benefitting programs/activities in the base, whether they be direct or indirect.

> **EXAMPLE:** A local agency, in addition to the Director's Office, has five operating divisions. For its basic telephone service, the agency opts to allocate the bill to organizational units based on the number of telephones in each unit. It must allocate costs to each unit and the Director's Office (which is treated as indirect). It cannot allocate to just two divisions with the other three divisions' allocations being allocated back to the Director's Office.

2-12 Circular A-87 requires that costs be allocated to activities or cost objectives based on relative benefits received. Are there exceptions to this requirement? [Att. A, ¶ C.3]

Circular A-87 requires that where a cost or activity benefits multiple activities or programs, those costs must be allocated in accordance with the relative benefits received by each activity or program. This requirement is an underlying principle of cost allocation. Exceptions to this requirement are permissible only under certain circumstances. If an awarding agency determines that costs allocable to another program or cost objective are allowable under their program, then the unallocable costs may be bourne by their program. This shifting of unallocable costs is permitted only when the head of the awarding agency advises the cognizant agency that under its enabling legislation, such cost shifting is allowed and expected. In the absence of such authorization, costs must be allocated to all benefiting programs.

2-13 Some Federal and state programs collect and use identical eligibility criteria or common data such as income, family structure, resources, etc. Can the costs of eligibility determination for several Federal/state programs be assigned to only one program, based on a concept of "primary program"? [Att. A, ¶ C.3]

Circular A-87 requires that common activities be allocated to all benefitting programs. The notion of "primary program" is contrary to the allocability provisions of A-87. As noted in the answer to Q&A 2-12 above, where the head of an awarding agency determines that the agency's enabling legislation permits reimbursement of unallocable costs, such costs may be allowed by the cognizant official for cost allocation or indirect cost agreements, when notified by the awarding agency head. Absent such notification, the primary program concept may not be used.

2-14 Sometimes, it is unclear when the costs of one program or activity end and those of another begin. For example, some Federal programs are categorical in nature, requiring some form of cost or beneficiary eligibility determination. In the course of determining that an individual is ineligible for the Federal program, it may be determined that the person qualifies for a state-only program. What criteria are to be used for allocating these costs? Should the Federal program be required to pay for all joint or common costs because, in the course of determining individuals eligible for the program, it follows that some individuals will be determined ineligible as well? [Att. A, ¶ C.3]

Some states have opted to provide benefits with state funding for individuals not covered by Federal programs. Quite often, in order to achieve economies, states will structure their intake or eligibility processes so that applying and determining eligibility for one or the other program can occur concurrently. As this is an efficient method of serving both programs, for which each receives a common benefit, it is appropriate and proper that each program receive an allocable share of these costs. A typical allocation base would be the number of positive eligibility determinations made for each program. (Such a methodology results in each program receiving a proportionate share of "ineligibility determination" costs.)

Whether such costs can be viewed as being attributable to the activity of determining ineligibility or a common eligibility cost depends on how the state has structured its operations. For example, if an eligibility determination runs its course for the Federal program, and the eligibility process begins anew for the state-only program, then there are costs of determining ineligibility solely for the Federal program. However, where the failure to qualify for the Federal program only requires some incremental work to be performed to determine eligibility for the state-only program (because information and data has been collected for both), then the latter program receives benefit from the common or joint effort previously expended and must receive an allocation of those costs.

In determining whether benefit is received from these common costs, consideration should be given to the following issues: Would the activity still exist, and thereby result in the same costs being incurred, if one program were terminated? Could a reasonable conclusion of eligibility or ineligibility for either program be made if

potential beneficiaries were evaluated against certain key eligibility criteria in the early stages of the determination process (i.e., level of income, whether there are children in the home, etc.), rather than at the tail-end of the process?

2-15 Circular A-87 seems to require that donated services always be allocated indirect costs. Are there any circumstances when such a distribution is not required? [Att. A, ¶ C.3.b]

As with the distribution of costs to any cost objective, no allocation is required when the component can demonstrate there is no benefit. If the level of benefit is not the same as for other benefitting activities, then additional, intermediate pools would be necessary so that only benefitting indirect costs are distributed to the donated services.

2-16 The discussion in Circular A-87 concerning allocable costs, Attachment A, paragraph C.3.c, stipulates that costs allocable to one program may not be shifted to another, yet it goes on to say that cost shifting is allowable. Is this inconsistent policy? [Att. A, ¶ C.3.c]

No inconsistency was intended. OMB made a distinction between *cost allocation* and *funding allocations*. [Editor's note: OMB added the exception language to this provision at the specific request of HHS, to address confusion that had occurred in the funding of some of its programs. The term "cost shifting" should not have been used, because cost shifting is unallowable, per se.] A function or activity within the government organization that benefits two or more programs may be set up as a single cost objective. Costs allocable to that cost objective would be allowable under any of the involved programs which benefit from these activities/costs. The government can make a business decision regarding what combination of funds made available under these programs would be applied to this cost objective. In public assistance agencies, for example, certain services rendered to children may comprise a cost objective. If the services provided and the criteria establishing the children's eligibility to receive them are the same for two or more child welfare programs, the government could fund the services with any combination of funds made available under these programs. This results in applying eligible funding sources to the single cost objective, rather than allocating the cost objective to the programs involved.

> **EXAMPLE:** Program A allows payments for children in foster care whose parents' incomes do not exceed 180% of the poverty income level. The payments to the care givers are matched by the Federal program at 50%, with no ceiling on the total amount that can be paid by the Federal Government. Program B allows payments for children in foster care regardless of the parents' income. While Program B will match these payments at 75%, total Federal payments may not exceed $10M. The state opts to establish a single cost center for children in foster care whose parents' income is less than 180% of the poverty level. As these children qualify for either program, the state can initially fund these services with the higher matching Program B funds (75%). When the Federal ceiling of $10M is reached, the cost center can

then be *funded*, from that point forward, with Program A funds, albeit at a lower matching rate of 50%. Children whose parents' income exceeds the 180% income level would be charged to a separate cost center, along with the attendant eligibility and other administrative costs. (Typically, the costs of determining eligibility for these two groups would initially be aggregated in an intermediate cost pool reflecting common costs. The pool would be further allocated to the two final cost objectives based on the number of children served in each.)

2-17 Is the list of applicable credits all inclusive? [Att. A, ¶ C.4.a]

No. There are other common examples. For instance, applicable credits result from allowable activities that generate income, such as income from sales of publications; income generated from employee morale, health, and welfare activities per Attachment B, paragraph 17; and interest earnings on internal service funds and positive cash flows.

2-18 If a government operates its entitlement programs through different component units, such as the health department and welfare department, may cost allocation plans be required from each? [Att. A, ¶ F.2]

Yes. The requirements of Attachment D apply to all public assistance programs, regardless of where they are organizationally located. Public assistance programs are not the only instances when a government component may need a cost allocation plan. Whenever the nature of the component's activities are such that direct costs cannot be adequately determined with reasonable precision, a cost allocation plan would be necessary. Typically, a plan is necessary when substantial "direct" costs of programs, awards, contracts, projects, etc. consist of joint or common cost distributions. This would not preclude, however, the use of an indirect cost rate in conjunction with a cost allocation plan.

2-19 Are cost allocation plans only applicable to state/local-wide cost allocation plans (SWCAPs/LOCAPs) and public assistance cost allocation plans (PACAPs)? [Att. A, ¶ F.2]

No. The component or a Federal agency may request a cost allocation plan in lieu of an IDC rate under the circumstances described for public assistance plans in Q&A 2-18 above. Where a cost allocation plan is necessary for a component of the governmental unit for which the cognizant agency makes no awards, or has no knowledge of the component's programs, the awarding agency impacted the greatest may be designated to approve such plans.

2-20 Attachment A, Section G discusses the use of a standard 10% rate for services provided by one agency (except state/local-wide centralized services departments) to another within a governmental unit. Can this concept be used under any circumstances where a state makes a subaward to a local government? [Att. A, § G]

No. This provision only applies to components (agencies) within a specific governmental unit, not outside that unit.

2-21 Attachment A, Section G allows components, when billing another component for services, to include a flat 10% of salaries and wages in lieu of determining actual indirect costs. Under what circumstances would this be permissible? [Att. A, § G]

A number of agencies do not receive Federal awards and therefore have no need to obtain an indirect cost (IDC) rate from a cognizant agency. From time to time these agencies might provide a reimbursable service to another agency which does receive awards. OMB opted to allow the 10% of salaries and wages, which is viewed as nominal, rather than requiring such agencies to go through the burden of developing indirect cost rates for relatively insignificant activities. If an agency providing services has an IDC rate, that rate must be used in lieu of the flat 10% rate if its application results in less reimbursement.

PART 3

Attachment B — Selected Items of Cost

3.1 Handling Items of Cost Not Listed in Attachment B

Like other sets of Office of Management and Budget (OMB) cost principles, Circular A-87 lists selected items of cost that are common to performing and administering Federal awards to governmental units. The selection of these costs represents OMB's judgment that policy about allowability is either needed or desirable. However, OMB recognizes that it is not possible to develop comprehensive rules that address every possible type of cost that might arise in the context of awards to governmental entities. Accordingly, Attachment B of the Circular, which addresses the selected items, is introduced with a general policy that is intended to be helpful in making cost determinations. It states: "Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards for similar or related items of cost."

Under this policy, if an item is not listed in the Circular, but a similar item is discussed, it may be that allowability can be determined by assessing the degree to which common characteristics exist between the two cost items. Alternatively, applying the general tests of allowability contained in Attachment A of the Circular could be determinative. It may be advisable to seek advance understanding with the awarding or cognizant agency concerning particular costs if allowability is more difficult to determine, although such a practice is not specifically mentioned zin Circular A-87. Other OMB cost principles suggest this approach where doubts are present, but further state that the absence of such an advance understanding does not preclude allowability.

3.2 Prior Approval

In the past, because of concerns about the allocability of certain items of cost, OMB usually required that these items be subject to the prior approval of Federal agencies. he 1995 revision to the Circular changed the frequency and precision with which these approvals must be obtained. First, through definition changes and other means, it streamlined the award administration process by reducing the number of transactions subject to prior approval. Second, it expanded the actual definition of what constitutes approval. Under the new definition, the term "approval or authorization of the awarding or cognizant Federal agency" means "documentation evidencing consent prior to incurring a specific cost." However, the definition goes on to state that if costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a state/local-wide cost allocation plan or an indirect cost rate proposal, approval of the plan constitutes the approval of costs requiring prior approval. The addition of these policies in the 1995 revision is intended to preclude prior approval-seeking for costs requiring prior approval when a cost has already been considered and analyzed as part of another review process.

While not specifically mentioned in the Circular, most Federal awards will also identify the official(s) of the awarding agency who are authorized to issue approvals. Approval should always be documented in writing by the authorized Federal official.

3.3 Highlights of Changes Affecting Attachment B

Numerous selected items of cost were added to the listing in the 1995 revision. Many make the Circular consistent with OMB cost principles applicable to other types of recipients. Because of their newness or the relative lack of familiarity that officials of governmental recipients may have with these other cost principles, numerous questions have been raised concerning applicability. Many of these are addressed in the Questions and Answers section which follows the changes listed below.

Attachment B has been reformatted into an alphabetized discussion of costs, noting in the discussion for each cost whether it is allowable or unallowable. Separate sections dealing with allowability/unallowability have been deleted. Where selected items of cost appear in new sections due to the alphabetical format and there is no substantive change in policy, no mention of the change is provided in this document. Also, as the discussion of allowability for a selected item of cost is applicable regardless of whether a cost is direct or indirect, specific references to billed and like services have been deleted. Again, if no substantive change has been made, no mention is made herein. [Att. B, ¶¶ 1-42]

Significantly qualifies and defines "advertising and public relations costs" and when they are allowable. [Att. B, ¶ 2]

Clarifies that "advisory councils" may be allowable as either direct or indirect costs. [Att. B, ¶ 3]

Adds a new section specifically making alcoholic beverages unallowable. [Att. B, ¶ 4]

Adds additional language as to what audit costs are allowable and stipulates that they are to be allocated based on the ratio of Federal funds to total expenditures. [Att. B, ¶ 5]

The specific prohibition of "budgeting costs" attributable to routine costs of government has been deleted from this section. [Att. B, ¶ 9] However, see reference to Att.B,¶ 23, below.

The section on "Compensation for personnel services" has been greatly expanded. Significant changes are:

— criteria for determining what is reasonable compensation;

— an expanded fringe benefits discussion rolled into this section that explains, among other things, how costs are claimed when using accrual or cash basis of accounting;

— considerable attention to the accounting and claiming of pension costs;

— detailed requirements concerning salary support and time distribution systems; and

— a new subsection on "donated services" which prohibits reimbursement of such services but nevertheless requires that they be included in the base for purposes of allocating indirect costs. [Att. B, ¶ 11]

Contingencies continue to be unallowable but the section has been qualified to clarify that reserves for such things as pensions and other fringe benefits are permitted. [Att. B, ¶ 12]

A new section, "Defense and prosecution of criminal and civil proceedings, and claims" has replaced the former "Legal expenses" section. The new section incorporates statutorily required language applicable to contracts. Legal and related expenses incurred in the prosecution of claims against the Federal Government remain unallowable. [Att. B, ¶ 14]

An expanded section on "Depreciation and use allowances" adds the following provisions:

— the assets of enterprise funds must be capitalized, as required by GAAP;

— governmental subdivisions may not be considered donors for purposes of establishing an asset's value at fair market value (FMV); — componetization of buildings is allowable;

— except for enterprise and bona-fide internal service funds, classes of assets must be the same basis as used in the governmentwide financial statements; and

— when converting from use allowance to depreciation, the balance to be depreciated will be computed using a pro forma depreciation schedule starting with the date of acquisition.

The prohibition of excess capacity has been relocated to another section. (See reference to Att.B, ¶ 24, below). [Att. B, ¶ 15]

The "Equipment and other capital expenditures" section has been expanded to:

— define what is a capital expenditure;

— allow governments to establish a capitalization threshold at the lessor of $5,000 or the threshold used in preparing the financial statements;

— clarify that capital expenditures may only be allowed as a direct cost with prior approval; and

— provide guidance on how unamortized portions of assets are to be handled when a governmental unit changes its capitalization policy.

Rental costs have been removed from this section and given a dedicated citation. (see 3-22 below) [Att. B, ¶ 19]

A section on "Fund raising and investment management costs" has been added. Fund raising and general investment activities/costs are unallowable but must be allocated a pro rata share of indirect costs. Investment activities related to pension funds, self-insurance funds, etc. are allowable. [Att. B, ¶ 21]

A new section has been added addressing gains and losses and the relocation of Federally sponsored programs. While gains and losses on the sale, retirement, or other disposition of depreciable property must be accounted for in the current period, several methods are cited for handling the adjustment. Where Federal programs are relocated from a facility in which there was Federal participation in the financing of the facility, adjustments can be required by the cognizant agency. [Att. B, ¶ 22]

General or routine costs of government have been given a separate section. In addition to the governor's office, several other examples are listed as being unallowable. [Att. B, ¶ 23]

A new section addressing idle capacity and facilities was created which incorporates definitions of these terms and establishes parameters for establishing allowability. [Att. B, ¶ 24]

The section on "Insurance and indemnification" has been expanded to address self-insurance funds such as worker's compensation and unemployment compensation. This discussion is quite detailed and covers such areas as measuring risk, funding, offsets for investment income, etc. [Att. B, ¶ 25]

Interest is now allowable on equipment acquired before or after the effective date of the revised Circular. However, for existing debt, only interest expense incurred/paid in the government's fiscal year beginning on or after September 1, 1995 is allowable. Retroactive claims for interest paid in prior periods is unallowable. The Circular also requires, for facilities, that earnings on construction borrowings be offset against income expense. Where depreciation and interest expense exceeds principal and interest payments (positive cash flow), the state is required to "negotiate" the amount of allowable interest with the cognizant agency. While no change was made concerning the allowability of interest for facilities, the section now permits interest for reconstruction or remodeling completed after October 1, 1980. [Att. B, ¶ 26]

A new section on "Lobbying" generally makes these costs unallowable. [Att. B, ¶ 27]

The section on "Professional services" no longer requires prior approval and has been expanded to include retainer fees. Related to this, the previous requirement that the cost of "management studies" had to have specific prior approval has been deleted. [Att. B, ¶ 33]

The Circular no longer requires prior approval of "Proposal costs" that are treated as an indirect costs. Prior approval is still required if the cost is claimed as a direct cost. [Att. B, ¶ 34]

Two new sections have been added addressing "alterations" and "reconversion" costs of facilities. While both are allowable, circumstances dictate whether prior approval is required. Alterations incurred to meet the specific requirements of a Federal award require prior approval. Alterations at the termination of an award that are necessary to restore facilities to their prior condition are allowable. [Att. B, ¶ 36, 37]

"Rental costs" has been expanded to address capital and less-than-arms-length leases. Allowable costs are limited to the pro forma costs of ownership. [Att. B, ¶ 38]

The "Taxes" section has been qualified to exclude as allowable those taxes that are self-imposed and otherwise disproportionately affect Federal programs. This qualifier becomes effective on January 1, 1998. [Att. B, ¶ 39]

Where a governmental unit fails to have written travel reimbursement policies, the "Travel" section now requires that General Services Administration

(GSA) rules be used. Where noncommercial air transportation is used, allowable costs are limited to commercial fares. [Att. B, ¶ 41]

3.4 Questions and Answers on Attachment B

3-1 How are the cost allowability requirements of Circular A-87 different from those of Circular A-21 and A-122? [Att. B]

There are currently some differences between the various sets of OMB cost principles, but they are relatively minor. All three sets of principles reflect essentially the same policies toward cost allowability and documentation. OMB has stated that it intends to eliminate remaining differences as the circulars continue to be revised.

3-2 The previous version of Circular A-87 prohibited budgeting and accounting costs allocable to general costs of government. Are these costs now 100% allowable? [Att. B, ¶ 1]

No. In its 1995 revision of Circular A-87, OMB omitted language qualifying which accounting and budgeting costs are allowable. Those costs allocable to general or routine costs of government continue to be unallowable under the general provisions of Attachment B, paragraph 23, "General Government Expenses." In its efforts to reduce verbiage in the Circular, OMB determined that it was unnecessary to qualify every item of cost. All costs are subject to the general prohibition of allowing costs attributable to the general cost of government.

3-3 Other than the capitalization of ADP equipment and related hardware, must the developmental and testing costs for such systems be amortized? [Att. B, ¶ 6]

At the time of this guide's publication, no applicable industry-wide government accounting standards exist for the treatment of these costs. Governmental units are to treat these costs in accordance with their established capitalization policies. In the future, should the Governmental Accounting Standards Board issue applicable pronouncements on this subject, governmental units will be required to follow them.

3-4 Where financing was obtained to develop an ADP system, are there any limitations with respect to claiming interest expense associated with these costs?

Interest is only allowable on capital expenditures where there is interest expense and depreciation (or use allowance) in the current period. If development costs are not amortized, i.e. written off as expenditures, then no interest is allocable or allowable under Federal programs. However, interest expense incurred in the first year of the expenditure is allowable.

3-5 Lump sum leave (Unused Leave at B.11.d(3)) payments are to be allocated as general administrative expenses to all activities of the governmental unit or component. Why are both noted here, but only "governmental unit" is cited for severance pay (B.11.g(2))? [Att. B, ¶ 11.d]

The section dealing with severance pay requires an allocation of these costs "to all activities of the governmental unit as an indirect cost." This language is interpreted as including components; no distinction is intended.

3-6 If an employee worked on the same program during their entire employment, can their unpaid leave, at the time of separation, be charged to that program? [Att. B, ¶ 11.d(3)]

Attachment B, paragraph 11.d(3) requires that unpaid leave be treated as an indirect cost. If a governmental unit wishes to direct charge such costs, the alternative that would result in the same level of equity would be if unpaid leave for all employees were charged to the source(s) where the leave was earned. The allocation would not only have to be within the last component unit worked, but to all other units worked over the employees' careers. As this approach involves burdensome accounting for the entire work force, OMB provided the indirect cost approach as being the least burdensome.

3-7 In the preamble to its notice in the May 17, 1995 *Federal Register,* page 26485, OMB stated that a proposed revision requiring separate actuarial computations for different classes of employees had been deleted. OMB did not explain why this provision had been deleted. Does this mean that classes of employees, such as police and social workers, may now be combined for computing pension liabilities and employer contributions? [Att. B, ¶ 11.d(5)]

No. OMB has stated that this provision was deleted because it was redundant of a more general provision of the final revision to Circular A-87. Attachment B, paragraph 11.d(5) stipulates that fringe benefits must be allocated "in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees...." As such, it is the intent of OMB that separate actuarial analyses be made for pensions and other applicable fringe benefits involving different classes of employees having different cost patterns.

Basic guidelines affecting allowability of costs provide that policies, regulations, and procedures be consistently and uniformly applied to both Federal and nonfederal activities. This consistency concept recognizes that there will probably be several actuarial groupings to reflect different employee classes (e.g., police/fire, judges, regular classified, etc.). Consistency requires that pension contributions for employees within each actuarial grouping be based on the same assumptions and computations (e.g. 7% of salaries and wages).

3-8 Circular A-87 states that pension contributions by a governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods. Does this mean that the excess amount is not allowable in the year contributed, but may be allowed or recognized in future periods? If so, how should the unallowable amount be calculated? [Att. B, ¶ 11.e]

The maximum amount allowed for pension costs in a given fiscal year would be the amount actually contributed, based on the amount determined for that fiscal year under an acceptable actuarial system that has been used by the government in

its financial statements. Any amount exceeding this determination would be unallowable in the year funded but would be considered a prepaid contribution that can be used in whole or in part by the government in a future period when its contribution is less than the actuarially determined amount for that period. The amount allowed in this later period would reflect the amount prepaid, plus interest earnings on that amount, as computed based on the assumed interest rate used by the actuary in its determinations.

3-9 Circular A-87 notes only two acceptable methods for computing pension plan costs applicable to a governmental unit's fiscal year, i.e., the pay-as-you-go method or an acceptable actuarial cost method. It further notes the amounts that will be recognized as allowable for a given year, i.e., actual payments to retirees or their beneficiaries under the former method, and amounts funded within six months after the end of that year (extensions subject to approval) for the latter. If another method is used, e.g., an approved funding schedule by the state legislature, is that method acceptable if it produces contributions between what the two approved methods would allow? [Att. B, ¶ 11.e]

This would be similar to an actuarial method where a governmental unit funds less than the actuarially determined amount. As provided in Attachment B, paragraph 11.e(2), costs that are funded after the six-month period would be allowable in the year the actual funding takes place. However, only the amount that would have been funded if contributions were made on a timely basis would be allowable. Any increased costs due to the delayed funding would be unallowable in the year funded.

3-10 Circular A-87 allows recognition of actuarial pension contributions in a specific year if these contributions are made in a period not exceeding six months after year end. An extension of the six months is permitted if an imputed interest offset adjustment is made to compensate for the difference in the timing of the Federal reimbursement versus the state/local contribution. Are such adjustments required during the course of the year, i.e. the timing between the Federal reimbursement during the twelve-month period and the actual contribution to the pension fund during that same period? [Att. B, ¶ 11.e(2)]

OMB did not believe it was necessary to establish rules concerning timely contributions, as this matter falls under the purview of cash draw downs and, as such, is subject to the provisions of the Cash Management Improvement Act (CMIA) (P.L. 101-453, implemented by the Treasury Department at 31 CFR Part 205). Where the cognizant agency determines that funds have been drawn down, retained for extended periods, and subsequently used to make untimely contributions, the cognizant agency is required to recover imputed interest through the Treasury Department under the auspices of the CMIA.

3-11 Attachment B, paragraph 11.e(5) provides for the Federal Government to receive a refund, withdrawal, or other credit if pension monies revert to state/local general revenues or other nonpension uses. How would the Federal Government refund be determined? [Att. B, ¶ 11.e(5)]

The Federal refund percentage of the amount reverted to the governmental unit should be based on the same pro rata share of the pension contribution charged to Federal programs. However, because Federal pension contributions usually occur over a long period of time, an accurate determination of the pro rata share over this period is seldom feasible. The cognizant agency may negotiate with the governmental unit a reasonable estimate of the pro rata share or elect to use the universally accepted 20 percent as the approximation. The 20 percent representing the Federal share would be applied to the total amount transferred.

3-12 Severance payments associated with normal turnover are allowable and are to be allocated to all activities of the governmental unit as an indirect cost. Are governments required to allocate to the entire governmental unit, e.g. the state, through the state-wide cost allocation plan (SWCAP) as an indirect cost or just to all activities within the affected component of the governmental unit? [Att. B, ¶ 11.g(2)]

Attachment B, paragraph 11.g(2) only refers to severance pay involved with normal turnover and not that experienced with reductions due to program cutbacks or elimination, reductions in the government workforce, buy-outs, etc. This section deals with relatively insignificant costs resulting from normal operations and are to be included in a component's indirect costs, the SWCAP/LOCAP, or a state/local-wide fringe benefit rate, depending on how the government accounts for such costs. However, they are not to be treated as direct costs.

3-13 Attachment B, paragraph 11.g(3) notes that "abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency." What is the definition of "severance pay" in this case, and what must be submitted to the Federal Government for approval? [Att. B, ¶ 11.g(3)]

The question raises several points and the responses to each are as follows:

(1) Mass severance or termination benefits would include all expenses associated with the event. This would include: lump sum payments that may be linked to years of service, increased pension benefits such as granting additional years or eliminating penalties for early retirement, payments of unused leave, and the cost of any other incentive offered to employees as an incentive to leave government service, such as buy-outs.

(2) The costs of these special termination benefits must be determined and prior approval of such costs must be obtained from the Federal cognizant office prior to claiming these costs directly or indirectly against Federal programs. The requests for prior approval, at a minimum, must demonstrate the reasonableness and allocability of such costs to Federal programs.

(3) If a state or local government is contemplating such packages, they must obtain approval as required, based on the effective date of Circular A-87 for the specific governmental unit. In addition, even though the former Circular A-87 did not note a specific requirement for advance approval for

such costs, it did require that, for claiming and reimbursement purposes, all costs be allocable to and benefit Federal programs.

(4) Cognizant agencies will generally use the following criteria in making a determination as to whether the abnormal severance costs will be allowed.

a. The governmental unit must demonstrate that such costs are allocable to Federal programs.

b. The buy-out should be government-wide. (However, see Q&A 3-14 below.)

c. The plan should address policies concerning rehiring and forfeiture of buy-out or other severance payments if rehiring policies are not followed.

d. The plan should address estimated savings, total and Federal, in both dollars and number of employees.

e. The governmental unit should analyze the effect the downsizing will have on the operation, continuity, and effectiveness of programs.

f. The governmental unit and the cognizant agency also will establish an agreement providing for compensation to the Federal Government

should the terms and conditions of the buy-out/severance plan not be met.

3-14 Is there a prohibition on allocating or charging buy-out and other severance costs directly to the function or activity in which the employee last worked? [Att. B, ¶ 11.g(3)]

As stated in Attachment B, paragraph 11.g(3), each incentive package will be determined on a case by case basis. The direct charging of buy-out costs to functions/programs/components is appropriate under certain circumstances. For example, where the state or the Federal Government is eliminating a program, charging the buy-out costs to that program is consistent with the allocability provisions of Circular A-87. However a problem may be created in this situation because the buyout costs would be assigned to a component or program that no longer operates. If such programs are state/local-only supported programs, then such costs would not be allocable to Federal programs either directly or indirectly. If such programs are Federally supported programs, then these programs should provide for the costs of such cut backs or terminations because a basic A-87 cost principle at Attachment A, paragraph C.3.c. provides that "[a]ny cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies...."

3-15 What is a personnel activity report (PAR)? [Att. B, ¶ 11.h]

A PAR is a timesheet or log maintained by the employee which contemporaneously accounts for 100% of their time. The objective is to identify effort spent on multiple activities or programs. Breaks, meals, generic training, etc. can all be coded to a single activity such as "admin" or "other," which in turn would be reallocated to the activities or programs.

In limited situations a PAR can be a time certification relying on an informal log or calendar notations. For example, an attorney working in an agency general counsel office routinely works on general management activities, which are allowable, and his time is charged 100% to an indirect cost center. However, in one month he works three weeks with the state attorney general on a lawsuit against the Federal Government. For that month, it would be acceptable for him to complete an end-of-the-month certification reflecting a 25% distribution of time to the IDC pool and 75% to a cost center representing unallowable legal costs (pursuing claims against the Federal Government).

Caution must be exercised when using time certifications. Their use is only suitable where few activities are involved and the effort involved covers long periods without diversions to other efforts. Where effort is expended on a number of activities with constant variations throughout the day as well as from day to day, a month-end certification would be unacceptable. It would be at best a rough estimate of time expended and would not meet the requirement of an after-the-fact reporting of actual effort.

3-16 Attachment B, paragraph 11.h establishes acceptable standards for a personnel activity reporting (PAR) system. One standard requires an employee signature when working on multiple activities. If a government component maintains an ADP on-line PAR system which is fully computerized and paperless, would a "digital signature" (occurring when an employee logs on to the PAR system with a logon ID and a secret password) constitute an acceptable alternative to an employee signature? [Att. B, ¶ 11.h]

As long as the governmental unit can demonstrate and document that only the employees' actions would result in the identification of the activities to be charged, and that it complies with the other criteria in Attachment B, paragraph 11.h(5), the procedure would be acceptable.

3-17 Some central services activities are billed based on the service hours provided to user agencies. Circular A-87 requires that "personnel activity reports or equivalent documentation...must reflect an after-the-fact distribution of the actual activity of each employee." Based on the requirements at Attachment B, paragraph 11.h, are timesheets reflecting actual effort required or are monthly estimates sufficient? [Att. B, ¶ 11.h]

If an employee is assigned to and expected to work solely in one billed activity (cost objective), only periodic certifications, as required by Attachment B, paragraph 11.h(3), must be generated. However, if that employee is assigned to a billed activity in which multiple rates are developed, then personnel activity reports

or equivalent documentation set forth in 11.h(4) and (5) are required. Monthly estimates can only be used for interim billing purposes. Such billings must be adjusted to actual effort based on the criteria set forth in 11.h(5)(e).

3-18 How should year-end bonuses be treated? [Att. B, ¶ 11.h]

If the amounts involved are significant, they must be allocated based on the entire year's activity. As such, time and effort reports (or equivalent systems) must be averaged for the period covered by the bonuses, in this case, an entire year. However, if it can be demonstrated that the time and effort or other statistical data for the period in which the bonus was paid is typical of the entire period for which the bonus was awarded, then no redistribution is required.

3-19 If an employee works on only one Federal award, is a certification required? [Att. B, ¶ 11.h(3)]

Yes. However, this requirement can be met through certain payroll codings and time and attendance certifications pursuant to payroll authorizations. For example, if (1) employees work in a dedicated function; (2) their potential assignment to multiple programs/activities is not within the authority, function, or purview of the supervisor responsible for certifying payroll time and attendance; and (3) the employee is coded to a dedicated function not benefitting multiple functions or programs, the payroll certification shall be accepted in lieu of the semi-annual certification of time and effort.

3-20 Will an employee working on two indirect cost activities subject to different allocation bases be required to maintain a personnel activity report? [Att. B, ¶ 11.h(4)(d)]

Attachment B, paragraph 11.h(4)(d) requires that employees in these circumstances must complete personnel activity reports, whether through time sheets or some form of statistical sampling.

3-21 Where a personnel activity reporting system is based on employee time sheets, what are the minimum increments of time in which employees may record their time? [Att. B, ¶ 11.h(5)]

The purpose of time and effort (T&E) reporting is to capture total activities expended on various Federal and state programs. Depending on the level of detail required by the enabling legislation or management, activity-specific vs. program-specific time might have to be captured. Increments of time should not be limited arbitrarily, because this may prevent employees from accurately and completely reporting effort on all programs and required activities if the minimum increment is too large.

Time sheets must be completed contemporaneously and must be detailed enough to reflect all activities performed during a specific period of time. The time increments should be sufficient to recognize the: (1) number of different activities performed, and (2) dynamics of these responsibilities. For example, very large time increments could be used for employees performing only a few functions

which change very slowly over time. Conversely, very small increments would be needed for employees performing a multitude of very short-term tasks.

Reporting time frames established by a unit or component may be subject to Federal review. If the cognizant agency determines that an established time frame or increment is inadequate because it does not allow employees to report effort on all activities or programs fully and contemporaneously, the unit or component will be required to revise its system to capture all activities and programs. To avoid this condition, a statistical reporting system (e.g. random moment sampling) should be considered for employees working in dynamic situations (performing many different types of activities on a variety of programs over a short period of time).

3-22 For employees working on multiple activities where the component has opted to account for time based on time and effort reports, must the personnel activity report for the employee account for 100% of the worker's effort? [Att. B, ¶ 11.h(5)(b)]

Yes. Failure to account for 100% of an employee's or volunteer's time would result in the shifting of program/activity costs to those programs for which time is accounted.

3-23 Can the results of an acceptable statistical sampling method or time and effort reporting covering one period of time be applied to a different period, e.g., a prior quarter? [Att. B, ¶ 11.h(5)(c)]

No. The results of a specific period represents the values experienced during that period only. Attachment B, paragraph 11.h(5)(c) requires that time and effort reporting coincide with one or more pay periods. Therefore, retroactive application of such results, whether they are statistically based or effort reporting, is unacceptable. However, prior period actuals may be used as estimates for applying costs in a future period, provided that the estimates are adjusted back to actual effort for that period when claimed for reimbursement.

3-24 How often must time sheets be prepared? [Att. B, ¶ 11.h(5)(c)]

The timeliness of completing time and effort reports depends on the nature of activities being reported. The Circular requires that such reports must reflect the actual activity of each employee. If activities or programs worked on vary constantly throughout the work day, then they must be completed as each event begins and ends. However, in accordance with Attachment B, paragraph 11.h(5)(c), they must be completed no less frequently than monthly.

3-25 Are legal costs associated with administrative appeals of disallowed costs, cost allocation and indirect cost proposal disputes, or other adverse decisions made by the Federal agency allowable? [Att. B, ¶ 14]

Circular A-87 stipulates that the costs of pursuing claims against the Federal Government are unallowable. However, OMB has deferred to agencies in interpreting this policy. Most, but not all, agencies have interpreted this policy as prohibiting costs associated with both administrative and judicial appeals occurring

after a final management decision has been issued by the agency. As efforts are being made to establish a consistent interpretation throughout the Federal Government, governmental units should periodically check with their cognizant or awarding agency to determine if they are affected. Where such costs are interpreted as being unallowable, governmental units must establish methods and a cost center to aggregate such costs.

3-26 Attachment B, paragraph 14 refers only to those legal defense expenses deemed unallowable. What about accounting or other activities supporting unallowable legal defense activities? [Att. B, ¶ 14]

Although not mentioned specifically, other costs supporting unallowable legal defense activities would also be unallowable. Unallowable defense activities constitute the cost objective and any costs allocable to that activity are likewise unallowable.

3-27 How does a governmental unit identify unallowable legal defense and related costs? [Att. B, ¶ 14.b]

Unallowable activities must be identified through separate cost objectives or cost centers. With respect to salaries and wages, Attachment B, paragraph 11.h(4)(e) requires that unallowable activities be identified through the use of personnel activity reports or equivalent documentation. These costs would be fully burdened with applicable fringe benefits and related administrative costs.

3-28 Can depreciable lives of assets that are relied upon in the preparation of the financial statements differ from those used in filing claims with the Federal Government? [Att. B, ¶ 15]

In accordance with the consistency provisions of Attachment A, paragraph C.1.e, if a governmental unit elects to depreciate in its financial statements (CAFR), the depreciable lives and classes used in those statements must be used by all components of the government in their claims under Federal awards.

3-29 Most states do not have a state-wide policy on depreciation. Quite often, individual state agencies have policies that may be different from state practice, e.g., the state does not depreciate equipment in its financial statements. Are agency policies on depreciation sufficient, if applied consistently throughout the agency, or is the agency required to follow what is practiced by the state in developing its financial statements? [Att. B, ¶ 15]

OMB recognized that states are not required to depreciate assets in their financial statements. As such, OMB granted an exception to the consistency requirements of Attachment A, paragraph C.1.e. Even if the state financial statements do not provide for depreciation, a government component (e.g. Department of Transportation, public university, etc.) may claim this expense. However, the capitalization threshold used in the CAFR for the fixed asset group must be used by the agency in establishing which assets to depreciate. In addition, depreciable lives for classes of assets must be consistent throughout the component. Where

componentization is elected for buildings, the practice must be consistently applied to that asset group throughout the component.

3-30 Where a governmental unit or component opts to change from use allowance to depreciation, how is this conversion to be handled? [Att. B, ¶ 15]

In accordance with Attachment B, paragraph 15.e, the asset's imputed book value at the time of conversion is to be established by assessing pro forma depreciation for those periods when use allowance was applicable, i.e. from the date of acquisition. The remaining balance is then depreciated over the remaining useful life.

3-31 May components of a governmental unit determine, establish, and account for the cost of assets on a different basis, i.e., some through the use allowance provision and others through deprecation? [Att. B, ¶ 15]

Generally, yes. Attachment B, paragraph 15.a, permits this. However, only one method — depreciation or use allowance — may be applied to a single class of assets. A combination of the two methods is not allowed.

The exception to the above is in the case of internal service funds (ISFs) and enterprise funds. OMB, at Attachment B, paragraph 15.a, recognizes the requirement in generally accepted accounting principles that assets in such funds must be depreciated. The use of a depreciation method in the ISFs is acceptable even though other central service activities (unbilled) are applying use allowance in the determination of their costs.

3-32 Under what circumstances can accelerated depreciation be claimed? [Att. B, ¶ 15.e]

Depreciation accounting is, frequently, a reflection of tax or social policy. In contrast to IRS regulations, Circular A-87 follows traditional financial precepts associated with the production of goods and services by requiring that straight line depreciation procedures be applied to recognize an asset's consumption over its useful life (based on historical information or experience). The straight line procedure is presumed to be the only acceptable method because it is extremely difficult to demonstrate that the expected consumption of an asset will be significantly greater in earlier portions of its useful life.

It is assumed that older assets will probably require more maintenance and repair costs than newer assets. However, since these "fix up" costs are recognized as current period expenses, maintenance and repair expenditures have no impact on annual depreciation costs. Depreciation expense might vary from year to year only if an organization could demonstrate that an asset contributes more (or less) each year to the production of goods and services.

Alternative depreciation procedures may be acceptable if an asset's consumption is based on unit of production rather than estimated useful life. For example, an entity may have a policy of removing vehicles from service after 125,000 miles or replacing certain equipment after 200,000 hours of operation. In these cases, miles

driven or operating hours per year could be used to compute annual depreciation (rather than estimated years of service).

3-33 Under what circumstances may a use allowance be allowed for assets which have been fully depreciated? [Att. B, ¶ 15.g]

In only the most extraordinary circumstances should a use allowance be allowed for fully depreciated assets. Increased maintenance and service costs resulting from the age of the asset generally are insufficient justifications for allowing use allowance, as such costs are reimbursable directly as current period operating expenses. Furthermore, capital improvements/repairs/renovations to maintain the original asset's viability are equally insufficient justification, as they are recoverable through depreciation. The reimbursement of use allowance may be justified when Federal programs had been charged with little or no depreciation expense in the past.

3-34 Under what circumstances may a use allowance be allowed for assets which have been subjected to use allowance and would be considered to be fully depreciated at the use allowance rate? [Att. B, ¶ 15.g]

As with situations where an asset has been fully depreciated, additional use allowance for any asset for which the past application of use allowance can be considered to have resulted in the full acquisition cost of the asset having been recovered, use allowance should only be allowed in exceptional cases. The concept of reasonableness assumes that claims submitted to the Federal Government (and other external organizations) for cost reimbursement should be limited to an asset's acquisition cost. In sum, any claim for cost reimbursement in excess of cost would be unreasonable and unallowable. The criteria for allowing use allowance for fully depreciated assets (see Q&A 3-33) should also be applied for assets that have been subjected to use allowance in the past.

3-35 Attachment B, paragraph 19.a(2) defines equipment as the lessor of the governmental unit's capitalization policy or $5,000. However, Attachment B, paragraph 19.d stipulates that items of equipment less than $5,000 can be charged directly to grants without prior approval of the grantor agency. Do these rules contradict each other? [Att. B, ¶ 19]

No. Attachment B, paragraph 19.c establishes the requirement for prior approval of capital expenditures. The purpose of Attachment B, paragraph 19.d is to establish the prior approval dollar threshold for capital expenditures charged direct to grants. Attachment B, paragraph 19.a(2) permits governmental units to write-off assets up to $5,000, pursuant to an established government-wide capitalization policy. Based on these definitions, noncapital expenditures become classified as supplies or some other object of expenditure other than "equipment." However, even if a governmental unit has a capitalization policy of less than $5,000, they may still claim direct capital expenditures as "equipment" without prior approval, up to $5,000.

This distinction is necessary to avoid over-reimbursement of indirect costs where a modified total direct cost (MTDC) base is used to distribute indirect costs. When

using an MTDC base, the cognizant agency excludes capital expenditures based on the organization's capitalization policy (not to exceed $5,000). If amounts exceeding the organization's capitalization policy, up to $5,000, were to be treated as supplies, then indirect costs would be applied to those supplies, resulting in over-reimbursement.

3-36 When a governmental unit does not account for depreciation in its financial statements, it theoretically does not have a capitalization policy. On what basis should the governmental unit charge use allowance if it does not have a capitalization policy? [Att. B, ¶ 19]

Governments that do not report depreciation in their financial statements typically disclose a "fixed asset group." In determining which assets will be reported in this group, the government has established a dollar threshold, i.e., assets costing over a certain amount are included. For purposes of defining equipment and for purposes of charges to Federal programs, the threshold established for the "fixed asset group" would constitute the government's capitalization policy.

3-37 Circular A-87 permits governmental units to define equipment up to $5,000. Assuming a government adopts the $5,000 limit and purchases a computer system for $1M, if no single component costs more than $5,000, can the $1M be expensed? [Att. B, ¶ 19.a]

No. The components of the computer system make it useable for the purpose for which it was acquired and therefore establishes the "system" as the capital expenditure. (Att. B, ¶ 19a(1)) In accordance with generally accepted accounting principles, and the definition of "acquisition cost" in section __.3 of the Common Rule accompanying OMB Circular A-102, the entire system of $1M is to be capitalized. Subsequent additions to the system, such as additional personal computers for new staff, may be treated as maintenance costs expensed to the current period.

3-38 A governmental unit does not depreciate capital expenditures but rather expenses everything. For CAFR reporting purposes, however, the unit maintains a fixed asset group category in which all assets over $250 are tracked as capitalized assets. Which capitalization policy should it use for its central service allocation plan, i.e. $250 or $5,000? [Att. B, ¶ 19.d]

In accordance with Attachment B, paragraph 19.d, the unit is required to use the lesser of $5,000 or the same capitalization policy used in the development of its financial statements. The capturing of assets over $250 in the fixed asset group category effectively establishes the unit's capitalization policy at that level. As such, capital expenditures over $250 may not be expensed in the cost allocation plan. A use allowance may be claimed on those items.

3-39 Settlements and damages resulting from noncompliance with Federal, state, or local laws are unallowable. Would settlements with employees arising out of bargaining-unit negotiations and agreements also be unallowable? [Att. B, ¶ 20]

Provided that no laws have been violated by the governmental unit, such settlements

and awards are allowable as a general management cost.

3-40 The Circular stipulates that when there is substantial relocation of Federal projects from a facility in which the Federal Government participated in the financing, space charges may be renegotiated. What criteria are to be used in determining "substantial relocation," and, if there is an adjustment, how should it be handled? [Att. B, ¶ 22]

The criteria for determining whether a substantial relocation has occurred is if over 50% of Federally sponsored programs are transferred in the first 20 years of occupancy or where a pattern of "churning" Federally financed debt can be established. Cognizant agencies are to exercise caution in exercising the 50% rule, taking into consideration program changes, cutbacks, and the governmental unit's resource needs. Where churning has occurred, i.e. relocations are occurring to maintain Federal programs in debt-financed space, the cognizant agency may limit future space reimbursement to historical costs, i.e. the cost of the vacated space.

3-41 Under Attachment B, paragraph 23.a, five examples are presented as unallowable general government expenses. The previous version of A-87 identified others, e.g., accounting and budgeting. Are these latter items now allowable? [Att. B, ¶ 23]

No, these items are still unallowable when attributable to general government functions. For example, budgeting functions in support of the state legislature, taxing functions of the state treasurer, and criminal prosecutions by the attorney general, are all routine costs of general government and are not allocable to Federal programs.

3-42 Attachment B, paragraph 25.e states that severance pay is allowable in the year paid with two conditions, one of which is that the cost is allocated as a general administrative expense to all activities of the government unit. Attachment B, paragraph 11.g also addresses the treatment of severance pay, but makes a distinction between normal turnover and mass severance. Is there a difference between these policies? [Att. B, ¶ 25.e]

Attachment B, paragraph 25.e only covers normal severance. If severance payments are determined to be abnormal or mass severance, then the provisions at Attachment B, paragraph 11.g(3) must be applied.

3-43 Is interest allowed on the acquisition of land that is debt-financed? [Att. B, ¶ 26]

Yes. However, principal payments for the acquisition of land remain unallowable. The pro rata share of debt payments attributable to land must be deducted from outflows when a cash flow adjustment is required under the provisions of Circular A-87 Attachment B, Paragraph 26. (See Illustration 3-1.)

3-44 How is interest expense on assets that have a shorter life than the debt instrument treated? [Att. B, ¶ 26]

Interest on fully depreciated, scrapped, or nonexistent assets is unallowable. The interest is neither allocable to the asset nor is there an allocable benefit to Federal programs. In addition, single debt-financing for assets having variable lives must be allocated to those assets. Governments are encouraged to structure their debt in such a way so as not to incur additional financing costs for periods beyond the useful lives of the financed assets.

> **EXAMPLE:** A 25-year bond is issued for $10M. $7.5M is to be used to construct a facility with a 40-year life and $2.5M is to be used to acquire equipment with a life of 15 years. Allocable interest would be calculated as follows:
>
> Building: $7.5M/$10M = 75%
>
> Equipment: $2.5M/$10M = 25%
>
> As a result, 75% of annual interest would be allocable to the building, which would be fully allowable in years 1-25. With respect to the equipment, 25% of total annual interest would be allocable and allowable in years 1-15. In years 16-25, when the equipment has been fully depreciated or otherwise out-lived its useful life, 25% of annual interest would be unallowable.

3-45 Some governments issue blanket bond issuances to meet their capital needs. Is interest allowable where, in accordance with their capitalization policy, such expenditures are expensed or otherwise not recognized in the comprehensive annual financial report (CAFR) as "fixed assets"? [Att. B, ¶ 26.a]

No. Expenditures for items expensed or otherwise written-off constitute operating expenditures, unless they are identified as fixed assets. Attachment B, paragraph 26.a only permits interest for capital expenditures. Interest for operating or working capital is unallowable.

3-46 Attachment B, paragraph 26.b allows interest on equipment paid or incurred on or after the applicable effective date of the revised Circular (May 4, 1995). However, in the preamble to the May 17, 1995 *Federal Register* notice of the Circular's issuance, page 26486, in response to a comment, OMB seems to exclude computer equipment. Is interest paid or incurred after the applicable effective date allowable? [Att. B, ¶ 26.b]

In the preamble, OMB was responding to comments that sought allowability of interest on both equipment and facilities, regardless of when the assets were acquired. In justifying allowing interest on pre-effective date equipment, but not facilities, OMB reasoned that, except for computer equipment, such acquisitions typically were nominal in cost and had short lives. The intent was not to exclude computer equipment, but merely to state a fact. As such, interest on all equipment, including ADP, incurred or paid after September 1, 1995 is allowable regardless of when the debt was incurred. For those governmental units or components subject

to Circular A-87 Attachments C, D and E, interest on equipment is allowable in the government's fiscal year starting after September 1, 1995. For facilities, interest is only allowable for those acquired or constructed after October 1, 1980.

3-47 Attachment B, paragraph 26.b(1) makes interest unallowable when a government borrows from itself or nonbona fide third parties. If the government has established quasi-public agencies or "authorities" to issue bonds for the acquisition of equipment and facilities, are these viewed as less than third-party transactions? [Att. B, ¶ 26.b(1)]

No. Bond issuing authorities are viewed as enterprises of the governmental unit. The authority typically is not operating at a profit and, as a result, reduces bond issuance costs. While the government is issuing the bonds, it is not borrowing from itself but rather from the general public, to which interest is paid. The intent of this A-87 provision is to prohibit reimbursement of costs such as a state agency borrowing funds from general revenues and the state treasurer charging the agency interest on the borrowings.

3-48 The Circular requires governmental units to negotiate with the cognizant agency the amount of interest expense to be allowed when depreciation and interest expense (inflows) exceeds principal and interest payments (outflows). Recovering positive cash flows in the early years will result in negative cash flows in the latter years. Doesn't this penalize the governmental unit in later years? [Att. B, ¶ 26.b(4)]

It is not OMB's intent to require the recovery of positive cash flows. During periods of positive cash flow, earnings, either actual or imputed, can be made on those funds. It is the intent of OMB that during such periods, those earnings on the positive cash flow should be used to offset interest expense. The net amount would be the allowable interest expense allocable to Federal awards. Components would retain the positive cash flow, but not the earnings, to meet shortages during periods of negative cash flow. The interest assessed should be based on actual interest earned or the state treasurer's average return on investment. A suggested format for computing and tracking cash flow is provided in Illustration 3-1.

Illustration 3-1 A-87 Excess Cash-Flow Calculation - Sample Format for Annual Report

Applicable for debt arrangements over $1 million, unless initial equity contribution equals 25 percent or more

		Month 1	2	3	4 ***	12	Annual Total
Year_____	of___Years						
Line 1	Prior Period's cumulative cash flow balance (Prior Month's or Year's Line 9)						
	Add this period's inflows:						
Line 2	Depreciation expense (Note 1)						
Line 3	Interest expense (Note 2)						
Line 4	Amortization of debt issuance costs (Note 2)						
	Subtract this period's outflows:						
Line 5	Principal payments (Note 3)						
Line 6	Interest payments (Note 3)						

Line 7 Subtotal of cumulative cash flows
(Line 1+2+3+4 - 5 - 6)

Line 8 In initial period only, subtract initial equity contribution (Note 4)
(Will be zero after initial period)

Line 9 Total of cumulative cash flows
(In initial period, Line 7 - Line 8)
(In subsequent periods, equals Line 7)

Line 10 If Line 9 is positive, state month's closing interest rate based on actual or state treasurer's ROI
If Line 9 is negative, put "0" (zero)

Line 11 Imputed interest income on cumulative positive cash flow
Monthly columns = (Line 10 x Line 9)/12

Line 12 Allowable interest for period
(Line 6 - Line 11)

Note 1: May include amortization of capitalized construction interest in accordance with GAAP. Depreciation expenses should be reported on a monthly basis (Annual expense/12) if the agency has an IDC rate.

Note 2: Interest expense and amortization of debt issuance costs that are not included in loan amount should be reported on a monthly basis (Annual expense/12) if the agency has an IDC rate.

Note 3: If land is included in the financing arrangement, Line 5 would be calculated as: principal payment - (Debt proceeds used to purchase land/total debt proceeds x principal payment). Principal and interest payments should be reported in the month that payments were made.

Note 4: This line may only include amounts of initial equity contribution made prior to occupancy of the facility. The amount is to be entered only in the initial period covered by the cash flow submission, and should be left blank in future periods.

3-49 The Circular requires an adjustment to interest expense for earnings on positive cash flows. Since the Circular does not specify, how should this be accomplished? Does it apply to all debt? [Att. B, ¶ 26.b(4)]

While OMB did not provide guidance in Circular A-87, they have been more precise in other circulars on this subject. Circular A-122 and A-21 require that "[t]he rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month." Many organizations covered by Circulars A-21 and A-122 typically do not have adequate data to compute return on investments. Consistent with the other Circulars, under A-87, an offset is only required for debt over $1,000,000.

As noted in Illustration 3-1, the cash flow schedule provides for: (1) a cumulative monthly reporting of cash flows; (2) offset of equity contributions on a "first-in-first-out" (FIFO) basis; (3) waiver of the offset requirement if equity contribution is 25% or more; (4) interest on land but not for principal payments on land; and (5) inflows to be averaged over a twelve-month period, regardless of when actual payments (outflows) are made. While components are not required to use the schedule in Illustration 3-1, cash flow computations and adjustments should be made in accordance with these policies.

3-50 What type of assets are subject to interest offset for earnings on positive cash flows? [Att. B, ¶ 26.b(4)]

OMB advised HHS that it intended that all capital expenditures be subject to the offset provision, where applicable. This is consistent with the other OMB cost circulars.

3-51 What are the submittal requirements for the cash flow analysis? [Att. B, ¶ 26.b(4)]

When required by the cognizant agency, the cash flow analysis is to be submitted with each submission of a component's indirect or cost allocation proposal. The analysis is to be prepared for each twelve-month period contained in the proposal. For those governments and components not required to submit a proposal to a cognizant agency, the analysis is to be prepared annually with a corresponding adjustment to allowable interest for the period.

3-52 Is it acceptable to treat proposal costs for Federal awards as indirect costs? [Att. B, ¶ 34]

Attachment B, paragraph 34 encourages such treatment. In accordance with Attachment A, paragraph C.1.e, the practice must be consistently applied throughout the governmental unit. The Circular allows the direct charging of these costs with the prior approval of the awarding agency. This practice is discouraged as it may create inconsistent treatment issues.

3-53 What are the allowable costs for capital leases? [Att. B, ¶ 38.d]

The Circular provides that capital leases are allowable to the extent that costs would have been allowed had the asset been purchased outright. As such, interest, depreciation or use allowances, maintenance fees/expenses, related administrative costs, taxes, and insurance are allowable. Interest costs are allowable to the extent they meet the requirements of Attachment B, paragraph 26. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the government/component purchased the asset outright.

3-54 Are "payments in lieu of taxes" (PILOT) allowable? [Att. B, ¶ 39]

Generally, PILOT payments are allowable if they are consistently assessed against all activities, regardless of the source of funding.

3-55 If a governmental unit has its own plane(s), what documentation is needed to satisfy the Circular A-87 requirements for noncommercial travel? Can the cognizant agency approve rates for the aircraft that would meet these requirements? [Att. B, ¶ 41.d]

Attachment B, paragraph 41.d. limits reimbursement for use of entity-owned or private aircraft to the commercial air fare determined in accordance with Attachment B, paragraph 41.c, which discusses limitations on allowable commercial air fares. In essence, reimbursement for use of private aircraft is based on cost but cannot exceed what would have been reimbursed had commercial air transportation been used. There could be circumstances where the use of commercial air would result in greater costs than the use of private aircraft. In those situations, allowable costs would be based on actual costs.

PART 4

Attachment C — Requirements for Cost Allocation Plans

4.1 Highlights of New Section, Attachment C

A new attachment C has been added addressing Central Service Cost Allocation Plans (commonly referred to as the state-wide cost allocation plan or SWCAP and for local governments, LOCAP). The new Attachment generally has incorporated longstanding practices and procedures contained in internal HHS implementing material as well as historical convention.

4.2 What is a Central Service Cost Allocation Plan?

Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Because Federally supported awards are performed within the individual operating agencies, there needs to be a process through which these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan (CSCAP) provides that process.

4.3 Content of CSCAPs

CSCAPs must include all central service costs that will be claimed, whether as a billed or an allocated cost, under Federal awards. Costs of central services omitted from the plan **will not** be reimbursed. Documentation requirements are discussed in section 4.5 below.

Plans must include a projection of the next year's allocated central services cost. This projection should be based on either actual costs for the most recently completed year or the budget projection for the coming year. Plans must also include a reconciliation of actual allocated central services costs to the estimated costs used for either the most recently completed year or the year preceding the most recently completed year.

4.4 Requirements for Submission of Cost Allocation Plans

4.4.1 Role of Cognizant Agencies

Circular A-87 provides that, for certain larger governmental units and their subdivisions, Federal cognizant agencies will be appointed to review and approve cost allocation plans on behalf of other Federal agencies. The Circular further explains these assignments and the approval process that these agencies will use.

4.4.2 State Governments and "Major" Local Governments

All state governments must submit statewide cost allocation plans to the Department of Health and Human Services. All local governments that OMB

designates as "major" are also required to submit their plans to a designated cognizant agency unless the cognizant agency determines otherwise. Note: Indian tribal governments should use guidelines applicable to local governments and local education agencies (LEAs) should follow the procedures established by the U.S. Department of Education.

OMB periodically publishes a listing of major local governments in the *Federal Register*. The most recently published listing is contained in Appendix 2 of this guide. In general, cognizant agencies for local governments are assigned according to the predominance of Federal funding, although other factors such as availability of resources and past history may also be considered.

4.4.3 Local Governments Not Considered "Major"

Local governments that are not designated as "major" are not required to submit their cost allocation plans for Federal review and approval unless specifically instructed to do so by a Federal agency. Local governments that only receive funds as a subrecipient of another government should follow instructions from their pass-through grantors concerning submission and review. However, they are expected to prepare and retain their plans for audit by independent auditors and Federal auditors. Pass-through grantors (primary recipients) are expected to review and monitor subrecipient plans to provide reasonable assurance that provisions of Circular A-87 are being followed.

4.5 What Are the Documentation Requirements for a CSCAP?

All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the appropriateness of the costs assigned to Federal awards.

4.5.1 Allocated Central Services

The allocated costs of the CSCAP are commonly referred to as "Section I" costs and are categorized as such in both the plan submission and the negotiated agreement. For each allocated central service, the proposed cost allocation plan must:

- # briefly describe the service;
- # identify the unit rendering the service and the operating agencies receiving the service;
- # list the items of expense included in the cost of the service;
- # identify the method used to distribute the cost of the service to benefitted agencies; and
- # provide a summary schedule showing the allocation of each service to benefitted agencies.

In addition, all proposed cost allocation plans must be accompanied by:

an organization chart which is sufficiently detailed to show operations, including the central service activities of the governmental unit, regardless of whether they are shown as benefitting from central service functions;

a copy of the comprehensive annual financial report (CAFR) (or executive budget, if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and

a certification that the plan:

— was prepared in accordance with A-87;

— contains only allowable costs; and

— was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and nonfederal awards/activities.

4.5.2 Internal Service Funds

The internal service funds (ISFs) and other billed services in the CSCAP are commonly referred to as "Section II" costs in both the plan submission and the negotiated agreement. For each internal service fund or similar activity with an operating budget of $5 million or more, the proposed cost allocation plan must include:

a brief description of each service;

a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system;

a revenue/expenses statement with revenues broken out by source;

a list of nonoperating transfers (as defined by generally accepted accounting principles) into and out of the fund;

a description of the methodology used to charge the costs of each service to users, including how billing rates are determined;

a schedule of current rates; and

a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service under Circular A-87, with an explanation of how variances will be handled.

4.5.3 Self-Insurance Funds

For each self-insurance fund, the proposed cost allocation plan must include:

the fund balance sheet;

a statement of revenue and expenses, including a summary of billings and claims paid by the agency;

a listing of all nonoperating transfers into and out of the fund;

the type(s) of risk(s) covered by the fund;

an explanation of how the level of fund contributions are determined;

a description of the procedures used to charge or allocate fund contributions to benefitted activities;

an identification and explanation of reserve levels in excess of claims:

— submitted and adjudicated, but not paid;

— submitted but not adjudicated; or

— incurred but not submitted; and

an insurance report.

4.5.4 Fringe Benefits Costs

For fringe benefit costs, the proposed cost allocation plan must:

list fringe benefits provided to covered employees and the overall annual cost of each type of benefit;

identify current fringe benefit policies; and

describe procedures used to charge or allocate the costs of the benefits to benefitted activities.

4.5.5 Pension and Postretirement Health Insurance Plans

For pension and postretirement health insurance plans, the proposed cost allocation plan must provide:

the governmental unit's funding policies, if different from actuarially determined rates;

the pension plan's costs accrued for the year;

the amount funded and date(s) of funding;

a copy of the current actuarial report, including the actuarial assumptions;

the plan trustee's report; and

a schedule from the activity showing the value of the interest cost associated with late funding.

4.5.6 Certification

CSCAPs must be accompanied by a certification, shown in Attachment C, ¶ D.4. (See also 2.9, Government Certification)

4.6 How Should Allocated Costs Be Presented in a CSCAP?

4.6.1 Sample Formats for Central Service Cost Allocation Plans

The following pages illustrate a central service cost allocation plan. They consist of:

Illustration 4-1 - Statement of Function and Benefit, Personnel Department. The personnel department has been selected as an example of a central service. This schedule is a narrative description of the activities conducted by the personnel department, their necessity (benefits) to the successful performance of Federally supported programs, a description of the base(s) selected to distribute the costs of those activities to the organizations to which services are rendered, and the rationale for the base(s) selected.

Illustration 4-2 - Costs to be Allocated, Personnel Department. This illustration shows the composition of the costs of the personnel department as contained in official financial or budget statements and a reconciliation of those costs with the amount allocated in Illustration 4-1.

Illustration 4-3 - Allocation of Costs, Personnel Department. This illustration shows those state organizations to which the personnel department provides services and the allocation of its costs to those organizations. This illustration is supported by Illustrations 4-1 and 4-2.

Illustration 4-4 - Summary of Allocated Central Service Costs. This illustration shows each central service, and the attendant costs, which benefit Federal grants and contracts and for which a state or local government wishes to make a claim. This summary must be supported by detailed schedules comparable to Illustrations 4-1 — 4-3 for each included central service. (For purposes of preparing Attachment A of the Negotiation Agreement, only those state agencies receiving Federal funds are to be individually listed. The remaining agencies are to be grouped under "other.")

Illustration 4-5 - Summary of Central Services Billed. It is common practice for central service departments to bill those organizations to which they render services for the cost of those services. This summary illustrates the services billed

to organizations conducting Federal grants and contracts, the costs included in the billing, the methodology for computing the billing rate, etc.

Amounts allocated to the operating departments from the central service cost allocation plan in Illustrations 4-4 and 4-5 are carried forward to Illustrations 6-1 — 6-4, which provide various sample formats for an indirect cost rate proposal.

Only a few of the many possible central services have been shown in Illustration 4-4 and only one central service department is shown in the accompanying Illustrations 4-1 through 4-3. A central service cost allocation plan may include any other services and their attendant costs which are allowable under OMB Circular A-87 and for which documentation can be provided. Each type of cost claimed should be supported by appropriate schedules and other documentation sufficient to provide a reasonable basis for evaluation and acceptance.

Illustration 4-1

Sample Central Service Cost Allocation Plan Statement of Function & Benefit, Personnel Department For the Fiscal Year Ended June 30, XXXX

The personnel department is responsible for overall administration of the Civil Service program. This includes recruiting, interviewing, testing, and referring potential candidates for the more than 2,000 municipal positions.

The personnel department administers the classifications and salary programs and is responsible for recommending personnel policies and procedures to the Civil Service Commission for approval.

The department is involved in the design of the various employee benefit programs. After installation, the department reviews and maintains the records of these programs. Active and inactive personnel records are maintained on all municipal employees.

The personnel department is responsible for maintaining the safety program (including workmen's compensation and injury level) and the city training programs.

All functions and services performed by the personnel department benefit all departments of the city. Federal programs are benefitted because city employees are hired to work in these programs. Therefore, the costs of the personnel department have been distributed to all departments of the city.

The basis for allocation is the number of employees per department. The base data is readily available and verifiable. All employees receive essentially the same type and level of services. Therefore, this base reflects that condition by distributing the total cost of providing these services to each department in proportion to its relative number of employees.

This is a sample. In practice, this schedule should be sufficiently detailed to provide narrative explanations of the functions and benefits associated with the costs being allocated.

Illustration 4-2

Sample Central Service Cost Allocation Plan
Costs to be Allocated, Personnel Department
For the Fiscal Year Ended June 30, XXXX

Salaries and Wages			$1,088,380
Fringe Benefits (19.8%)			215,499
Supplies			113,600
Travel			26,200
Equipment/Capital Outlay			41,560
Maintenance and Janitorial Services			26,040
Miscellaneous			35,880
Total Cost			$1,547,159
Adjustments			
Less:	Unallowable Costs	<40,979>	
	Capital Outlay	<41,560>	
	Costs Chargeable to Federal Grant ***(a)***	<24,000>	
Add:	Use Allowance	15,236	
Subtotal Adjustments		<91,303>	
Total Allowable, Allocable Costs			$1,455,856 ***(b)***

Notes:

(a) Represents charges to a Federal grant awarded to assist the state or local government in improving its efforts to hire and train disabled workers. If a supporting agency received an award from the Federal Government, all costs incurred in connection with the award (including any costs that are required for matching or cost sharing) must be eliminated prior to distributing the supporting agency's costs to the user departments or agencies.

(b) The costs allocated must be reconciled to appropriate financial documents, either financial statements, budgets, or a combination of both. In this example, the government's base data was cost incurred for its most recent fiscal year.

This is a sample. In practice, this schedule should be sufficiently detailed to show the costs of major activities, branches, etc. of the personnel departments in a manner permitting a reasonable assessment of the costs claimed against Federal programs.

Illustration 4-3

Sample Central Service Cost Allocation Plan Allocation of Costs, Personnel Department For the Fiscal Year Ended June 30, XXXX

Department/Unit	Number of Employees ***(b)***	Percent	Allocation ***(c)***
Health	188	6.61	96,232
Environmental Services	170	5.98	87,060
Social Services	61	2.14	31,155
Highway and Public Transportation	289	10.16	147,915
Police	570	20.04	291,754
Corrections	475	16.70	243,128
Other Departments ***(a)***	1,091	38.37	558,612
Total	2,844	100.00	$1,455,856

Notes:

(a) Those departments that do not perform Federal programs may be grouped together. However, a one-time schedule is required, listing all agencies or functions listed under "other."

(b) Allocation base must include all full- and part-time employees of all operating departments that are serviced by the personnel department.

(c) Allocated amounts are carried forward to the summary schedule in Illustration 4-4. The total of $1,455,856 comes from Illustration 4-2.

This is a sample. In practice, the type and level of service provided by the personnel department to the various organizations served may require a separate allocation for each service or to different organizations served.

Illustration 4-4

Sample Central Service Cost Allocation Plan Summary of Allocated Central Service Costs For the Fiscal Year Ended June 30, XXXX

	Central Service Organizations ***(c)***	Total

Department/Operating Unit	Personnel *(a)*	Accounting/ Cmptr Svcs.	Purchasing	Audit	Allocated Costs *(b)*
Health	96,232	201,450	34,123	16,753	348,558
Environmental Services	87,060	216,220	22,211	12,210	337,701
Social Services	31,155	79,841	8,960	6,452	126,408
Highway and Public Transportation	147,915	428,550	67,512	62,271	706,248
Police	291,754	519,605	94,751	114,211	1,020,321
Corrections	243,128	497,431	99,970	145,260	985,789
Other Departments	558,612	1,876,082	214,311	186,542	2,835,547
TOTALS	$1,455,856	$3,819,179	$541,838	$543,699	$6,360,572

Notes:

(a) Allocated amounts shown are from Illustration 4-3. In an actual plan, the remaining service departments would also need to be supported by separate schedules showing the computation of the allocated amounts.

(b) These amounts are includable in the indirect cost proposals of the individual operating departments/units.
See Illustrations 6-1 — 6-4.

(c) Suggested allocation bases can be found in Section 4.6.2.

This is a sample. In practice, a state or local government may wish to claim more or fewer activities as charges to Federally supported programs. If so, this Illustration and its supporting schedules (Illustrations 4-1 — 4-3) would need to be modified accordingly.

Illustration 4-5

Sample Central Service Cost Allocation Plan Summary of Central Services Billed to User Organizations

Motor Pool	The state (or local government) operates a central motor pool which makes cars, trucks, and buses available to the user departments. User departments are billed for each mile driven: cars - 40 cents per mile; trucks - 55 cents per mile; and buses 75 cents per mile. The basis for the charge is the most recent study of cost per mile driven, performed by the internal audit staff. Any over- or under recovery is applied to the next year's expected expenditures and is included in that year's billing rate. The costs included are salaries and wages and fringe benefits of motor pool personnel; their travel; supplies and parts; and use charges for equipment, buildings, and vehicles determined in accordance with OMB Circular A-87.

Data Processing	The state (or local government) operates a central data service center (DSC) consisting of a mainframe computer and an area network. The center provides both regular, continuing, and special job computer support to most operating and staff departments. Billings for services are made to user organizations based on a standard price schedule. The price schedule is related to, and designed to recover, the costs of various types of jobs on each system. It is revised quarterly and audited annually by the internal audit department. Profits or losses are carried forward and used to adjust price schedules of ensuing quarterly billing rates. Costs consist of salaries and wages and fringe benefits of center personnel, supplies, maintenance and utilities, and straight-line depreciation of equipment based on a fifteen-year life.
	This is a sample. In actual practice, a complete listing of all billed components of the DSC would be required: e.g., CPU, programming, microfiche, etc.
Long Distance Telephone	All long distance telephone calls are placed through a central switchboard and are billed to the organizations making the call.

Notes:

If a direct billing mechanism is used by the government, then all users must be billed, either through actual, memo, or imputed billings. Billing of selected departments and allocation of residual amounts through the cost allocation plan to remaining departments results in inequitable costing and is not acceptable. However, if all users are billed, residual amounts may be allocated through the allocation plan, provided they are not material and the allocation base is equitable.

A detailed breakdown of costs is not normally required as a part of this summary. However, the submitting state or local government must have and make available to the Federal cognizant agency such cost and revenue breakdowns, utilization records, and other information necessary to permit a reasonable assessment of the costs incurred and changes made.

This is a sample. In practice, the number and types of services billed may be greater than shown here and may require more extensive description and explanation.

4.6.2 Suggested Bases for Cost Distribution

Listed below are suggested bases for distributing joint costs of central-type services to local government departments or agencies and to projects and programs utilizing these services. The bases are suggestions only, and should not be used if they are not suitable for the particular services involved. Any method of distribution can be used which will produce an equitable distribution of cost. In selecting one method over another, consideration should be given to the additional effort required to achieve a greater degree of accuracy.

Type of Service	*Suggested Bases for Allocation*
Accounting	Number of transactions processed
Auditing	Direct audit hours
Budgeting	Direct hours of identifiable services of employees of central budget
Buildings lease management	Number of leases
Data processing	System usage
Disbursing service	Number of checks or warrants issued
Employees retirement system administration	Number of employees contributing
Insurance management service	Dollar value of insurance premiums
Legal services	Direct hours
Mail and messenger service	Number of documents handled or employees served
Motor pool costs, including automotive management	Miles driven and/or days used
Office machines and equipment maintenance repairs	Direct hours
Office space use and related costs (heat, light, janitorial services, etc.)	Square feet of space occupied
Organization and management services	Direct hours; Square feet
Payroll services	Number of employees
Personnel administration	Number of employees
Printing and reproduction	Direct hours, job basis, pages printed, etc.
Procurement service	Number of transactions processed
Local telephone	Number of telephone instruments
Health services	Number of employees
Fidelity bonding program	Employees subject to bond or penalty amounts

4.7 How Should Billed Costs Be Presented in a CSCAP?

"Billed costs" include internal service funds (ISFs), self-insurance funds (SIFs), and fringe benefits funds (FBFs). Illustrations 4-6 and 4-7 show suggested formats for presenting these costs in the CSCAP proposal. While these formats are not

mandated, the information they contain is required, unless the cognizant agency waives the requirement.

Specifically, for all funds, including those under $5 million, a schedule of retained earnings (see e.g., Illustration 4-7) must be submitted which shows:

- # the beginning balance for the fiscal year;
- # actual and imputed revenues;
- # A-87 allowable costs, adjusted for:
  - — capital expenditures,
  - — depreciation or use allowance,
  - — nonrecognized transfers,
  - — bad debts,
  - — CSCAP allocations,
  - — actual or imputed earnings on monthly cash balances and replacement reserves; # working capital reserve; and
- # contributed capital.

Contributed capital consists of unallowable A-87 costs, such as reserves for future asset replacement and capital expenditures, and are funded by nonfederal funds.

For those funds which have operating budgets over $5 million, a schedule of billed services must be submitted. Illustration 4-6 is a suggested format for presenting billings. Again, this format is only for illustration purposes, and is not required. However, the schedule must provide, for each fund:

- # billings by user;
- # revenues, both actual and imputed; and
- # adjustments for the pro rata share of the rate representing bad debts, reserves for replacement costs, capital expenditures, etc.

STATE OF _____ **Illustration 4-6** **ATTACHMENT**

_____ **FUND** **Summary of Actual and Imputed Revenues by Fund**

SUMMARY OF ACTUAL AND IMPUTED REVENUES

FOR THE YEAR ENDING JUNE 30, 19__

		TOTAL BILLING COLLECTED BILLINGS#		IMPUTED REVENUES							
USER AGENCY/DEPARTMENT	RATIO OF FEDERAL ACTIVITY*	BILLED AT FULL RATE(S)	BILLED AT LESS THAN FULL RATE(S)	UNCOLLECTED BILLINGS**	DIFF. BETWEEN (FULL-BILLED RATES)	MEMO BILLING	UNBILLED	SUBTOTAL (A-87 REVENUES)	SURCHARGE*** (COLLECTED)#	(IMPUTED)	TOTAL REVENUES
	0.0%	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
	0.0%										

	0.0%										
	0.0%										
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	0.0%										
TOTALS		$0	$0	$0	$0	$0	$0	**** $0	$0	$0	***** $0

* FOR EXAMPLE, BASED ON EXPENDITURES EXCLUDING FLOW-THROUGH FUNDS.
** ACCOUNTS RECEIVABLE/BAD DEBT EXPENSE.
*** FOR EXAMPLE, INCREMENT FOR UNALLOWABLE COSTS SUCH AS INTEREST, RESERVES FOR REPLACEMENT, PROJECTED COST INCREASES, ETC. BILLED TO STATE FUNDS **** SHOW THIS FIGURE AS "ACTUAL & IMPUTED REVENUES" ON RECONCILIATION OF FUND TO FEDERAL GUIDELINES (ATTACHMENT B).
***** MUST RECONCILE TO TOTAL ACTUAL COSTS PER STATE FINANCIAL REPORT.
# MUST RECONCILE TO BILLED REVENUE PER STATE FINANCIAL REPORT.

Illustration 4-7 Reconciliation of Retained Earnings

(If less than zero, the amount on (A) is the beginning A-87 R.E. balance for the next year's reconciliation. If there is an excess balance, than the federal share should be returned to the federal gov't and the amount on (B) will be the beginning A-87 R.E. balance for the next year.)

PART II A-87 CONTRIBUTED CAPITAL BALANCE

A-87 CONTRIBUTED CAPITAL BALANCE JULY 1, 19__ $0

TRANSFERS Per CAFR (Supported By Official Accounting Records)

Plus: Transfers in (e.g., Contrib. Capital) $0

Less: Transfers Out (e.g., Payback of Contrib. Capital, Other Users of Fund R.E.) (0)

Net Transfers $0

A-87 CONTRIBUTED CAPITAL BALANCE JUNE 30, 19__ (C) $0

STATE OF _____ ATTACHMENT B

_____ FUND

RECONCILIATION OF RETAINED EARNINGS BALANCE TO FEDERAL GUIDELINES
FOR YEAR ENDING JUNE 30, 19 __

PART I A-87 R.E. BALANCE (000s)

A-87 R.E. BALANCE JULY 1, 19__

Balance Per Prior Year's Reconciliation of Fund to A-87 $0
(Initial Year, Use CAFR RE Balance at Beginning of Year Less Adjustments - e.g., Contrib, Capital)

FY 19 __ RETAINED EARNINGS INCREASE (DECREASE) Per CAFR

A-87 Revenue (Actual and Imputed)
From Attachment A $0

Other-		0	
Total Revenues			$0
Expenditures (Actual Costs):			
Per State's Financial Report		$0	
Less A-87 Unallowable Costs (e.g.)-			
Capital Outlay		(0)	
Projected Cost Increases/Replacement Reserve		(0)	
Bad Debt		(0)	
Other - (e.g., Gain on Disposal of Assets)		(0)	
Plus A-87 Allowable Costs (e.g.)-			
Indirect Costs from SWCAP (If Not Allocated in Section I Of SWCAP To User Depts/Programs)		0	
Depreciation or Use Allowance (If Not Included in Actual Costs Above)		0	
Other-		0	
OMB A-87 Allowable Expenditures			$0
Adjustments:			
Imputed Interest Earnings on Monthly Average Cash Balance at State Treasury Avg. Rate of Return		0	
Other-		0	
Total Adjustments			$0
A-87 R.E. BALANCE June 30, 19__	(A)		$0
Allowable Reserve	(B)		$0
Excess Balance (A)-(B)			$0

PART III A-87 ADJUSTMENTS BALANCE A-87

ADJUSTMENTS BALANCE JULY 1, 19__

ADJUSTMENTS:			
Less: A-87 Unallowable Costs		($0)	
Plus: A-87 Allowable Costs		0	
Other-		0	
Total Adjustments			$0
A-87 ADJUSTMENTS BALANCE JUNE 30, 19__	(D)		$0

PART IV RECONCILIATION OF A-87 R.E., CONTRIBUTED CAPITAL AND ADJUSTMENTS BALANCES TO CAFR BALANCE

RECONCILIATION OF A-87 R.E., CONTR. CAPITAL & ADJUST. BALANCES TO CAFR (A) + (C) + (D) $0

(Should Tie to the Fund Balance in the CAFR)

Instructions for Preparing the Reconciliation of Retained Earnings (R.E.) Balance to Federal Guidelines (Illustration 4-7)

General. A reconciliation schedule must be completed for all billed central services, including internal service funds (ISFs), self-insurance funds (SIFs), and fringe benefit funds (FBFs).

For those funds which utilize multiple billing rates (e.g., ADP funds), a reconciliation schedule may be required for **each** billing rate. An overall/average fund balance may not be appropriate, because excess charges may occur in one billed service but undercharges may occur in other billed services. In addition, various users do not utilize each/all billed services to the same extent.

Part I A-87 R.E. Balance

1. **Beginning A-87 R.E. Balance.** If this is the first time the reconciliation schedule is being prepared, the beginning A-87 R.E. balance should be the R.E. balance on the state's CAFR, including allowable adjustments (e.g., transfers in/transfers out, A-87 unallowable/allowable costs, imputed interest). If the fund has been reviewed in prior years, the beginning balance will be the ending balance from the previous year's reconciliation schedule. However, if adjustments for excess reserve balances have been made, then a zero balance may be the appropriate starting balance.

2. **A-87 Revenues.** Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for services (or were not billed at a full rate), a schedule showing the full imputed revenues associated with these users shall be provided (see Summary of Actual and Imputed Revenues - Illustration 4-6). Revenues should also include (i) all other revenues the fund earned from its operation, and (ii) interest earned on reserves. If imputed interest/investment earnings are shown at the bottom of the schedule, these amounts should not be included in this section.

3. **A-87 Expenditures.** The initial expenditure balance should reconcile to the CAFR (or other financial records). Adjustments in accordance with A-87 are made, for example, the exclusion of bad debts and the inclusion of allocated central service costs (SWCAP Section I costs).

4. **Imputed Interest**. There are different methods to compute imputed interest earnings. Currently, one acceptable method is the application of the state's Treasury Average Rate of Return to the monthly average cash balance for the year. If actual interest earned is computed incorrectly, then additional interest may be imputed.

5. **Allowable Reserves.**

   A. **Internal Service Funds.** The allowable reserve for ISFs, which are identified in the CAFR, is equal to the ISF's billing cycle up to 60 days allowable operating expenditures. The reserve is determined by applying a percentage to the allowable operating expenditures (excludes depreciation/use allowance, start-up capital, and any

reserves to fund long-term assets). The percentage is the number of days in the billing cycle days divided by 360.

Reserves for other billed central services that are not identified as ISFs in the CAFR are unallowable.

B. **Self-Insurance Funds.** The allowable reserve for self-insurance funds is defined in Circular A-87, Attachment B, paragraph 25. d. It is normally limited to the discounted present value of claims (i) submitted and adjudicated but not paid; (ii) submitted but not adjudicated; and (iii) incurred but not submitted. C. **Fringe Benefit Funds.**

(i) *Medical, Unemployment, and Workers* Compensation Insurance.* See self-insurance funds above.

(ii) *Pension Plan.* Actuarial determined, but limited to the amount funded in accordance with Circular A-87, Attachment B, Paragraph 11.e.

(iii) *Post-retirement Health Benefits.* Actuarial determined, but limited to the amount funded in accordance with Circular A-87, Attachment B, paragraph 11.f.

(iv) *Accrued Leave.* Accrued leave is the amount required to pay leave earned but not taken. The reserve must be a valid liability as defined by GAAP and is limited to the amount funded. It must be supported by the state*s payroll records.

Note: To be considered funded, a reserve must be paid to a trustee (or insurer) who maintains a trust fund or reserve for the sole purpose of paying the specific fringe benefit for which the reserve is established. If there is no funding, costs are recognized when paid.

6. **Excess Balance.** The Federal share of the excess must be returned to the Federal Government. Exceptions are based on negotiator judgment. For example, the state could credit the appropriate Federal and state programs/agencies for the overcharged amount, or the future billing rates could be reduced.

Interest may be assessed, taking into consideration the time period required to affect the payback.

Part II A-87 Contributed Capital Balance

1. **Transfers In/Transfers Out.** Contributed capital represents contributions by the state to the fund to cover expenditures not allowable under A-87, capital expenditures, reserves for the acquisition of future assets, etc. Transfers in/transfers out are identified in the CAFR and are in compliance with GAAP. Examples include contributed capital to the fund by the state or the

transfer out of earned capital/cash to a fund that is having cash flow problems.

Part III A-87 Adjustments Balance

1. **A-87 Adjustments.** Adjustments specific to A-87 must be identified and recorded. The figures should be the same as those identified in Part I above.

Part IV Reconciliation of R.E., Contr. Capital & Adjustments Balances to CAFR Balance

1. The ending balances for Parts I, II, and III are totaled. The total figure should reconcile to the CAFR fund balance.

   Note: If this schedule is for a billed central service that is general funded (and not identified as an ISF in the CAFR), there will be no reconciliation.

4.8 Questions and Answers on Attachment C

4-1 Under what, if any, circumstances can an approved cost allocation plan be reopened by either party? [Att. C]

With respect to the governmental unit or component, the only circumstance whereby a negotiated plan can be re-opened is noted in Question 4-2 below. The basis for the cognizant agency to reopen the approved plan is stated in Attachment C, paragraph F.2, e.g., if there is a violation of a statute or if submitted information was materially incomplete or inaccurate. Inclusion of unallowable or unallocable costs under Circular A-87 will not be grounds for reopening. In such cases, a roll-forward adjustment or refund will be made at the cognizant agency's option.

4-2 If a central service activity, either allocated (Section I) or billed (Section II), is omitted when the state/local-wide cost allocation plan (SWCAP/LOCAP) is approved, can the carry forward procedure be used to recover the cost of the omitted activity in a future plan? [Att. C, § C]

Attachment C, Section C specifically states that costs of central services omitted from the plan will not be reimbursed. However, OMB clarifies in the preamble to the May 17, 1995 *Federal Register* notice of the Circular's issuance that if a service **did not exist** (as opposed to being overlooked) when the plan was prepared, the approved plan can be reopened to include the new activity. In such cases, the plan will be amended to include the nonexistent activity. The definition of "nonexistent" does not include central services that existed when the plan was finally approved, nor those that the state should have known would exist in the future, based on budgets approved by the state legislature.

4-3 Does Circular A-87 require primary recipients to prospectively review cost allocation plans and negotiate indirect cost rates with all organizations to

which it makes cost reimbursement subawards? OMB does not impose a similar requirement on Federal agencies. [Att. C, ¶ D.3]

Circular A-87 does not specifically prescribe procedures to be used by primary recipients in accepting claims for indirect costs made by organizations to which they make subawards. The Circular states: "Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan. " (Att. C, ¶ D.3.) This would permit a primary recipient to actually engage in prospective review and negotiation. Alternatively, the primary recipient could require subrecipients to develop the necessary documentation concerning indirect charges and retain the documentation for audit and could then review audit reports to determine whether proper cost charging occurred. It would also be acceptable for primary recipients to use a combination of these methods, depending upon the relative size of the subrecipient. As accountability for the Federal funds ultimately rests with the primary recipient, the level of risk and exposure should be the determining factors in what oversight will be required.

4-4 Attachment C, Section E provides the cognizant agency with flexibility in the types of information and documentation it can require when approving central service cost allocation plans (SWCAPs/LOCAPs). Are there limits on this authority? [Att. C, § E]

The data and information that a cognizant agency can require is subject to reasonableness. Factors to be considered when assessing documentation needs are: (1) the overall size of the government unit; (2) the timing of previous reviews and the results of such reviews; (3) the appearance of systemic problems; (4) the reoccurrence of problems/issues; (5) the veracity of information provided in the past; and (6) the level of "good faith" exercised in the past by the government or its consultants, if applicable.

4-5 Attachment C, paragraph E.2 requires that a summary schedule be provided showing the allocation of each service to the specific benefitted agencies. Can the allocations to small or inconsequential agencies be included in a grouping, such as "other"? [Att. C, ¶ E.2]

Such a practice is permissible where, in fact, the agencies/activities are inconsequential and they receive no Federal awards. However, a narrative description must be provided listing all agencies/activities that have been included in the grouping, so that it can be verified that all operations of the government have been included in the base.

4-6 Attachment C, paragraph E.3.b. identifies the requirements for the submission of information to the cognizant agency concerning internal service funds (ISFs). What is the definition of an ISF? [Att. C, ¶ E.3.b(1)]

The definition is provided in generally accepted accounting principles, i.e., a fund used "to account for the financing of goods or services provided by one department or agency to other departments or agencies of a government or to other governments, on a cost-reimbursement basis." *(Codification of*

Standards of Governmental Accounting, 1300.104. Governmental Accounting Standards Board.) Internal Service Funds (ISFs) would be separately recognized in the financial statements using the accrual basis of accounting. However, this section of A-87 covers more than ISFs for central service activities of a state or local government. It covers the submission requirements of all central service activities for which the state or local government uses a billing mechanism (formal or memo billing) to assign or allocate costs to other components of the respective government. This requirement applies whether or not the "billed" activity is established in the unit's financial statements as a true ISF under generally accepted accounting principles.

4-7 Under a central service cost allocation plan (SWCAP/LOCAP), is the government required to submit documentation for internal service funds (ISFs) with operating budgets under $5 million? [Att. C, ¶ E.3.b(1)]

Attachment C, paragraph E.3.b(1) specifies documentation requirements for internal services funds (ISFs) with operating budgets of $5 million or more. It also states that the requirements may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. At a minimum, the government or component must submit a schedule for ISFs under $5 million that reconciles the ISF Retained Earnings. Illustration 4-7 provides a sample schedule format for making such presentations. This schedule provides information that is essential for Federal review and approval of the ISFs and which is not included in the comprehensive annual financial report (CAFR) or other financial statements. In addition, the reconciliation determines an A-87 allowable balance on an on-going basis. Additional documentation may be requested on a case-by-case basis, depending, in part, on the dollar impact on Federal awards and when a detailed review of the ISF was last performed by the cognizant Federal agency.

4-8 Attachment C, paragraph E.3.b(1) requires the governmental unit to provide a description of the procedures (methodology) used to charge the costs of each service to the user, including how the billing rates are determined. How much detail is required on how billing rates are determined? [Att. C, ¶ E.3.b(1)]

Like any other aspect of the submission requirements, the governmental unit is required to submit sufficient documentation for the reviewer to make an informed judgement as to the acceptability of the basis used by the unit of government. Such documentation would include: (1) the items of expense making up the billed activity; (2) the specific data used to develop the billing rate(s) and how often they are updated; (3) justification as to why the method used is the most appropriate for the activity; (4) an identification of any users that are not billed, with assurance that their share of services are reflected in the base; (5) how often billings are compared to actual costs and usage; (6) how variances will be adjusted; and (7) any other information the cognizant agency requires to evaluate the reasonableness of the billing system.

4-9 Attachment C, paragraph E.3.b(2) of the May 4, 1995 revision to Circular A-87 requires that the expenses of the billed function be broken out by object cost categories. In the past, submissions were permitted where a break-out of salaries and wages was made, but a roll-up of all other costs was presented as one amount. Can this practice continue, supported with detailed, on-site accounting records, or must the plans be modified to include the detail? [Att. C, ¶ E.3.b(2)]

A listing of the items of expenses is required for each central service activity whether it is a billed or unbilled activity. In addition, as noted in the beginning of Attachment C, Section E, the documentation requirements can be reduced by the cognizant agency. For example, reduced documentation might be appropriate for a central service function which has little or no impact on Federal awards. Therefore, the initial plan should address the A-87 documentation requirement, unless the cognizant agency approves otherwise based on the Federal effort, significance of "roll-up amount," and other factors.

4-10 Under what circumstances are working capital reserves permitted for internal service funds (ISFs) and how are they to be determined? [Att. C, ¶ G.2]

Attachment C, paragraph G.2 permits working capital reserves to allow ISFs sufficient cash to sustain operations between billing cycles. While the Circular authorizes reserves of up to 60-day cash needs, their allowability is not automatic. The following factors are to be considered when establishing reserves and determining whether they will be allowable.

(1) Reserves are only allowable for enterprise funds and bona fide ISFs recognized in the government's comprehensive annual financial report (CAFR). Reserves are not allowable for activities funded through general revenue appropriations.

(2) For each fund for which a reserve is determined necessary, the number of days of cash needs, up to 60 days, must be fully supported by a cash flow analysis reflecting billing cycles, revenue receipts, and allowable disbursements.

(3) Semi-annual or annual payments are to be amortized in billing rates.

(4) Reserves, for purposes of Federal recognition, may only include allowable cash disbursements. Depreciation, principal payments, and capital expenditures are not allowable. However, interest payments are allowable.

(5) Self-insurance funds, including fringe benefits operating as such, are further subject to the provisions of Circular A-87, Attachment B, paragraph 25.

(6) Pension funds are subject to Circular A-87, Attachment B, paragraph 11.

(7) Allowability of reserves covering longer periods can be granted by the cognizant agency in extraordinary circumstances where such needs are fully documented and justified.

4-11 Earnings on ISF cash balances are to be treated as applicable credits. If a state co-mingles its funds, how is the amount of earnings for a single fund to be determined? [Att. C, G]

When known, actual earnings should be used. In the circumstances described above, earnings may be imputed by applying the government's, e.g., State Treasurer, Average Rate of Return on the average monthly balance for a given fund.

4-12 Attachment C, paragraph G.4 establishes four methods for adjusting internal service funds (billed central services) for profits or losses realized from operations. Alternative (b) allows credits to amounts charged to the individual programs. This method would only cover profits. If losses occur, why can't individual programs be debited? [Att. C, ¶ G.4]

Effectively, alternative (b) is correcting billed costs in the current year, whereas alternative (c) is carrying forward the profit/loss into the next open fiscal period. The failure of the Circular to note how losses are to be treated in alternative (b) is an editing error. For consistency purposes, both alternative (b) and (c) cover profit and loss situations. However, only one method can be used in a given fiscal year.

4-13 Attachment C, paragraph G.4 allows adjustments to allocated, unbilled central service costs ("Section I costs") as an option for adjusting a particular billed service ("Section II costs") if the amount of the adjustment does not exceed $500,000. May this adjustment be made in the normal course of plan preparation or is prior Federal approval required? [Att. C, ¶ G.4]

Prior Federal approval is not required by Circular A-87. It should be noted, however, that the $500,000 threshold applies to the entire billing function and not to components of that function.

> **EXAMPLE:** A data service facility typically has numerous cost centers for which it develops individual billing rates. The allocation method for adjusting over/under billings can only be used if the net, total adjustment for the data facility is less than $500,000.

4-14 For adjustments exceeding $500,000, Attachment C, paragraph G.4 presents three options. What criteria will be used to select the method of recovery? [Att. C, ¶ G.4]

The primary concern would be the assurance that the Federal programs charged in a given year receive an equitable and appropriate adjustment for the over/under billings. Consideration must also be given to the makeup of

the user community in future periods as well as the level of support they will require.

PART 5

Attachment D — Public Assistance Cost Allocation Plans

5.1 Highlights of New Section, Attachment D

The new Attachment D deals with Public Assistance Cost Allocation Plans (PACAPs) and incorporates longstanding HHS policies and procedures. The Attachment makes HHS's 45 CFR Part 95, Subpart E applicable to all Federal programs administered by a public assistance agency, e.g. the U.S. Department of Agriculture's (USDA) Food Stamp program.

5.2 Applicability of Regulations at 45 CFR Part 95, Subpart E

Federal programs that provide public assistance to individual citizens are often administered at the state level by large, complex, multi-functional agencies. The programs administered by these governmental organizations are predominately financed by the Department of Health and Human Services (HHS). HHS has long required cost allocation plans for those programs and codified rules for development, submission, approval, and use of these plans in 45 CFR Part 95, Subpart E. However, these rules only applied to HHS programs, although there are other Federal agencies whose assistance awards may be handled by the same state units. Accordingly, revised OMB Circular A-87 provides a means for coordinating and assuring consistency among the various Federal agencies. Attachment D of the revised Circular:

describes the basic policy concerning public assistance cost allocation plans (PACAPs);

reflects the salient features of 45 CFR Part 95; and

extends requirements of 45 CFR Part 95 to all Federal agencies whose programs are administered by a state public assistance agency.

A public assistance cost allocation plan must be prepared, documented, and implemented by all state public assistance agencies. The plan and any amendments to it must be submitted to the appropriate field office of HHS' Division of Cost Allocation. HHS, as well as other affected Federal agencies, will review new plans or plan amendments. The other agencies will provide comments to HHS, which will in turn act as the cognizant agency on behalf of the others. HHS conducts any negotiations with the state agency and is responsible for notifying the agency about action taken on the plan or plan amendment.

Due to the nature of state public assistance agency operations, a public assistance cost allocation plan is required in lieu of an indirect cost rate proposal. A large percentage of agency operations consist of common or indirect costs: program-specific, first-tier cost centers are minimal. Typically, a considerable amount of the work performed involves determining and continuing to verify the eligibility of program beneficiaries. The persons who handle these tasks do so for multiple Federal and state programs. For example, in determining the eligibility of a person for one program, the case worker may concurrently perform tasks related to another program. Or, the determination established for one program simultaneously determines eligibility for additional programs without any additional incremental effort.

The nature of the work performed at state public assistance agencies can result in complex costing issues that are unique to those agencies. However, the concepts and principles contained in Attachment D of the Circular can have applications for other state and local agencies that operate in a Federally funded environment where an indirect cost rate inadequately identifies cost of operations and greater precision is needed. An example might be a state health department which has county and municipal facilities that offer a variety of services that are partially or completely Federally funded. For example, local public health clinics typically operate clinics where they provide general health assessments, medical care, immunizations, health counseling, nutrition guidance, etc. Their funding, for a single, one-day clinic, could come from a variety of sources, including direct Federal grants from several agencies, e.g., well baby clinics (MCH/HHS), nutrition assistance (WIC/USDA), immunizations (PHS/HHS), primary or secondary cost reimbursement funding for health assessments (EPSDT/HCFA/HHS), and provider fees for services provided (Medicaid/HHS). Obviously, the potential for duplicate claims is great. The cost allocation procedures described in 45 CFR Part 95, Subpart E can assist in clarifying the appropriate burden to be borne by each Federal program.

Another example of the importance of these procedures involves the somewhat atypical organizational structures that have arisen in recent years at the state level. Through the formation of cabinet or "umbrella" type structures, public assistance programs may be operated by the same entity type that handles unemployment programs, job training, juvenile detention, and even the state prison system. Some of the programs may include those, such as certain block grants, that have been exempted from mandatory application of Circular A-87. All of these programs and activities must be included in the PACAP to ensure that they receive an equitable share of administrative and other indirect costs. While the level of detail to be included in the cost allocation plan for these other nonpublic assistance programs is less than that required for the public assistance programs, HHS will, in reviewing and approving the plans, be responsive to the expressed needs of those Federal agencies whose programs are included and who need to identify allowable and unallowable program activities and costs for their programs. Where an operating component within the umbrella agency is funded primarily from a single Federal agency, that Federal agency may be designated by the cognizant agency responsible for reviewing and approving that component of the plan.

Under Attachment D of Circular A-87, when a letter of approval or disapproval of a

PACAP is transmitted to a state public assistance agency in accordance with 45 CFR Part 95, Subpart E, the letter ***will*** apply to all Federal agencies and programs. This policy is effective for plans and amendments submitted or prepared for a state's fiscal years beginning on or after September 1, 1995.

5.3 Submission and Documentation Requirements

State public assistance agencies are required to submit a cost allocation plan that describes the procedures used to identify, measure, and allocate all costs to each of the programs they operate. The plan must contain sufficient detailed information for Federal officials to reach an informed judgment about the correctness and fairness of the methods employed by the state. The submission must be sent to the appropriate field office of the Division of Cost Allocation, HHS, and should include the following features:

an organizational chart showing the placement of each unit whose costs are charged to the programs operated by the state agency;

a listing of all Federal and all nonfederal programs performed, administered, or serviced by these organizational units;

a description of the activities performed by each organizational unit and, when not self-explanatory, an explanation of the benefits provided to Federal programs;

the procedures used to identify, measure, and allocate all costs to each benefiting program and activity (including those that may be subject to different rates of Federal financial participation;

the estimated cost impact resulting from proposed changes to a previously approved plan (however, subsequent approval of the cost allocation plan does not constitute approval of the estimated costs for use in calculating claims for Federal financial participation);

unless the costs are addressed in a state or local-wide cost allocation plan or an umbrella department cost allocation plan, a statement stipulating that wherever costs are claimed for services provided by a governmental agency outside the state agency, they will be supported by a written agreement that includes certain minimum features, including (1) the specific services being purchased, (2) the basis on which billing will be made by the provider agency, and (3) a stipulation that the billing will be based on the actual cost incurred;

a cost allocation plan for local agencies, if public assistance programs are administered by local governments under a state- supervised system;

a certification by a duly authorized official of the state that (1) information contained in the plan was prepared in accordance with Circular A-87, (2) the costs have been accorded consistent treatment in accordance with generally accepted accounting principles, (3) an adequate accounting and statistical system exists to support claims that will be

made under the plan, and (4) the information provided in support of the cost allocation plan is accurate; and

other information that may be necessary for HHS to establish the validity of the procedures used to identify, measure, and allocate costs to all programs being operated by the state agency.

(45 CFR § 95.507).

5.4 Amendments

A state must promptly amend the public assistance cost allocation plan and submit the amended plan to the appropriate field office of the Division of Cost Allocation, HHS, whenever any of the following events occur:

the procedures shown in the existing plan have become outdated because of organizational changes, changes in Federal law or regulation, or significant changes in program levels affecting the validity of approved cost allocation procedures;

a material defect is discovered in the cost allocation plan by the Division of Cost Allocation field office or by the state;

the state programmatic plan for public assistance programs is amended in a manner that affects the allocation of costs; or

other changes occur which make the allocation basis or procedures in the plan invalid.

(45 CFR § 95.509).

Even if none of these types of changes has occurred, an annual statement, indicating that the existing plan is not outdated, must be submitted by the state to the HHS Division of Cost Allocation field office.

If an amendment is submitted and approved, its effective date will generally be the first day of the calendar quarter following the date of the event that made the amendment necessary. However, under certain conditions involving inequity, error, or impracticality, the date could be established either earlier or later.

5.5 Review and Approval of Plans

Within sixty (60) days of receipt of a proposed cost allocation plan or amendment, the Director of the HHS Division of Cost Allocation field office will notify the state that the submission is either specifically approved or disapproved, that modifications are needed in order for approval to be granted, or that additional information is needed to evaluate the submission. Also, if a determination cannot be made within the 60 day period, the field office will notify the state. If a plan submission is disapproved, the state will be notified accordingly, along with the reasons for the disapproval. Under 45 CFR Part 16, a state may appeal a disapproval of a plan submission so long as the appeal is postmarked no later than 30 days after receipt of the determination letter. (45 CFR § 16.7(a)).

5.6 Claims Under PACAPs

Any claims developed under approved cost allocation plans must be for allowable costs under OMB Circular A-87. Where unallowable costs have been claimed, they must be refunded to the Federal program that originally accepted them either by a cash refund, an offset against a subsequent claim (if authorized), or credits to the amounts charged to individual awards.

5.7 Questions and Answers on Attachment D

5-1 In the early 1960s the former Department of Health, Education, and Welfare (HEW) issued a document entitled "Handbook of Public Assistance Administration." Is this issuance still in effect, and if so, which Federal issuance takes precedence when sections of that handbook contradict the cost principles of Circular A-87, e.g., treatment of the cost of land? [Att. D, § A]

Under an Action Transmittal Notice of August 11, 1975, the former Social and Rehabilitation Service of (then) HEW advised State agencies that, as published in the *Federal Register* on August 11, 1975, Parts I, II, and VI, and Supplements A, B, and C of the Handbook were revoked. Parts III, IV, and V were still in effect to the extent that they were not superseded by subsequent regulation or policy issuances. OMB Circular A-87 was issued to bring consistency to the manner in which Federal awarding agencies measured and recognized allowable administrative costs. Federal agencies are required by OMB to implement the Circular and abide by those rules unless OMB has granted a specific waiver to the agency for a rule(s) or the Circular is in conflict with a given statute. Therefore, if the Handbook conflicts with any section of A-87, Circular A-87 policy would apply unless the exceptions noted above exist.

5-2 45 CFR Part 95.507(b)(6) requires that a statement be submitted describing services provided by a governmental agency outside the state agency other than those provided through the state-wide cost allocation plan (SWCAP) or umbrella department cost allocation plan (CAP) costs. If this other agency is only a subrecipient of Federal monies from the state (or local) agency and the subrecipient proposes a cost allocation procedure, who is responsible for the review and approval of this plan? [Att. D, ¶ D]

Review and approval of the plan used by the subrecipient governmental agency is the responsibility of the state agency. The Part 95 provision referenced above does not require Federal approval. It has been long-standing policy that the prime grantee is responsible for assuring that subawardees properly spend and account for flow-through Federal funds. Where the subrecipient has an indirect cost agreement or cost allocation plan approved by a Federal cognizant agency, costing and claims to the primary recipient agency should be made in accordance with that agreement (plan). The amounts claimed under these procedures are still subject to audit and to Federal awarding agency review of quarterly claims.

5-3 Attachment D, paragraph D.2 states that the effective date of the plan is "the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS." 45 CFR 95.515 states "[a]s a general rule, the effective date of a cost allocation amendment shall be the first day of the calendar quarter following the date of the event that required the amendment." The date may be earlier or later based on specific conditions. Is there an inconsistency between the two effective dates as currently stated? [Att. D, ¶ D.2]

No. The state agency is required to promptly amend its cost allocation plan when one of several conditions occurs. Therefore, these dates should effectively be the same.

5-4 Attachment D, paragraph E.3 states "[i]f a dispute arises in negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process." The wording implies that single funding issue disputes, whether it involves the negotiation of a plan or disallowance, will be resolved through the funding agency appeal process. 45 CFR Part 95, Subpart E requires use of the Part 75 appeal process for plan disapprovals, and splits responsibility for crosscutting and single agency disallowance actions. Is this inconsistent with the revision to Circular A-87? [Att. D, ¶ E.3]

No. Disputes involving plan disapprovals are subject to 45 CFR Part 16 governing the Departmental Appeals Board Procedures. (Due to reorganization within HHS, Part 75 has been rescinded.) Single-funding agency disallowance actions are appealed through the applicable funding agency, unless the issue(s) involve cost accounting practices or policies. In such cases, the cognizant agency may determine that the appeal will be handled through its process.

5-5 Attachment D, paragraph E.1 provides for after-the-fact reviews to assure compliance with approved plans. The circular states that these reviews can be accomplished by the funding agency, single audits, or the cognizant audit agency. Does the A-87 language preclude the cognizant agency responsible for approval of the plan from performing compliance reviews? [Att. D, ¶ E.1]

No. The term "funding agency," in this context, includes the cognizant agency responsible for negotiating the plan approval. Compliance reviews are part of the oversight function in the approval of the cost allocation plan (CAP).

PART 6

Attachment E — State and Local Indirect Cost Rate Proposals

6.1 Highlights of New Section, Attachment E

Attachment E has been added for state and local indirect (IDC) rate proposals. This Attachment is also a compendium of conventions, internal HHS policies and procedures, and portions of the former OASC-10. The Attachment provides definitions, submission requirements, how to develop a rate(s), documentation requirements, etc. for IDC rates issued to state and local agencies.

6.2 Acceptable Methodologies for Indirect Cost Allocation and Rate Determination

6.2.1 Types of Rates

Circular A-87 defines four possible types of indirect cost rates. However, two of these types, the provisional and the final, are actually two stages of one approach. The types of rates are listed below:

1. A ***provisional*** rate is a temporary rate, agreed to in advance, based on anticipated future costs. It is subject to retroactive adjustment at a future date after costs are known.

2. A ***final*** rate is established after the costs are known. It adjusts the provisional rate but is administratively burdensome. Underpayments resulting from application of the provisional rate are subject to availability of funds, while overpayments must be credited or returned.

3. A ***fixed*** rate is also agreed to in advance, based on an estimate of future costs, but it is not retroactively adjusted. Instead, the difference between estimated and actual costs is carried forward to future years.

4. A ***predetermined*** rate is agreed to in advance, based on an estimate of future costs, but is not subject to adjustment except under very unique circumstances. It is intended to be permanent and thereby reduce the administrative burden associated with indirect cost recovery. A predetermined rate may not be used for any governmental unit that does not submit its indirect cost rate proposals to a cognizant agency for negotiation, nor may it be used on Federal contracts. The 1995 revision of Circular A-87 encourages long-term use of predetermined rates over a period of two to four years where there is a high degree of assurance that the agreed-upon rate will not exceed one that would result if actual costs were determined.

6.2.2 Direct Cost Bases

The direct cost base is used to distribute indirect costs to individual Federal awards, i.e., an indirect cost rate must be applied to a direct cost base in order to determine the amount of indirect costs. There are two basic types of direct cost bases: total direct salaries and wages (S&W), or modified total direct costs (MTDC). MTDC exclude "any extraordinary or distorting expenditures," usually capital expenditures, subawards, contracts, assistance payments (e.g., to beneficiaries), and provider payments. The direct cost base selected should result in each award bearing a fair share of indirect costs in reasonable relation to the benefits received from those indirect costs.

6.2.3 Simplified Method

There are two basic methods for calculating indirect cost rates—the simplified method and the multiple rate method. Where each of a recipient agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished under the simplified method. The steps involved in calculating a rate under the simplified method are shown below:

Steps Involved in Calculating a Rate Under the Simplified Method

1. Adjust indirect costs for the period by eliminating any costs directly reimbursed through a Federal award awarded specifically for that purpose. For example, if a construction grant was received, then no depreciation or use allowance should be included in the indirect cost pool. Likewise, remove any administrative salaries included in the pool that were funded as direct in a grant. The pool also must be adjusted for any A-87 unallowables and capital expenditures. Use allowances should be computed and added to the pool along with any CSCAP allocations.

2. Adjust direct costs by eliminating flow-through funds and capital expenditures. Compute and add use allowances.

3. Divide the total allowable indirect costs (net of applicable credits) by an equitable direct cost base, e.g. salaries and wages or modified total direct costs.

Illustration 6-1 illustrates the distribution of indirect costs of a state or local government department, the division/bureaus of the department, and the cost of central services provided to it. Under the simplified method shown in this illustration, indirect costs are identified at the division or bureau level, and are so indicated. This method may be used if the ratio of the indirect costs to direct salaries and wages (or other selected base) of each division or bureau reasonably approximates the ratio of the other divisions or is otherwise not inequitable to the Federal Government. If the indirect/direct ratio varies significantly between divisions or bureaus, the multiple rate method (Illustration 6-3) should be used.

Illustration 6-1

Sample Indirect Cost Rate Proposal - Simplified Method
Department of Environmental Services
For the Fiscal Year Ended June 30, XXXX

					Direct Costs ***(c)***	
	Total	Exclusions	Expenditures Not Allowable	Indirect Costs	Direct Salaries & Wages	Expenditures For All Other Purposes
	(e)	***(a)***	***(b)***	***(d)***		
Division/Bureau						
Air Quality and Noise	$ 438,338		$ 36,820	$ 47,480	$ 206,320	$147,718
Community Environmental Control	691,931		22,161	61,210	481,182	127,378
Water Quality Management	2,390,738	$1,800,000	9,945	52,641	410,771	117,381
Solid Waste Disposal	1,153,057		106,210	96,847	643,782	306,218
Parks and Forests	844,617		115,000	91,119	450,788	187,710
Subtotal	$5,518,681	$1,800,000	$290,136	$349,297	$2,192,843	$886,405
Departmental Indirect Costs						
Office of the Director	$ 122,610			$122,610		
Financial Management	155,275			155,275		
Administrative Services	86,930			86,930		
Equipment Use	16,800			16,800		
Running Subtotal	$5,900,296	$1,800,000	$290,136	$730,912	$2,192,843	$886,405
Services Furnished (But Not Billed)						
By Other Government Agencies ***(f)***						

Personnel	$ 87,060			$ 87,060		
Accounting	216,220			216,220		
Purchasing	22,211			22,211		
Audit	12,210			12,210		
Total	$6,237,997	$1,800,000	$290,136	$1,068,613	$2,192,843	$886,405

This is a sample. It is not intended to prescribe methods of charging costs.

Notes to Illustration 6-1

(a) Under some Federal programs, funds (called "flow-through funds") are provided to a primary recipient and subsequently passed through to another organization which actually performs the program for which the funds are provided. There is no measurable involvement by the primary recipient in the expenditure of the funds. The primary recipient's involvement is generally limited to monitoring and oversight. This example illustrates such a situation. Because these funds, which are recorded as a cost in the records of the department, do not reflect the expenditure of resources, they are excluded from the computation. However, if the primary recipient does in fact incur significant costs administering the grant, then it should be assessed for its equitable share of indirect costs. This column is normally used by states only and not local governments.

(b) Expenditures not allowable. This amount represents costs or capital expenditures and costs, whether direct or indirect, which are unallowable in accordance with the cost principles. Although a cost may be unallowable, if it either generated or benefitted from the indirect costs, it should be moved to the base (provided that it is salaries and wages in this example) and allocated its share of indirect costs.

(c) Under the simplified method, a determination is made as to which activities are direct, illustrated under the heading Direct Costs, and which are indirect, illustrated under the heading Indirect Costs.

(d) Once the determination of direct/indirect has been made, a ratio should be determined for each division/bureau as shown in the following calculation:

Division/Bureau	Indirect Costs	Direct and Wages	Salaries Ratio
Air Quality & Noise	$47,480	$206,320	23.01%
Community Environmental Control	$61,210	$481,182	12.72%
Water Quality Management	$52,641	$410,771	12.82%
Solid Waste Disposal	$96,847	$643,782	15.04%
Parks & Forests	$91,119	$450,788	20.21%

In this illustration, the dollar amounts of indirect costs differ significantly between division or bureau; however, when individually expressed as a percentage of direct salaries and wages, the differences

are minor. Therefore, a single overall rate for the department may be computed by adding the departmental indirect costs and the costs incurred by other government agencies and allocating the indirect cost pool over a single base.

(e) Total departmental costs. This amount should be reconciled to the financial statements or other supporting documentation included in the proposal.

(f) Costs incurred by other government agencies. This amount must agree with the amounts shown on the central service cost allocation plan (see Illustration 4-4). In Illustration 6-1, costs of $337,701 represent costs of central services allocated to the entire department. Governmentwide services that are billed directly to departments or to programs must also be documented in the cost allocation plan (See Illustration 4-5).

Illustration 6-2

Department of Environmental Services
Sample Indirect Cost Rate Proposal - Simplified Method
For the Fiscal Year Ended June 30, XXXX

Total	Exclusions & Expenditures Not Allowable	Indirect Costs	Direct Salaries & Wages	Other Direct Expenditures
$6,237,997	$290,136	$1,068,613 (A)	$2,192,843 (B)	$886,405

(A) divided by (B) = $1,068,613 / $2,192,843 = Indirect cost rate of 48.73% of direct salaries and wages, excluding fringe benefits.

Notes:

The totals from Illustration 6-1 are brought forward to this illustration. The indirect cost rate is expressed as a percentage resulting from the ratio of the allowable indirect costs ($1,068,613) to the direct salaries and wages ($2,192,843).

In this illustration, fringe benefits applicable to direct salaries and wages are treated as direct costs.

This is a sample. It is not intended to prescribe methods of charging costs.

6.2.4 Multiple Allocation Base Method

Where a recipient agency's indirect costs benefit its major functions in varying degrees, the multiple rate method is more appropriate.

Steps Involved in Calculating Rates Under the Multiple Rate Method

1. Classify departmental indirect costs into functional cost groupings (cost pools) which benefit divisions of the agency in significantly different proportions.

2. Select appropriate bases for distribution of each classified pool of indirect costs.

3. Distribute each classified pool to the benefitting division.

4. Calculate an indirect cost rate for each division of the agency by relating the total indirect costs allocated to that division to that unit's direct cost base.

Illustration 6-3 shows the distribution of indirect costs on a multiple allocation basis to each division or bureau within a department. This method results in more definitive costing and should be used when operating differences between divisions or bureaus result in material differences in the use of resources and in costs.

The computation recognizes the indirect costs of each division or bureau, department level administration, and the cost of services furnished by other government agencies and approved through the central service cost allocation plan. These costs are allocated to the divisions or bureaus on bases which most fairly reflect the extent to which they benefit from or generate the costs. For example, the costs of purchasing services is allocated on the number of purchase orders issued, while the costs of personnel administration is allocated on the number of employees serviced.

Indirect costs allocated from the department level and from the central service plan are added to the indirect costs incurred by each division or bureau to arrive at total indirect costs for each of the divisions or bureaus. A rate is developed for each division or bureau by relating its indirect costs to its salaries and wages or other selected base.

Illustration 6-3

Sample Indirect Cost Rate Proposal - Multiple Rate Method
Department of Environmental Services
For the Fiscal Year Ended June 30, XXXX

			Total	Services Furnished by Other Gov't Agencies				Departmental Costs ***(d)***				
	Allocation Base		Indirect Costs	Personnel	Accounting	Purchasing	Audit	Director	Financial Mgmt.	Admin. Services	Equipment	Total
			(b)									***(f)***
Services Furnished (But Not Billed) By Other Government Agencies ***(c)***												
Personnel	No. of Employees	$	87,060	($87,060)								
Accounting	No. of Employees ***(e)***		216,220		($216,220)							
Purchasing	No. of Purchase Orders		22,211			($22,211)						
Audit	No. of Audit Hours		12,210				($12,210)					
Subtotal		$	337,701									
Departmental Indirect Costs												
Director's Ofc.	Direct Salaries & Wages	$	122,610					($122,610)				
Financial Mgmt.	Transactions Processed		155,275						($155,275)			
Admin. Services	Direct Salaries & Wages		86,930							($86,930)		
Equipment Use	Uses of Equipment		16,800								($16,800)	
Subtotal		$	381,615									
Division/Bureau												
Air Quality and Noise		$	47,480	$ 17,545	$ 41,495	$ 3,434	$ 1,089	$ 24,522	$ 23,776	$ 15,543	$ 1,000	$ 175,884
Community Environmental Control			61,210	12,920	30,575	3,434	1,089	24,522	29,885	10,659	1,000	175,294
Water Quality Management			52,641	11,997	28,394	2,289	1,089	24,522	37,273	10,659	6,000	174,864

Solid Waste Disposal	96,847	36,935	87,362	11,456	6,777	24,522	46,423	29,488	6,000	345,810
Parks and Forests	91,119	7,663	28,394	1,598	2,166	24,522	17,918	20,551	2,800	
										196,761
Subtotal	$ 349,297									
Totals	$1,068,613	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	$ 1,068,613

This is a sample. It is not intended to prescribe methods of charging costs.

Notes to Illustration 6-3

(a) The allocation bases used were selected as reasonable and applicable under the circumstances. Other bases could be just as acceptable if they represented a fair measure of cost generation or cost benefit.

(b) The costs in this column must be reconciled to official financial statements. In this illustration, it is assumed that all costs incurred are allowable and relevant in accordance with OMB Circular A-87. To the extent that unallowable or excludable costs are included therein, a separate column should be added to the schedule to show the amounts and adjustments made.

(c) These are carried forward from the central service cost allocation plan shown in Illustration 4-4. The costs of services furnished (but not billed) by other government agencies, which are derived through the central service cost allocation plan, are allocated to each functional division or bureau. This allocation could be made more precise by allocating the costs to each departmental administrative function, e.g., to financial management, administrative services, etc., and to the divisions or bureaus. The indirect costs of each departmental administrative service, plus its allocated amount of central service costs, would then be allocated to the divisions or bureaus. If the result of such allocations would have a material effect on the rates computed, the more precise method should be used. In the example presented, the dollar effect is not sufficiently material to warrant this level of precision. In addition to the listed unbilled services, the department also received services from other organizations for which it is billed at rates approved through the central service cost allocation plan (See Illustration 4-5). Illustration 6-3 assumes that these billed costs are already recorded in the accounting records of the department and included in the column Total Indirect Costs, or are treated as a direct cost.

(d) Departmental indirect costs are allocated to each division or bureau. As with services furnished by other government agencies, explained in Note (c) above, the allocation of certain departmental indirect costs, such as equipment use charges, could have been allocated to other departmental administrative functions, if the results of such allocation would have had a material effect on the rates to be computed. In the example presented, the dollar effect is not sufficiently material to warrant the additional allocations.

(e) Accounting services rendered by other agencies are allocated to the divisions or bureaus on the basis of number of employees. In

Illustration 6-3, the accounting services provided by the central service agency were predominantly payroll services.

(f) The total indirect expenses developed for each division or bureau is carried forward to Illustration 6-4, where the relationship between the indirect expenses and direct salaries and wages of each division or bureau is used to develop indirect cost rates.

Illustration 6-4

Sample Indirect Cost Rate Proposal - Multiple Rate Method
Department of Environmental Services
For the Fiscal Year Ended June 30, XXXX

Divisions/Bureaus	Indirect Costs	Direct Salaries and Wages	Indirect Cost Rates
	(a)	***(b)***	***(c)***
Air Quality and Noise	$ 169,560	$ 206,320	82.18%
Community Environmental Control	169,200	481,182	35.16%
Water Quality Management	168,666	410,771	41.06%
Solid Waste Disposal	336,612	643,782	52.29%
Parks and Forests	190,904	450,788	42.35%
Total	$1,068,613	$2,192,843	

Notes:

(a) The amounts in this column are from Illustration 6-3.

(b) The amounts in this column are derived from, and must be reconciled to, the books and records of the department. Salaries and wages is the preferred base. However, other bases may be used where it results in a more equitable allocation of costs. Generally, the same base should be used for all divisions; however, if approved by the cognizant Federal agency, different bases may be used for one or more of the divisions.

(c) The indirect cost rate for each division/bureau is computed by dividing the indirect costs for each division/bureau by the direct salaries and wages of that division/bureau.

$$\frac{\text{division/bureau indirect costs}}{\text{division/bureau direct S\&W}} = \text{indirect cost rates for division/bureau}$$

6.3 Special Rates

Circular A-87 notes that there may be instances where a single indirect rate for all activities of a recipient department or agency may not be appropriate. Factors such as different physical locations for work, level of administrative support needed, organizational arrangements, and subaward practices, or a combination of these factors, may create the need for separate rates. It is not uncommon for these types of situations to result in a headquarters rate and multiple off-site rates.

In addition, some Federal programs, such as those funded by the Department of Education, place limitations on allowable indirect costs. In those instances, restricted rates are issued.

6.4 Submission and Documentation of Proposals

6.4.1 Documenting Indirect Cost Proposals

A cognizant agency may require additional data, depending on the circumstances, but each indirect cost proposal must include, at a minimum:

1. The rates proposed, including subsidiary work sheets and other relevant data, cross-referenced and reconciled to the financial data.

2. For allocated central service costs, the summary table included in the approved central service cost allocation plan, unless otherwise available to the funding agency. The summary schedule from the approved central service cost allocation plan is frequently needed because the Federal agency that is cognizant for a departmental indirect cost rate proposal may be different from the one that is cognizant for the central service plan for the overall governmental unit.

3. A copy of the financial data upon which the rate is based.

4. The approximate amount of direct base costs incurred under Federal awards, broken out between salaries and wages and other direct costs. The cognizant agency will use the breakdown between salaries and wages and other direct costs within the direct base costs to determine whether to establish the resulting indirect cost rate on the basis of salaries and wages or modified total direct costs.

5. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional

statement(s) noting the duties and/or responsibilities of all units that comprise the agency. The organizational chart that is submitted with the indirect cost rate proposal should be accompanied by a narrative statement. This statement should provide sufficient detail about the functions that are performed by component units to permit the proposal reviewer (cost negotiator) from the cognizant agency to differentiate levels of benefit provided and received within the organization.

6.4.2 Required Certifications

Indirect cost rates, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, must be certified by the governmental unit using the Certificate of Indirect Costs as set forth in Attachment E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal. (See also 2.9, Government Certification.)

6.5 Review, Negotiation, and Approval of Rates

OMB Circular A-87 places considerable discretion with the cognizant Federal agency assigned to particular recipients. It permits the cognizant agency to determine, within reasonable bounds, the level of detail that is appropriate to support a cost allocation plan and/or an indirect cost rate proposal. This discretion carries over to the review and approval process as well.

6.5.1 The Review Process

In general, the cognizant agency will follow certain basic steps for most submissions. Note: there is no hard and fast rule about the approach or tools used. Typical steps in the review process are shown below:

Steps in the Review Process

1. Review the submission for materiality, completeness, and reliability of supporting data, including audited financial statements.
2. Acknowledge receipt and request any needed additional information.
3. Review prior negotiation and audit experience; assess prior agreements and applicable conditions.
4. Assess the submission's general reliability and the governmental unit's financial condition.

5.	Determine the extent to which coordination with other awarding agencies may be necessary.
6.	Review the proposal for accuracy and determine whether it includes all activities and costs of the governmental entity.
7.	Determine whether unallowable costs have been excluded and whether allocation methods and billing mechanisms are appropriate and properly designed.
8.	Assess what the appropriate rate base (salaries and wages, modified total direct cost, etc.) should be for the resulting indirect cost rate and the extent to which any rate established should be subsequently adjusted.

6.5.2 Indirect Cost Rate Negotiations

Negotiations about submissions may be limited or extensive, based largely on the results of the review steps described above. In the case where, for any number of reasons, a rate cannot be negotiated, the Circular does permit unilateral action by a cognizant agency to establish a rate.

6.5.3 Features of a Typical Rate Agreement

Appendix 3 is an example of a contemporary rate agreement containing the salient features that are likely to appear in those issued by most cognizant agencies. Note: there is no standard governmentwide Federal form employed for the purpose of rate determination.

6.6 Applying an Approved Rate to Grants and Contracts

6.6.1 Establishing the Amount of Approved Indirect Costs in the Award Budget

Because Circular A-87 establishes a policy that Federal programs bear their fair share of costs recognized under the Circular, Federal awarding agencies are expected to recognize and use indirect cost rates approved by the cognizant agency for a particular recipient. This recognition and use usually occurs at the time that an award is made. Awarding agency officials review direct cost proposals and applications to determine that anticipated costs included are necessary, reasonable, and allocable. Any proposed indirect costs are assessed according to whether or not an agreement exists with a cognizant agency. If one does, the awarding agency officials determine whether it will be fully recognized and to which object class categories of expenditure it will be properly applied. (Some Federal programs impose regulatory limits on the indirect percentage that will be allowed, e.g., HHS training grants that limit reimbursement to 8% of MTDC.)

If no agreement exists, awarding agencies should encourage recipients to obtain one. In the interim, agencies may only award funds for direct and allocated costs. The awarding agency should conduct a review of these costs to determine the propriety of any allocations. Agencies may not establish indirect cost rates unless they are the cognizant agency for the recipient.

6.6.2 Applying the Rate to the Direct Cost Base and Calculating Claims

Once the indirect cost rate is recognized within an award document, the governmental unit is permitted to apply that rate to the applicable base of the allowable direct costs incurred during award performance. Periodically the governmental unit is expected to submit a Financial Status Report (usually either Standard Form 269 or 269A) which summarizes total expenditures incurred under the award. It may claim indirect costs by multiplying its indirect cost rate by the direct cost elements to which the rate may be applied under the terms of the award. Thus, its total cost recovery for the applicable period is comprised of the allowable direct costs incurred plus the allowable, allocable indirect costs.

6.6.3 Effect of Rate Changes from One Fiscal Year to Another

Occasionally, a governmental unit will receive an award which it performs over a period that extends beyond the applicability of a single, approved indirect cost rate. This is likely when the award period does not correspond to the fiscal year of the governmental unit. In such a case, the recipient is expected to apply its rate(s) to expenditures incurred during the applicable fiscal year and to maintain consistent accounting treatment according to its normal procedures of expenditure recognition.

6.7 Record Retention

The Common Rule issued pursuant to OMB Circular A-102 covers most policies associated with records to be retained and/or disclosed by a governmental unit receiving Federal assistance funds. Section __.42 of that rule requires that all financial and programmatic records, supporting documents, statistical records, and other records of recipients and subrecipients be retained. Section __.36 (i)(10) of the rule covers the record retention requirement for contractors under grants and their subcontractors.

Generally, records must be retained for three years from the submission date of the final financial report for that funding period. However, if any litigation, claim, negotiation, audit, or other action involving the records has been initiated before the three-year retention period has expired, the records must be retained until the action is completed and all issues which arise from

it have been resolved, or until the end of the regular three-year period, whichever is later. (A-102 Common Rule, §__.42(b)(2)).

Section __.42(c)(4) of the Common Rule states that records associated with indirect cost rate proposals and cost allocation plans are included within the scope of the broader record retention requirement. Under that provision, "indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates)" are covered.

6.8 Audit

Audit of Federal awards is an aid to determining whether financial information is accurate and whether an award recipient has complied with terms and conditions that could have an effect on claims for costs incurred under the award. Under the Inspector General Act of 1978, as amended, the Inspector General of a Federal agency may audit or investigate any program, function, or activity administered by that agency. This potential for review extends to those organizations (including state, local, and Indian tribal governments) that are performing under awards made by the Federal agency. However, as a way to assure the best use of audit resources, the Act requires the Inspectors General to determine the extent to which they can rely on audit work performed by nonfederal auditors. This policy, combined with the fact that the Single Audit Act of 1984, as amended**,** requires recipients to arrange to have independent audits performed on Federal financial assistance awards that they receive, means that these nonfederal examinations are the principal means by which a governmental unit's compliance with Circular A-87 is determined. OMB is responsible for issuing implementing policies, procedures, and guidelines under the Act.

Applicable OMB guidance for auditors performing audits under the Single Audit Act identifies general and specific requirements against which the auditor is expected to test governmental unit compliance. Several of these requirements relate to policies contained in Circular A-87. Included within the general requirements are:

- allowable costs/cost principles;
- Federal financial reports; and
- administrative requirements.

Included in the specific requirements section of each listed Federal program are use and use restrictions and limitations, including matching and cost sharing, maintenance of effort, and earmarking requirements.

6.9 Disputes and Appeals

If a dispute arises concerning the application of provisions of Circular A-87, the method of resolving the issues raised and the party responsible for adjudicating them depend on the nature of the dispute. For example, if a dispute arises concerning the submission, negotiation, or establishment of a cost allocation plan or indirect cost rate, the procedures of the cognizant agency govern. On the other hand, if a dispute arises about questioned or disallowed costs associated with a particular Federal award, the procedures of the awarding agency govern.

Costs incurred by a governmental unit may be questioned during conduct of an audit or through some other form of monitoring or awarding agency oversight. They may be questioned because of an alleged violation of applicable policy, because they are not supported by adequate documentation at the time of the audit, or because they are deemed to be unreasonable or unnecessary by the responsible auditor or other party examining them. The determination as to whether costs will be disallowed is made by an awarding agency official authorized to issue decisions on behalf of the agency. Depending upon awarding agency procedures, there may be several layers of review within the agency before such a decision is considered final.

Each Federal agency has its own regulations and policies governing administrative appeals of agency determinations, and many agencies either do not allow appeals, or limit them to very specific areas. The costs of prosecuting these claims may not be allowable under agency interpretations of the A-87 prohibition on pursuing claims against the Federal Government.

6.10 Questions and Answers on Attachment E

6-1 The definition of an "Indirect Cost Rate Proposal" in Attachment E, paragraph B.1 is "the documentation prepared by a government unit...to substantiate its request for the establishment of an indirect cost rate." Based on the definition of "Government Unit" in Attachment A, paragraph B.13, can a state submit a state-wide indirect cost rate proposal in lieu of a state-wide cost allocation plan (SWCAP)? [Att. E, ¶ B.1]

No. A state, if it wishes to identify and claim all administrative and support costs provided to its components (operating agencies) which receive Federal awards, must prepare and submit a state-wide central service plan (SWCAP) in accordance with Attachment C of A-87. That Attachment, at paragraph D.1, stipulates that "[e]ach State will submit a plan...." The use of the term "governmental unit" in the above referenced Attachment E is viewed as an editing error where "government component" was intended. The only

government units that have been permitted to develop indirect cost rates in lieu of cost allocation plans for centralized government support activities are local units of government. This is permitted under Attachment C, paragraph D.3.

6-2 A review of Attachment E, paragraph D.1.b raises several questions:

(a) When reference is made to "governmental unit," is it actually referring to a "government component" for which an indirect cost (IDC) rate is required?

(b) It notes that OMB will publish lists of governmental units and their Federal cognizant agencies. Governmental units not listed on OMB's published lists of governmental units and their cognizant agencies must prepare an IDC rate proposal, and keep it on record unless the cognizant Federal agency requires that it be submitted for review and negotiation. In the past, a state component was required to negotiate an IDC rate if it wanted to recover IDCs. Has this policy changed?

(c) Based on the comments in (b) above, is a local government that is assigned a cognizant Federal agency required to submit its IDC proposal for review and negotiation? [Att. E, ¶ D.1.b]

The responses to each of the above are as follows:

(a) This is an editing error and "component" was intended.

(b) There has been no change. If a state component wishes to recover its IDC, it must develop, submit, and negotiate an IDC rate or cost allocation plan with the cognizant Federal agency.

(c) Appendix 2 identifies "major" local governments that have been assigned a cognizant Federal agency. At the present time local governments are not required to submit proposals for approval unless the cognizant Federal agency requires submission.

6-3 Attachment E, paragraph F.3 discusses IDC CAPs for a governmental unit not by the use of a rate but through a narrative plan similar to public assistance plans. By definition a "governmental unit" is the entire state or local government,

not a component thereof. Is this the intent of this section? [Att. E, ¶ F.3]

No. This was an editorial error. In some cases, because of the nature of its operations, a component or agency may find it necessary to develop a cost allocation plan rather than an indirect cost rate. See Q&A 2-18, Part 2 of this guide, for the criteria to be used when determining when a cost allocation plan should be used in lieu of an indirect cost rate.

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REFERENCE

OMB Circular A-87 references many documents. In addition, various bodies have issued documents which should be used in conjunction with Circular A-87 to ensure compliance with standards of accountability in Federal funds management. Pertinent documents are listed below, along with their issue date[1] and source.

This document:	as issued:	may be obtained from:
OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*	May 17, 1995	Executive Office of the President (EOP) Publications Office, 202-395-7332 or via the Internet, http://www.whitehouse.gov/WH/EOP/omb **OR** the *Federal Register*[2] at 60 FR 26484
OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments,* and the accompanying Common Rule, *Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments*	October 14, 1994 (Circular); March 11, 1988 (Common Rule), as revised April 19, 1995	Executive Office of the President (EOP) Publications Office, 202-395-7332 or via the Internet, http://www.whitehouse.gov/WH/EOP/omb **OR** the *Federal Register,* at 59 FR 52224, 53 FR 8087, 60 FR 19638
OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,* and the attached Common Rule	November 29, 1993	Executive Office of the President (EOP) Publications Office, 202-395-7332 or via the Internet, http://www.whitehouse.gov/WH/EOP/omb **OR** the *Federal Register,* at 58 FR 62992
The Federal Acquisition Streamlining Act of 1994 (FASA) (PL 103-355)	October 13, 1994	*Statutes at large*[3]

1 All issue dates listed in the Reference section of this guide are issue dates as of publication, 4/8/97.

2 Back issues of the *Federal Register* are generally available in paper or on microfiche at law libraries and larger public libraries. The 1995 and later issues (volumes 60 and up) are available via GPO Access on the Internet, http://www.access.gpo.gov.

3 Available at law libraries and some larger public libraries. Statutes are filed by public law number.

This document:	as issued:	may be obtained from:
OMB Circular A-128, *Audits of State*	April 12, 1985	Executive Office of the President (EOP)

and Local Governments[4]		Publications Office, 202-395-7332, also via fax-on-demand, 202-395-9068[5], or via the Internet, http://www.whitehouse.gov/WH/EOP/omb
OMB Circular A-133, *Audits of Institutions of Higher Education and Other Non-Profit Institutions*	April 30, 1996	Executive Office of the President (EOP) Publications Office, 202-395-7332, also via fax-on-demand, 202-395-9068, or via the Internet, http://www.whitehouse.gov/WH/EOP/omb **OR** the *Federal Register*, at 61 FR 19134, via the Internet, http://www.access.gpo.gov
Compliance Supplement for Single Audits of State and Local Governments	September 1990	US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, 202-512-1800
Questions and Answers on the Single Audit Process of OMB Circular A-128, "Single Audits of State and Local Governments"	November 13, 1987	The *Federal Register*, at 52 FR 43712
Common Rule on New Restrictions on Lobbying	February 6, 1990	The *Federal Register*, at 55 FR 6736
Lobbying Disclosure Act of 1995 (PL 104-65)	December 1995	*Statutes at Large* **OR** via the Internet through GPO Access, http://www.access.gpo.gov
OMB Circular A-21, *Cost Principles for Educational Institutions*	May 8, 1996	Executive Office of the President (EOP) Publications Office, 202-395-7332, or via the Internet, http://www.whitehouse.gov/WH/EOP/omb **OR** the *Federal Register*, at 61 FR 20880, via the Internet, http://www.access.gpo.gov
OMB Circular A-122, *Cost Principles for Nonprofit Organizations*	July 8, 1980, and revised April 27, 1984, May 19, 1987, and October 6, 1995	Executive Office of the President (EOP) Publications Office, 202-395-7332 **OR** the *Federal Register*, at 45 FR 46022, 49 FR 18260, 52 FR 19788, 60 FR 52516

This Circular is scheduled to be rescinded; state and local government audits will be covered by a revised OMB Circular A-133.

[5] Only circulars of less than 50 pages are available from OMB's fax-on-demand service.

This document:	**as issued:**	**may be obtained from:**
45 CFR Part 95, General Administration – Grant Programs (Public Assistance and Medical Assistance)	October 1, 1996	US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, 202-512-1800

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APPENDIX 1

OMB CIRCULAR A-87

Cost Principles for State, Local, and Indian Tribal Governments

APPENDIX 2

Cognizant Agency Assignments

APPENDIX 3

Sample Indirect Cost Rate Agreement

STATE AND LOCAL RATE AGREEMENT

DATE: July 3, 1996

DEPARTMENT/AGENCY:
State of X Family & Social
Services Administration

FILING REF.: The preceding
Agreement was dated
May 10, 1994

The rates approved in this agreement are for use on grants, contracts and other agreements with the Federal Government, subject to the conditions in Section III.

SECTION I: INDIRECT COST RATES*

RATE TYPES: FIXED FINAL PROV. (PROVISIONAL) PRED.(PREDETERMINED)

TYPE	EFFECTIVE PERIOD FROM	TO	RATE(%)	LOCATIONS	APPLICABLE TO
FINAL	07/01/93	06/30/94	14.4	* All	Division of DARS
PROV.	07/01/94	UNTIL AMENDED	14.4	* All	Division of DARS
FINAL	07/01/93	06/30/94	4.4	** All	Div of Mental Health
PROV.	07/01/94	UNTIL AMENDED	4.4	** All	Div of Mental Health

**BASE:
Total direct costs of the Division of Mental Health, exclusive of items of equipment, alterations and renovations, State Hospital expenses, and subawards and flow-through funds.

*BASE:
Direct salaries and wages, including all fringe benefits for the Division of Disabilities, Aging, and Rehabilitative Services (DARS), exclusive of the Developmental Disabilities Centers.

NOTE: The State claims use allowance on capital expenditures over $1,000.

DEPARTMENT/AGENCY:
State of X Family & Social Services Administration

AGREEMENT DATE: July 3, 1996

SECTION II: SPECIAL REMARKS

TREATMENT OF FRINGE BENEFITS:
Fringe benefits are specifically identified to each employee and are charged individually as direct costs. The directly claimed fringe benefits are listed in the Special Remarks Section of this Agreement.

TREATMENT OF PAID ABSENCES:
Vacation, holiday, sick leave pay, and other paid absences are included in salaries and wages and are claimed on grants, contracts, and other agreements as part of the normal cost for salaries and wages. Separate claims for the costs of these paid absences are not made.

FRINGE BENEFITS:

FICA
Retirement
Group Insurance
Worker's Compensation
Unemployment Insurance

ORGANIZATION:
State of X Family & Social Services Administration

AGREEMENT DATE: July 3, 1996

SECTION III: GENERAL

A. LIMITATIONS:
The rates in this Agreement are subject to any statutory or administrative limitations and apply to a given grant, contract, or other agreement only to the extent that funds are available. Acceptance of the rates is subject to the following conditions: (1) Only costs incurred by the organization were included in its indirect cost pool as finally accepted: such costs are legal obligations of the organization and are allowable under the governing cost principles; (2) The same costs that have been treated as indirect costs are not claimed as direct costs; (3) Similar types of costs have been accorded consistent accounting treatment; and (4) The information provided by the organization which was used to establish the rates is not later found to be materially incomplete or inaccurate by the Federal Government. In such situations the rate(s) would be subject to renegotiation at the discretion of the Federal Government.

B. ACCOUNTING CHANGES:
This Agreement is based on the accounting system purported by the organization to be in effect during the Agreement period. Changes to the method of accounting for costs which affect the amount of reimbursement resulting from the use of this Agreement require prior approval of the authorized representative of the cognizant agency. Such changes include, but are not limited to, changes in the charging of a particular type of cost form indirect to direct. Failure to obtain approval may result in cost disallowances.

C. FIXED RATES:
If a fixed rate is in this Agreement, it is based on an estimate of the costs for the period covered by the rate. When the actual costs for this period are determined, an adjustment will be made to a rate of a future year(s) to compensate for the difference between the costs used to establish the fixed rate and actual costs.

D. USE BY OTHER FEDERAL AGENCIES:
The rates in this Agreement were approved in accordance with the authority in Office of Management and Budget Circular A-87, and should be applied to grants, contracts, and other agreements covered by this Circular, subject to any limitations in A above. The organization may provide copies of the Agreement to other Federal Agencies to give them early notification of the Agreement.

E. OTHER:

If any Federal contract, grant, or other agreement is reimbursing indirect costs by a means other than the approved rate(s) in this Agreement, the organization should (1) credit such costs to the affected programs, and (2) apply the approved rate(s) to the appropriate base to identify the proper amount of indirect costs allocable to these programs.

BY THE DEPARTMENT/AGENCY:	BY THE COGNIZANT AGENCY ON BEHALF OF THE FEDERAL GOVERNMENT:
State of X Family & Social Services Administration (DEPARTMENT/AGENCY)	DEPARTMENT OF HEALTH AND HUMAN SERVICES (AGENCY)
_____ (SIGNATURE)	_____ (SIGNATURE)
_____ (NAME)	_____ (NAME)
_____ (TITLE)	DIRECTOR, DIVISION OF COST ALLOCATION (TITLE)
_____ (DATE)	July 3, 1996 (DATE) 5629 HHS REPRESENTATIVE: _____ Telephone: _____ _____

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APPENDIX O
PHMSA State Underground Natural Gas Storage Safety Grants
Guidance for Indirect Cost Recovery
Revised December 2017

Summary

The purpose of this appendix is to provide guidance to all underground natural gas storage safety grant programs as to the establishment of a negotiated indirect cost rate or other options in order to collect indirect costs. This replaces any previously issued guidance. See guidance below.

Summary of Topics

Overview of 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2 CFR 200 is the Federal Government Guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. This codified regulation provides a government wide framework for grants management. 2 CFR 200 supersedes and streamlines the requirements from any previously applicable requirements under 2 CFR 225 and any previous OMB Circulars A-87 and OMB Circular A-133.

In determining whether costs are allowable or not follow these basic guidelines:

- Necessary and reasonable
- Allocable
- Authorized under state or local laws
- Not restricted by PHMSA policy
- Not otherwise restricted by statute
- All activities are charged uniformly
- Consistent treatment
- In accordance with GAAP
- Not included as a cost of another federal award
- Net of all applicable credits
- Adequately documented

What is an Indirect Cost Rate and Indirect Cost Rate Proposal?

Indirect Cost Rate

An indirect cost rate is a device for determining in an equitable manner the proportion of indirect costs for each program. An indirect cost rate assists a grantee to obtain the full cost of operating a grant or a program, not just the more easily identifiable "direct cost".

An indirect cost rate is the ratio (expressed as a percentage) of the indirect cost to a direct cost base. Indirect costs may be recovered only to the extent that direct costs were incurred. In order to determine the reimbursable amount for indirect costs, the indirect cost rate is applied to the amount of direct costs expended, NOT to the total grant award. The direct cost base can vary from state to state but each is determined in accordance with 2 CFR 200.

Per 2 CFR 200 – Appendix VII, "indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment V to Part 200) and not otherwise treated as direct costs".

Indirect costs are normally charged to federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually developed for each department or agency of the governmental unit claiming indirect costs under federal awards. In addition to Appendix VII of 2 CFR 200, guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation

Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government". This is also known as ASMB C-10 and is located in the State Guidelines as Appendix N.

2 CFR 200 (Guidelines Appendix G), and ASMB C-10 (Guidelines Appendix N), comprise the majority of the federal guidance for indirect costs rates and cost allocation plans. A link to ASMB C-10 is provided below:

http://rates.psc.gov/fms/dca/**asmb**%20**c-10**.pdf

Indirect Cost Rate Proposal

An indirect cost rate proposal is the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate. All pipeline safety programs desiring to claim indirect costs in their grant reimbursement must submit an indirect cost rate proposal, and have an approved indirect cost rate agreement. The proposal and related documentation must be retained for audit in accordance to record retention requirements.

Proposal submission requirements include the following:

- Identification of costs considered to be indirect
- Identification of costs used as the direct costs to assist in setting the rate
- Rate(s) Development Schedules
- Copies of Financial Data
- Organizational Charts
- Certification of the rate by an authorized official

Indirect Cost Rates Types

The indirect cost rate type is determined between the cognizant agency and the grantee. Descriptions of the differing rates are as follows:

- "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an

informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

- "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
- "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.
- "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.
- "De Minimis rate" means a rate of 10% of modified total direct costs (MTDC) and may be used indefinitely without having a negotiated indirect rate. This rate is only available to those non-Federal entities who have never received a negotiated indirect cost rate. Any exceptions to this are found in Appendix VII to Part 200, paragraph (d)(1)(b).

Indirect Cost Rate Cap

PHMSA may implement a cap on indirect costs of 20% of total direct costs submitted for reimbursement if there is federal funding limitations and in order to substantially fund the direct costs of all programs. PHMSA will notify programs if the 20% cap on indirect cost is being implemented for a give grant year.

What do State Programs need to do?

What will each program need and when?

All state programs will need to have either an approved indirect cost rate agreement in order to be reimbursed for indirect costs or they may collect the de minimis rate of 10% of MTDC as noted above. Approved indirect cost agreements should be sent to Rex Evans at rex.evans@dot.gov.

- A grantee must have obtained a current indirect cost rate agreement from its cognizant agency, to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to its cognizant agency within 90 days after the date the Department issues the Grant Award Notification (GAN). This would be after our notice of Grant Award, or "Grant Allocation".
- If a grantee does not have a federally recognized indirect cost rate agreement, the grantee may continue to charge its grant for indirect costs at a rate of up to 10 percent of MTDC while a rate is being negotiated.

- If a grantee had a previously negotiated indirect cost rate agreement the grantee must either continue with keeping an updated agreement or will not be able to collect indirect costs.

Who will approve the indirect cost proposal?

The "Cognizant" federal agency is responsible for reviewing, negotiating, and approving the indirect cost proposals developed under 2 CFR 200 for each state. This agency is typically the federal agency from which the state agency receives the majority of their federal funding. In some cases this agency may be PHMSA and Indirect costs plans shall be submitted to Rex Evans at: rex.evans@dot.gov. We will work with those states on a case by case basis for indirect cost rate proposal approval as necessary. PHMSA/DOT will likely be the cognizant agent for most programs who have not previously secured an indirect cost rate, but it is recommended that each program consult their state grant office for initial assistance.

When is an indirect cost plan developed?

Indirect cost proposals are typically developed within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant federal agency. (See 2 CFR 200 for guidance)

Does the program have to have an "Indirect Cost Rate Agreement"?

No. If a state chooses, no plan or agreement is necessary and may collect up to a maximum of 10% of MTDC providing an indirect agreement has never been in place.

How often does a program need to have their agreement updated?

The rate period is typically outlined on the negotiated rate document, but any non-Federal entity that has a federally negotiated indirect cost rate may apply for a one-time extension of a current negotiated indirect cost rates for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate.

Is there a cap on the amount of indirect costs a program can recover?

Yes, per program implemented policy as described above, there is a limitation of 20% of direct program costs that can be submitted for reimbursement in the pipeline safety grant program.

Where should programs go for guidance?

1. Your agency financial personnel and state grant office should be the first place you seek guidance
2. See 2 CFR 200 and ASMB C-10
3. PHMSA State Programs Contact:

Rex Evans – rex.evans@dot.gov
217-679-8495 office
217-801-8014 cell

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program - Procedure to Monitor, Evaluate, and Reject a State Program's Certification

Appendix P

U. S. Department of
Transportation

Pipeline and
Hazardous Materials
Safety Administration

PHMSA Office of Pipeline Safety Procedure to Monitor, Evaluate, and Reject a State Program's Certification

Effective Date: April 2012

I. Purpose

The following procedure outlines the process by which the Secretary of Transportation (Secretary), and PHMSA as the designee, may monitor, evaluate, and reject a state program's Certification and therefore assume *intrastate* regulatory, inspection, and enforcement responsibilities, from a state under an annual Certification. The Secretary may enter into a 60105 Certification with a state such that the state assumes regulatory oversight responsibility for intrastate facilities within that state. The Certification requires that the state successfully meet several requirements, further discussed in this document.

II. Secretary's Authority to Monitor State Programs

After a state becomes certified to regulate its intrastate facilities, the Secretary may monitor a safety program to ensure that the program complies with the Certification. PHMSA's Office of Pipeline Safety (OPS) monitors the performance of the state agencies participating in the pipeline safety program through PHMSA's State Programs Division.

PHMSA has broad statutory authority to regulate pipeline safety. If PHMSA determines that the state is not satisfactorily complying with the Certification requirements, then PHMSA may reject the Certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate oversight. PHMSA may adopt policies and rules implementing its statutory authority to reject a state's Certification

III. Establishment of Administrative Process and Procedures for Unsatisfactory Compliance with Certification Requirements

The following includes the administrative process and procedures PHMSA will follow if a state is found to have such deficiencies in its pipeline safety program that it is not satisfactorily complying with the Certification requirements and the statute. Such a finding is a prerequisite before PHMSA may initiate a proceeding to reject a state's Certification. In determining a state program's inadequacies, PHMSA may also evaluate a state's overall pipeline safety program, as well as evaluate past specific state oversight activities and enforcement actions. This document also includes the established administrative process and

procedures and other remedies available to a state for contesting a notice alleging it failed to satisfactorily comply with the Certification, should the state elect to do so.

IV. Considerations and alternatives before PHMSA rejects a state's Certification

Before rejecting a state Certification, PHMSA's Associate Administrator, OPS, may take other appropriate action to achieve adequate compliance with the Certification, which may include:

A. The Director of State Programs may issue a letter to the State Senior Official responsible for the Underground Natural Gas Storage safety program identifying the state's deficiencies and warning the state to make certain improvements or take other actions necessary to maintain the state's Certification with PHMSA.

B. PHMSA may notify the state in writing of the proposed action(s) to reject, suspend, or modify a state's certificate and provide that the matter may be resolved once PHMSA verifies that the evidence submitted by the state demonstrates completion of the following:

1. corrected the deficiencies,

2. complied with the required corrective action(s), or

3. a written agreement to correct the deficiencies within the time specified by PHMSA; or on or before the end of the suspension period. C. After giving the state an opportunity to respond, PHMSA may:

1. temporarily suspend the state's certificate, if PHMSA determined that the deficiency can be corrected within a reasonable amount of time;

2. allow states, deemed to have failed to satisfactorily comply with the Certification requirements, the opportunity to enhance their programs and to demonstrate their adequacy through periodic reviews; or

3. convert a state Certification to a 49 U.S.C. § 60106 agreement, which reduces the state's Underground Natural Gas Storage safety responsibility.

D. A state may give up its certificate prior to a final action by PHMSA to reject the state's certificate. The state may do this by sending a certified letter of intent to relinquish all Underground Natural Gas Storage safety responsibilities to the Associate Administrator, OPS. The letter should include a brief explanation with a description of any outstanding or active inspections and enforcement activities, and include a statement that the state understands and agrees that by relinquishing the Certification PHMSA will assume responsibility for intrastate Underground Natural Gas Storage safety.

E. PHMSA may take steps to reject a state's Certification if the state failed to demonstrate that it made improvements or took other actions required by PHMSA to maintain the state's Certification.

V. PHMSA's rejection of a state's Certification

When PHMSA finds that a state has such deficiencies in its Underground Natural Gas Storage safety program that it is not satisfactorily complying with the Certification requirements, then PHMSA may initiate

action to reject a state's Certification. PHMSA must document the basis for an allegation that a state failed to satisfactorily comply with the Certification requirements.

VI. Unsatisfactory Compliance Elements

Below are illustrative examples of nonconformance. A state program may be considered unsatisfactory if the state engages in one or more of these (as circumstances warrant):

A. Substantially failed to conform to the requirements detailed in its Certification or the statute when the state:

- Failed to have regulatory jurisdiction over the standards and practices prescribed by the Certification and statute,

- Failed consistently to take enforcement or corrective action after finding significant violations of Underground Natural Gas Storage safety laws and regulation,

- Failed to adopt regulations at least as stringent as the minimum Federal regulations,

- Failed to provide adequate oversight through ways that include inspections conducted by State employees that meet the qualifications prescribed by the statute,

- Failed to encourage and promote the establishment of a damage prevention program to prevent excavation damage to Underground Natural Gas Storages, to which the Certification applies, subjecting persons who violate the program requirements to civil penalties and other enforcement actions substantially the same as prescribed by the statute,

- Failed to provide for the enforcement of record maintenance, reporting, and inspection substantially the same as provided in the statute, or

B. Failed to provide for the enforcement of safety standards under a state law by injunctive relief and civil penalties substantially the same as provided in the statute.

C. Has been unable to have the majority of inspectors successfully complete requisite Underground Natural Gas Storage safety training conducted by PHMSA.

D. Engaged in any behavior that gives PHMSA reason to believe the state has not satisfactorily complied with the Certification requirements or statute.

E. Performance indicators, such as incident rates in combination with corrective actions, indicate the state is not satisfactorily meeting the intent of the safety oversight program.

VII. Adjudication Process and Procedures: Notice of Intent to Reject a State's Certification/Show Cause Order

When PHMSA determines that a state has such deficiencies in its Underground Natural Gas Storage safety program that it is not satisfactorily complying with the Certification requirements, PHMSA must notify the state of its intent to reject the state's Certification and provide an opportunity for a hearing before taking final action. PHMSA's Associate Administrator, OPS, may initiate the proceedings by serving Notice on the State with an order to show cause why the state's certificate should not be rejected. The Notice must include the basis for each allegation that a state failed to satisfactorily comply with the Certification requirements. When Notice is given, the state bears the burden of proof that it is enforcing satisfactorily compliance with the prescribed standards. The Notice shall provide an opportunity for the state to appear at a hearing to show cause why PHMSA should not reject its certificate or to show cause why it has not completed any required action(s) identified in written correspondence from PHMSA.

The show cause order shall provide:

- a time and place for the hearing and shall be served upon the state to give evidence upon the matter specified therein
- contain a statement(s) of the matters or allegations with respect to which PHMSA is inquiring;
- notify the state they bear the burden of proof for enforcing satisfactorily compliance with the prescribed standards
- notice and opportunity for the state to respond to any allegation(s) that it has not satisfactorily enforced compliance with safety standards in accordance with 49 U.S.C. Chapter 60101 *et seq*.
- PHMSA may dismiss a Notice to show cause before issuing a final order based on evidence that the state has taken action to address the alleged deficiencies

- the state appear no less than twenty business days after the receipt of such order, except where the safety of life, environment or property is involved, PHMSA may provide in the order for a shorter period of time to appear

- an extension of time may be granted upon a written request timely submitted by the state demonstrating good cause for an extension

- notice and opportunity to be represented by counsel at the hearing.

- notice and opportunity for the state to present witnesses, and submit any relevant explanations, information and material during a hearing.

- an opportunity to present evidence on any allegation(s)

- PHMSA to make publicly available all notices, findings and determinations.

- an opportunity for the state to petition for reconsideration of the final determination [process to be further defined]

PHMSA shall make a final written determination, including the reasons for the decision. PHMSA will notify the state of its final determination, including a brief statement of the reason(s) why the state's certificate should or should not be rejected, or whether other appropriate action may be taken.

VIII. Adverse Action

Any adverse action taken by PHMSA against a state may impact the state's grant funding.

IX. Reinstatement of State Certification

A decertified State may apply for Certification to PHMSA and must provide supporting documentation that the state meets Certification requirements.

A. A state applying for reinstatement must provide evidence of compliance with all Certification requirements, at least 30 days prior to the next grant application/Certification opportunity.

B. PHMSA will respond to such requests and perform an adequacy review in a timely manner.

C. PHMSA may not consider an untimely application for reinstatement or an application that failed to include all evidence of compliance at least 30 days prior to the next grant application/Certification opportunity.

D. PHMSA may grant a request to reinstate a state's Certification upon such showing by the state that it has improved its Underground Natural Gas Storage safety program to an adequate level.

Relevant Contacts

Office of Pipeline Safety - Zach Barrett, Director of State Programs

Alan Mayberry, Deputy AA Policy & Programs

Office of Chief Counsel – Deputy Chief Counsel

Chief Counsel

Guidelines for States Participating in the Underground Natural Gas Storage Safety Program – Progress Report Scoring

Appendix Q

STATE PERFORMANCE CRITERIA

I. RATING FROM STATE PROGRAM EVALUATION (50 PERCENT OF SCORE)

II. INFORMATION FROM STATE PROGRESS REPORT (50 PERCENT OF SCORE)

A. Extent of Intrastate Safety Authority (12 Points)

(Progress Report Attachment 1)

N = Number of operator types which state has safety authority
M = Number of operator types located in state

60105 State: N/M x 12 60106 State: N/M x 12 x .5

Operator Type

1. Private
   - a Depleted Reservoir
   - b Aquifer
   - c Salt formation
2. Municipal
   - a Depleted Reservoir
   - b Aquifer
   - c Salt formation
3. Public Utility
   - a Depleted Reservoir
   - b Aquifer
   - c Salt formation

B. Inspector Qualifications (8 POINTS)

(Progress Report Attachment 7)

8 - Highest percentage of inspectors in categories I and II (Highest percentage of inspectors (50% or greater) are in categories I and II combined)

4 - Highest percentage of inspectors in categories I, II and III (If percentage of categories I and II combined are less than 50% but percentage of inspectors in categories I, II and III combined are 50% or greater)

0 - Highest percentage of inspectors in categories III, IV and V (If categories I, II and III combined are below 50%.)

C. Number of Inspection Person-Days (9 POINTS)

(Progress Report Attachment 2)

9 - Meets or exceeds the recommended number of inspection person-days.

7 - Comes within 10 percent of meeting the recommended number of inspection Person-days (achieved 90 percent or above of recommended number).

5 - Comes within 25 percent of meeting the recommended number of inspection person-days (achieved 75 percent or above of recommended number).
3 - Meets less than 75 percent but at least 50 percent of the recommended number of inspection person-days (achieved 50 to 75 percent of recommended number).
0 - Meets less than 50 percent of recommended number of inspection person-days (achieved under 50

D. State Adoption of Maximum Civil Penalty Requirement (2 POINTS)
(Progress Report Attachment 8, Section I, Item 1)

2 -Adopted $200,000/day; up to $2,000,000
1 -Taking steps to adopts (has filed draft legislation)
0 -Not Adopted

E. State Adoption of Applicable Federal Regulations (8 POINTS)
(Progress Report Attachment 8, Section I, Items 2, 3, 4, 5, and 6)

8 - Adopted within 24 months of effective date (or two general sessions of the state legislature, whichever is longer).
5 - Taking steps to adopt (has filed draft legislation).
3 - Adopted all regulations within required time frame except one -- where continuing opposition has blocked adoption and state is not presently attempting to adopt.
0 - Not Adopted within 36 months of effective date.

F. One Call System Minimum Requirements under Part 198 (8 POINTS)
(Progress Report Attachment 8 Section III)

1.5 - Mandatory coverage of areas having pipeline facilities
0.5 - Qualification for operation of one-call system
1.5 - Mandatory excavator notification of one-call center
0.5 - State determination whether calls to center are toll free
1.5 - Mandatory intrastate pipeline operator participation
1.0 - Mandatory operator response to notification
1.0 - Mandatory notification of excavators/public
0.5 - Civil penalties/injunctive relief substantially same as DOT

G. State Attendance at Annual PHMSA Meeting (3 POINTS)
(Progress Report Attachment 8, Section III)

3 - Attended full time (lead rep or alternate pipeline program staff)
1 - Attended less than full time
0 - No one attended

H. Penalty Points

-2 - State CY Progress Report not received at PHMSA HQ by due date
-4 - points assigned if over 1 month late

1 Applicable Federal regulation for five year period will be listed in Progress Report attachments
2 Established under state law by statute, regulation, license, Progress Report, order, or any combination of these legal means

Guidelines for States Participating in the Pipeline Safety Program

Appendix R (Reserved)