

FORM CD-450 (REV 01/09)		<input type="checkbox"/> GRANT <input checked="" type="checkbox"/> COOPERATIVE AGREEMENT	
U. S. DEPARTMENT OF COMMERCE		AWARD NUMBER	
FINANCIAL ASSISTANCE AWARD		NA10NMF4630222	
RECIPIENT NAME Portland, City of			
STREET ADDRESS 1121 Sw 4th Ave, Room 340		FEDERAL SHARE OF COST \$300,000.00	
CITY, STATE, ZIP CODE Portland OR 97204-1900		RECIPIENT SHARE OF COST \$300,000.00	
AWARD PERIOD 07/01/2010-05/31/2012		TOTAL ESTIMATED COST \$600,000.00	
AUTHORITY 16 USC 661; 16 USC 1891a			
CFDA NO. AND PROJECT TITLE 11.463 Crystal Springs Restoration Project			
<p>This award offer approved by the Grants Officer constitutes an obligation of Federal funding. By accepting this award offer, the Recipient agrees to comply with the award Terms and Conditions checked below. If this was a paper issued award offer, please send two signed documents to the Grants Officer and retain one set of signed award documents for your files. If this award offer is not accepted without modification within 30 days of receipt, the Grants Officer may unilaterally withdraw this award offer and de-obligate the funds.</p>			
<input checked="" type="checkbox"/> Department of Commerce Financial Assistance Standard Terms and Conditions <input type="checkbox"/> Government Wide Research Terms and Conditions <input checked="" type="checkbox"/> Bureau Specific Administrative Standard Award Conditions <input checked="" type="checkbox"/> Award Specific Special Award Conditions <input checked="" type="checkbox"/> Line Item Budget <input type="checkbox"/> 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations <input checked="" type="checkbox"/> 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to States and Local Governments <input type="checkbox"/> OMB Circular A-21, Cost Principles for Educational Institutions <input checked="" type="checkbox"/> OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments <input type="checkbox"/> OMB Circular A-122, Cost Principles for Non-Profit Organizations <input type="checkbox"/> 48 CFR Part 31, Contract Cost Principles and Procedures <input checked="" type="checkbox"/> OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations <input checked="" type="checkbox"/> Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements REF: 73 FR 7696 (February 11, 2008). <input checked="" type="checkbox"/> Other(s) 74 FR 34642 (07/16/09)			
SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER		TITLE	DATE
Alan Conway		Grants Officer	08/10/2010
TYPE NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		TITLE	DATE

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) 2010 ORI	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual	300,000.00	300,000.00			600,000.00
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)	300,000.00	300,000.00			600,000.00
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$ 300,000.00	\$ 300,000.00	\$	\$	\$ 600,000.00
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (Rev. 7-97)
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Special Award Conditions

Award Number:

NA10NMF4630222

Amendment Number:

0

1) Cooperative Agreement

NOAA Fisheries participation will be crucial to ensuring the development and implementation of the most beneficial habitat restoration project possible. NOAA Fisheries will:

- provide hands-on assistance on technical and permitting issues for the habitat restoration project;
- monitor the progression of the restoration from implementation to post-construction monitoring, including one or more site visits;
- and participate in public events to highlight the restoration activities and to foster the concept of citizen-based habitat restoration.

2) Performance Progress Reports

Progress reports must be submitted using the NOAA Community-based Restoration Program's progress report narrative format and data form approved by OMB under control number 0648-0472. This form will be provided to you by the NOAA Federal Program Officer.

Narrative progress reports will be due on the same schedule as financial reports--Oct. 30 and April 30--covering April 1-Sept. 30 and Oct. 1-March 31, respectively.

A comprehensive final report covering all activities during the award period is required and must be received by the NOAA Program Officer 90 days after the end date of this award.

3) Invasive Species Control

Pursuant to Executive Order # 13112, recipients of NOAA funding cannot implement any actions that are likely to cause or promote the introduction or spread of invasive species, and should provide for restoration of native species and habitat conditions in ecosystems that have been invaded. NOAA recipients are expected to take positive steps to prevent the introduction of invasive species, provide for control of invasive species, and minimize the economic, ecological, and human health impacts that invasive species cause. Where possible and/or practicable, recipients should also respond rapidly to and control populations of invasive species in an environmentally sound manner, promote public education on invasive species, and conduct post-construction monitoring to ensure that impacts on native species did not occur (as applicable). NOAA can provide additional guidance on the detection, control and prevention of invasive species impacts upon request.

4) Technical Monitor

The Technical Monitor for this award is:

Megan Hilgart

1201 NE Lloyd Blvd.

Suite 1100
Portland, OR 97232
Ph: 503-231-6848
Email: megan.hilgart@noaa.gov

5) Adhere to All Applicable Laws

The recipient will ensure that implementation of the project will meet all federal laws and regulations by completing any required federal consultations and obtaining all applicable permits and approvals prior to expenditure of federal funds or award match for those activities requiring permits and consultations. Verification of federal permits and environmental compliance related to the project funded under this cooperative agreement must be available to the NOAA Program Officer or Technical Monitor if requested. The recipient must be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

6) Maintain Project Files

The recipient must maintain project files for all restoration activities taking place under this agreement. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.

7) Written Safety Plan

Safety is a critical consideration for restoration project implementation. The recipient must have a written safety plan for management of employees, contractors, and volunteers working on the project(s) as applicable. The plan should consider safety in and around project sites during and after project construction, and take into account potential safety concerns with regard to the current and future use of the sites. The recipient should ensure that a safety briefing is conducted for all project participants immediately prior to their involvement in hands-on restoration activities under this award, and require that any volunteers sign a liability release waiver. Recipients shall be responsible for exercising reasonable care and using best efforts to prevent accidents, injury or damage to all employees, contractors, persons and property, in and around the work site. All safety plans must be made available to NOAA upon request.

8) Acknowledge Contributors

The recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding through the NOAA Restoration Center ? Open Rivers Initiative. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects.

9) New Award SAC

This award number NA10NMF4630222, to the City of Portland, supports the work described in the Recipient's proposal entitled "Crystal Springs Restoration Project" dated 11/12/09, and revision dated 05/05//10, which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

10) Matching Requirement

Since this award requires the Recipient to provide \$300,000 in project-related costs from non-federal sources, the Recipient must maintain its official accounting records an accounting of \$600,000.

NOAA Administrative Standard Award Conditions

ATTACHMENT B

During the Federal Government's Fiscal Year 2006, NOAA fully implemented NOAA Grants Online. Grants Online is the premier Federal solution for full life-cycle grants management processing. Grants Online allows recipients to: Accept awards electronically, manage user roles for individuals within their organization, submit post-award action requests, financial reports, and performance progress reports. Grants Online operates in a web environment, and can be accessed anywhere at any time, provided that you have Internet access. You will be required to use an Internet browser to log in and to use Grants Online. **Internet Explorer** is the preferred browser for **PC users**; **FireFox** is the preferred browser for **MAC users**. No software is required for installation. Logins and passwords are required. If you do not have a password, you can contact the Grants Online Help Desk for assistance in obtaining your login credentials.

For more information, e-mail GrantsOnline.HelpDesk@noaa.gov or call the Help Desk at 301-444-2112 or toll free at 1-877-662-2478 between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time Monday through Friday excluding Federal holidays.

A. Award Payments

Your award payments will be made through electronic funds transfers using the U.S. Department of the Treasury's Automated Standard Application for Payments (ASAP) system. Recipients must enroll in ASAP system by emailing the following information to ASAP.Inquiries_Enrollment@noaa.gov:

1. EIN#
2. DUNS#
3. Name of Organization
4. Type of Organization (i.e. Non-profit, For Profit, State etc.)
5. Address
6. Point of Contact
7. Title
8. Point of Contact's Email Address
9. Phone Number

Please put the award number on the subject line of the email for reference.

Please refer to the NOAA website at:

[http://www.corporateservices.noaa.gov/grantsonline/Documents/ASAP Enrollment and Certification.pdf](http://www.corporateservices.noaa.gov/grantsonline/Documents/ASAP_Enrollment_and_Certification.pdf)
for additional information.

B. Financial Reports

Federal Financial Reports (SF-425) are to be completed in NOAA's Grants Online system effective April 1, 2009. Grants Online will notify your organization via email when your reports are available for completion and submission through the Grants Online system. The status of all reports can be seen under "Associated Documents" under the Grants File.

NOAA Administrative Standard Award Conditions

To complete a report, login to NOAA Grants Online at <https://www.GrantsOnline.noaa.gov>, search for the award and navigate to the Grants File overview page. Find the report near the bottom of the page and click on the link to the report to complete the report. For multiple awards that require Federal Financial Reports (SF-425) covering the same period, you may create and submit a multi-award SF-425 from the "Awards" tab. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at <http://rdc.noaa.gov/~GrantsOnline/Training>. This site also has additional detailed recipient assistance material. If you are having problems with accessing Grants Online, please contact the Grants Online Help Desk at 1-877-662-2478 or GrantsOnline.HelpDesk@noaa.gov.

1. Federal Financial Report (SF-425) - (final report only)

- a. A final comprehensive Federal Financial Report must be submitted, within 90 days after award expiration. The report shall cover the entire project period from the start date through the end date of the original award, or approved extended end date of the award, and must include the cumulative total of indirect costs charged to the award.

2. Federal Financial Report (SF-425) - Due semi-annually; reported under the "Federal Cash" line of the report. (This report replaces the SF 272, Cash Transaction Report)

- a. The SF-425 shall be submitted on a semi-annual basis. If the recipient is reporting on more than one NOAA grant and/or agreement, then the SF-425 attachment must be used.
- b. Interim semi-annual Federal Financial Reports (SF-425) are due no later than 30 days after the semi-annual reporting periods ending March 31 and September 30 for the entire project period of the award.
- c. A final Federal Financial Report (SF 425) is due within 90 days after award expiration. The report shall cover the last semi-annual reporting period ending on September 30 or March 31, or a portion thereof, based on the end date or approved extended end date of the award.
- d. The SF-425 is due for recipients using the Department of Treasury Automated Standard Application for Payments (ASAP) system for payment. If converting to ASAP during the course of the Award, the SF-425 forms will be due as described above starting with the ASAP conversion date.

NOAA Administrative Standard Award Conditions

3. Request for Advance or Reimbursement (SF-270)

- a. The SF-270 shall NOT be submitted by recipients using the Department of Treasury ASAP system unless specifically directed by a Special Award Condition.
- b. The SF-270 shall be submitted using the NOAA Grants Online system, as reimbursements are necessary for the financial management of the award.
- c. Semi-annual and final Federal Financial Reports (SF-425) are not required if the SF-270 is used.

C. Performance/Progress Reports

Performance/Progress Reports are to be completed in NOAA's Grants Online System. The Grants Online System will notify your organization through email, when your reports are available for completion and submission through NOAA Grants Online. Recipients are responsible for ensuring all personnel listed on an award have a current email address. The status of reports can be seen under Associated Documents under the Grant File.

To complete your report, login to NOAA Grants Online at <https://www.GrantsOnline.noaa.gov>, search for the award and navigate to the Grants File overview page. Then find the report near the bottom of the page and click on the link to the report to complete it. You must attach the report document for submission, or in the rare cases where there is very little to report, fill out the report in the report comments section. The Federal Program Officer is the authority on the acceptable form and content of Project Progress Reports. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at <http://rdc.noaa.gov/~GrantsOnline/Training>. This site also has additional detailed Recipient assistance material. If you are having problems with your access to Grants Online, please contact the Grants Online Help Desk at 1-877-662-2478 or GrantsOnline.HelpDesk@noaa.gov.

- a. Frequency: Performance reports are due on a semi-annual basis, unless otherwise specified in an award condition, no later than 30 days following the end of each six (6) month period from the start date of the original award. The last semi-annual performance report is required. The final report, which summarizes activities conducted during the entire award must be submitted within 90 days following the end date of the project.

D. Post Award Action Requests for Non-Construction Awards

All Post Award Action requests must be completed in Grants Online. NOAA Grants Online provides the ability for Recipients to submit 19 different Award Action Requests. Each request is described below with specific guidance for each request.

NOAA Administrative Standard Award Conditions

General Guidance and NOAA Business Rules

- NOAA requires all Award Action Requests to be approved by a "Recipient Authorized Representative." Grants Online enforces this business rule by routing all requests through the Recipient Authorized Representative(s) for submission to NOAA.
-
- An Award End Date may ONLY be extended through:
 - A funded amendment through an application (SF-424)
 - A No-Cost Extension - Prior Approval Waived (Research Terms and Conditions)
 - A No-Cost Extension - Prior Approval Required
-
- The Extension to Closeout is the only Award Action Request that may be initiated after the Award End Date.
 - An Extension to Closeout may only be requested within the 90-day closeout period (90 days after the award end date). The closeout period can be extended only once for a maximum of 60 days.
-
- A No-Cost Extension - Prior Approval Waived (Research Terms and Conditions) must be submitted to NOAA 10 or more days prior to the award end date.
 - Grants Online automatically enforces this business rule.
-
- A No-Cost Extension - Prior Approval Required is required to be submitted to NOAA 30 or more days prior to the award end date.
 - Recipients that are allowed Prior Approval Waived (Research Terms and Conditions) must exercise this no-cost extension, before requesting a no-cost extension Prior Approval Required.
 - Grants Online does not enforce this business rule. Enforcement is at the discretion of the Grants Officer.
-
- The "Other" Award Action Request may or may not produce an amendment. Use this Award Action Request if you have a request that does not fit under any other category. Please work with your Federal Program Officer to determine if you should submit the "Other" Award Action Request. In a few cases, the recipient will not have to submit an "Other" Award Action Request. An email request from the recipient to the Federal Program Officer, and the approval of the content of that email by the Program Officer, who in turn, submits it to the Grants Officer is sufficient. The approval of the request ultimately lies with the Grants Officer. This email request and attendant correspondence is always attached to the Grants File as evidence of the transaction.

Grants Online Processing Guidance for list of Award Action Requests (Award Action Requests are listed on the following pages)

From the Grants Online Recipient Quick Reference Guide :

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1. Click the "Award" tab.
2. Click the "Search" or the "Search Award" link. The "Search Award" page is displayed.
3. Click the "Search" button on the "Search Award" page. When your search results populate, click the award number for which you are submitting your AAR.
4. On the "Grants File" launch page, select the "Create Award Action Request" action from the action dropdown menu then click the "Submit" button.
5. The "Award Action Request Index" page is displayed with the available AARs. Click the link to the AAR that you wish to submit. The requested page will be displayed for you to complete. Enter the required fields and click the "Save" button.
6. The AAR page is re-displayed with the attachment link and other fields. You can upload documents. After completing the required information, click the "Save and Return to Main" button. Another message will display where you can confirm your request and start workflow, click the "Yes" button.
7. A review task is sent to your "Task" inbox for this request. Follow the steps listed under the Processing a Task in [this document](#). The review task will go first to the creator of the document and then to the Recipient Authorized Representative(s) in the organization. If you have the role of "Recipient Authorized Representative" you will have to submit the request to NOAA, thus you will have processed two tasks.

List of Award Action Requests

Listed below is each kind of Award Action Request in the same relative location as it is found on the Award Action Request selection page in Grants Online. Those marked with an asterisk always require an amendment. The others generally do not, but might if any Special Award Conditions are associated with the request approval.

* No Cost Extension – Prior Approval Required	No Cost Extension - Prior Approval Waived (Research Terms and Conditions)
Extension to Close Out	Reprogram or Rebudget
* Change in Scope	Equipment Purchase
* Transfer of Award	Foreign Travel
Change in Principal Investigator	Sole Source Contract
Change in Institution Name	Other
Change in Key Person Specified in the Application	Absence of more than 3 months or 25% by project director or PI
Satisfied Special Award Conditions	Inclusion of cost that require prior approval based on cost principles
Transfer of funds allotted for training to other categories of expenses	* Sub award, transfer or contracting out of any work under the award if not described in the approved application
Pre-Award Cost	*Termination for Convenience

NOAA Administrative Standard Award Conditions

Specific Guidance on each Award Action Request

1) No Cost Extension - Prior Approval Required

- a. If the recipient believes it is necessary to obtain an additional no-cost extension to complete the approved program description and objectives beyond the No-cost Extension – Prior Approval Required already granted, then the recipient must submit another No-cost Extension – Prior Approval Required, in Grants Online. The request must clearly justify why the extension is needed and explain what activities are remaining to be accomplished under the award and what funds are still available to support the activity. In addition, the award must be in compliance with all terms and conditions of the award, including submission of all required reports.
- b. The request to extend the award period shall be submitted through Grants Online at least 30 days prior to the expiration of the award. The recipient proceeds at its own risk of incurring costs beyond the award expiration if the request is not submitted to NOAA at least 30 days prior to the expiration.
- c. Any extension request submitted to NOAA after the expiration of the award will be denied. Requests for reconsideration of extreme circumstances that resulted in failure to request an extension before the end of the award period must be submitted in writing and will only be considered by the Grants Officer on a case-by-case basis. Awards which are not in compliance with all terms and conditions of the award, including submission of all required reports, will not be reconsidered.

Assistance and Business Rules Related to the No Cost Extension - Prior Approval Required:

- The written request must clearly justify why the extension is needed and explain what activities are remaining to be accomplished under the award and what funds are still available to support the activity.
 - Grants Online requires that the justification block be completed.
 - Grants Online requires the attachment of a document containing a budget of remaining funds.
- The request to extend the award period shall be submitted through Grants Online at least 30 days prior to the expiration of the award.
 - Grants Online enforces this business rule. You cannot submit any award action request other than an extension to the closeout after the award expiration date.
- Any extension request submitted to NOAA after the expiration of the award shall be denied.
 - Grants Online enforces this business rule. You cannot submit any Award Action Request other than an Extension to Closeout after the award expiration date.
- Once submitted to NOAA through Grants Online by the Recipient Authorized Representative, the No Cost Extension action will automatically be forwarded to the correct NOAA personnel for approval.

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- This action results in an amendment to the award. It is not considered to be completed until the Recipient Authorized Representative has accepted the Amendment. Tasks and notifications will be generated for the Recipient Authorized Representatives after the Grants Officer approves the Amendment.

2) No Cost Extension - Prior Approval Waived (Research Terms and Conditions)

1. Extensions to the Period of Performance/Award Period - Research Terms and Conditions

- a. All recipients covered under 15 CFR Part 14 (e.g., educational institutions/non-profits), with non-construction awards are herein granted authority to initiate a one-time no-cost extension to the award period of up to one year without prior approval as long as the recipient notifies the Grants Officer through Grants Online using the "No-cost Extension Prior Approval Waived (Research Terms and Conditions)" link least 10 days prior to expiration of the award with an explanation of the reason for the extension and none of the following conditions apply:
 - i. There are other special award conditions that prohibit the extension.
 - ii. The extension requires additional federal funds.
 - iii. The extension involves any change in program objectives or scope of the project.
- b. This authority to extend the award period without prior approval may not be exercised merely for the purpose of using unobligated funds. Recipients must maintain compliance with all terms and conditions of the award, including submission of required reports, or this extension may be revoked. (This authority should not be utilized to extend continuing awards that are pending termination by the Grants Officer - see Administrative Extensions below.)
- c. For recipients covered under 15 CFR Part 14 (e.g., educational institutions/non-profits), the notification to the Grants Officer must clearly state that the award is being extended under "No-cost Extension Prior Approval Waived (Research Terms and Conditions)" of 15 CFR 14.25(e), provide the new expiration date of the award, and explain the reason for the extension.

Assistance and Business Rules related to the No Cost Extension - Prior Approval Waived (Research Terms and Conditions):

- An award must support research in order to be eligible for No-cost Extension Prior Approval Waived (Research Terms and Conditions). Eligibility is determined by the Program Officer during application review. Grants Online enforces this business rule. If the Program Officer for the award determines that the award does not support research, the link to create the No Cost Extension - Prior Approval Waived (Research Terms and Conditions) will be disabled in Grants Online and therefore unavailable to the recipient.
 - Only certain organizations, which are conducting research, are eligible for No-cost Extension Prior Approval Waived (Research Terms and Conditions). Grants Online enforces this business rule. If your organization is not an eligible type, the link to create the No Cost Extension - Prior Approval Waived (Research Terms and Conditions) will

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be disabled. The following organization types are eligible for Research Terms and Conditions:

- Public/State Controlled Institution of Higher Education
 - Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)
 - Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)
 - Private Institution of Higher Education
 - Individual
 - For-Profit Organization (Other than Small Business)
 - Small Business
 - Hispanic-serving Institution
 - Historically Black Colleges and Universities (HBCUs)
 - Tribally Controlled Colleges and Universities (TCCUs)
 - Alaska Native and Native Hawaiian Serving Institutions
 - Non-domestic (non-US) Entity
- The execution of the No Cost Extension - Prior Approval Waived (Research Terms and Conditions) by the recipient is completely automatic in Grants Online. Once the notification is submitted to NOAA by the recipient's Authorized Representative, the new award end date is immediately reflected in Grants Online and in the ASAP system. Notifications are sent to the Program Officer and the Grants Officer of the new award end date. This action does not result in an amendment to the Award.
- Grants Online enforces the 10 day rule (see **General Guidance and NOAA Business Rules** above). If you do not submit the No Cost Extension - Prior Approval Waived (Research Terms and Conditions) 10 or more days prior to the expiration of the award, Grants Online will prohibit you from doing so.
- Only one No Cost Extension - Prior Approval Waived (Research Terms and Conditions) can be submitted per award. Grants Online enforces this business rule.
 - Recipients designated as "High Risk" are not authorized to invoke No-Cost Extension Prior Approval Waived (Research Terms and Conditions). Grants Online enforces this business rule. If you are designated as "High Risk", the link to create the No Cost Extension - Prior Approval Waived (Research Terms and Conditions) will be disabled.
 - The NOAA Grants Management Division requires that **all** No Cost Extension - Prior Approval Waived (Research Terms and Conditions) actions must be for a duration of one year.. Grants Online enforces this business rule.

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- The NOAA Grants Management Division requires that recipients who have the capability of executing the No Cost Extension - **Prior Approval Waived (Research Terms and Conditions)** do so **before** requesting a No Cost Extension - Prior Approval Required. Requests for No Cost Extension - Prior Approval Required submitted prior to the No Cost Extension - Prior Approval Waived (Research Terms and Conditions) will be denied by the Grants Officer. Grants Online does not enforce this business rule.

3) Extension to Closeout

- a. Recipients have 90 days after the award expires to submit all reports required by the terms and conditions of the award and liquidate all obligations incurred. An extension to the closeout period should only be requested to complete the preparation of final reports and make final payments.
- b. An extension to the closeout period of up to an additional 60 days may be approved by the Grants Officer if an award action request is submitted through Grants Online to the Grants Officer before the expiration of the 90-day closeout period.
- c. Any closeout extension requests submitted to the Grants Officer after the expiration of the award shall be denied. Requests for reconsideration of extreme circumstances that resulted in failure to request a closeout extension before it lapsed must be submitted in writing and will only be considered by the Grants Officer on a case-by-case basis.
- d. If the final Federal Financial Report (SF-425) and all other required reports are not provided by the expiration of the closeout period or approved extended closeout period; the Grants Officer shall proceed with the enforcement remedies for non-compliance including, but not limited to, withholding payments and withholding further award actions as allowed under the applicable administrative rules [15 CFR §14.62 and 15 CFR §24.43].

Assistance and Business Rules Related to the Extension to Closeout:

- The Extension to Closeout is available as one of the selections in the list of Award Action Requests.
- After the award project period has expired, the recipient no longer has access to the Create Award Action Request link on the Grants File launch page. Instead, this is replaced by the link: Request Extension to Closeout. This link is available until the award closeout period has expired.

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- The request for an Extension to Closeout must be submitted to NOAA and approved by the Grants Officer before the extension date will take effect.
- An approved Extension to Closeout extends the date upon which final Federal Financial Reports and Progress Reports are due. It also extends the date during which the recipient can draw down funds from the Department of Treasury ASAP payment system.
- An approval of the Extension to Closeout does not result in an amendment to the award. The recipient's Authorized Representative will be notified by Grants Online of the approval or rejection of the request.
- Additional work on the award project is prohibited during the closeout period.

4) Reprogram or Rebudget for Non-Construction Awards

- a) Creation of a new direct cost line item category within an approved budget for costs allowable under the applicable cost principles will not require prior approval from the Grants Officer unless the new direct cost category exceeds 10% of the total Federal share of the award. Prior approval is also required when the cumulative transfer exceeds 10% of the total (Federal and non-Federal shares) budget last approved for awards with a Federal share exceeding \$100,000.
- b) Requests for prior approval of any budget revisions that transfer funds among line item cost categories shall be submitted on the SF-424A (or other OMB approved budget form) showing the total budget for the award along with a detailed budget narrative explaining the funds transferred. The revised budget request shall be submitted to the Program Officer who will in turn forward the request, along with a Program Officer recommendation, to the Grants Officer, who will make the final determination.
- c) The Recipient is prohibited from expending award funds (Federal and/or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of providing transportation, travel, or any other expenses for any Federal employee unless specifically authorized in the award document.

Assistance and Business Rules Related to Reprogram or Rebudget:

- You must attach a new SF-424A outlining the revised budget. In addition to the SF-424A, a revised budget narrative describing the Reprogram or Rebudget, should be provided.
-
- Once submitted to NOAA through Grants Online by the recipient's Authorized Representative, the Reprogram or Rebudget action will automatically be forwarded to the correct NOAA personnel for approval.

NOAA Administrative Standard Award Conditions

- The approval of a Reprogram or Rebudget request does not normally result in an amendment to the award. The recipient's Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request.
- If a Reprogram or Rebudget request includes a request for a no-cost extension, then you must also submit a No-Cost Extension – Prior Approval Required award action request.

5) Change in Scope

15 CFR Part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations" states the following:

§ 14.25 Revision of budget and program plans.

...
(c) For non construction awards, recipients shall request prior approvals through Grants Online. The request will be routed through the Program Officer. If the Program Officer concurs with the request, then the request is routed to the Grants Officer for review and approval. This procedure occurs 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).

15 CFR Part 24, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments" states the following:

§ 24.30 Changes.

...
(d) Programmatic changes. Recipients must obtain the prior approval of the awarding agency whenever any of the following actions are anticipated:

...
(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

In general, the recipient's Principal Investigator may make changes in the methodology, approach, or other aspects of the project objectives. However, the recipient must obtain prior approval from NOAA for a change in the direction, type of research or training, or other areas that constitute a significant change from the aims, objectives, or purposes of the approved project. The recipient must make the initial determination of the significance of a change and should consult with its Program Officer as necessary.

Actions likely to be considered a change in scope and, therefore, requiring NOAA prior approval include, but are not limited to the following:

- Change in the specific goals and objectives approved at the time of award;
- Shift of the research emphasis;

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- Change in the approved project areas or species;
- Change in the amount of work from the approved project description, e.g. number of samples collected.

Assistance and Business Rules Related to Change in Scope:

- The justification for the Change in Scope may either be entered in the text area or in an attached file.

Any Change in Scope which results in a decrease in Federal or recipient funding must be accompanied by an SF-424A (or SF-424C for construction awards) and a budget narrative describing the planned expenditure of the remaining funds. The request for a decrease in funding must be clearly and prominently stated. Any request for a reduction in match for a competitively awarded grant or cooperative agreement will be denied by the NOAA Grants Management Division. Any request for a reduction in match for a grant or cooperative agreement which has a statutory match in place will be denied by the NOAA Grants Management Division.

- If a Change in Scope request includes a request for a no cost extension, then you must also submit a No Cost Extension – Prior Approval Required award action request.
- Upon submission to NOAA by the recipient's Authorized Representative, the Change in Scope request will automatically be routed to the correct NOAA personnel for review and approval.
- An approved Change in Scope will always result in an amendment to the award. Upon approval by the Grants Officer, the recipient's Authorized Representative(s) will be notified of the approved amendment and tasks will be generated for acceptance. The amendment must be accepted by the recipient in order to take effect.

6) Equipment Purchase

The Department of Commerce Financial Assistance Standard Terms and Conditions, on Page 23, states the following:

M. MISCELLANEOUS REQUIREMENTS

.03 American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

The definition for equipment, as stated in 45 CFR Parts 74 and 92, is an article of tangible nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. For awards subject to 15 CFR Part 14, equipment also includes exempt

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property charged directly to the award.

Recipients must submit an award action request for approval prior to purchasing equipment.

Assistance and Business Rules Related to Equipment Purchase:

- Recipient must answer the following question (presented on the Equipment Purchase page: "Was Lease vs. Purchase Analysis Completed?" If the answer is yes, then the analysis must be attached to the award action request. If the answer is no, then the recipient must provide justification for not completing the analysis.
- The proposed equipment purchase must be listed in the budget narrative and its budgeted cost must be shown on the SF-424A, Section B, Line D. If it is not, then a reprogram or rebudget Award Action Request must also be submitted.
- The equipment description should include a narrative description, including the equipment function. It should also include the make and model.
- The justification should include the previously mentioned lease vs. purchase discussion, as well as the purpose (related to the objectives of the award) for which the equipment is to be used.
- Upon submission to NOAA by the recipient's Authorized Representative, the equipment purchase request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of an equipment purchase request does not normally result in an amendment to the award. The recipient's Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request.

7) Transfer of Award

The Department of Commerce Grants and Cooperative Agreements Interim Manual, Chapter 16 - Page 9, states:

In certain circumstances, the Program Officer and the recipient may agree that it would be in the best interests of the government and the recipient for an award to be transferred by DOC to a replacement recipient.

1. When the two organizations, the Program Officer and the Grants Officer, agree that it is in the best interest of the Federal Government and the intended beneficiaries of the award to allow the transfer, the Grants Officer will amend the award to transfer it to the new recipient organization. In such cases, the Program Officer must submit a request to the Grants Officer to change recipients. The request shall include documentation attesting to the original recipient's and proposed replacement recipient's consent to the proposed transfer. Such documentation must include a written agreement between the original recipient and the proposed replacement recipient executed by authorized representatives of both parties. In this instance, the organization relinquishing the award will be liable for all programmatic activities and all funds expended under the award prior to the effective date of the transfer. The relinquishing organization will be responsible for all closeout activities, including having an audit performed, if required, for the award prior to the effective date of the transfer. The organization to which the award is transferred must submit an application (if appropriate) which includes a proposal and detailed

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budget narrative. . The following forms must also be submitted, as applicable: the SF-424, SF-424A, SF-424B, SF-424C, SF-424D, CD-511, CD-346, SF-LLL, or any other approved program specific forms. The Program Officer will review all documents and make a recommendation as to the applicant's adequacy to meet program requirements which will be forwarded to the Grants Officer along with the request. This review will be the same as the review of any new application, including a responsibility check on the applicant, unless that function is performed by the Grants Office. The language in the amendment must clearly delineate the responsibilities of both parties to the transfer.

2. **Novation Agreement.** A novation occurs when one organization takes over all of the liabilities and responsibilities of another organization. This might occur as a result of a merger, one organization buying another, an organization going out of business and entering into an agreement with another organization to take over its business, or a variety of other reasons.
 - a. When an organization seeks to transfer an award to another organization as a result of a novation agreement, the two organizations must submit a proposed novation agreement to the Grants Officer, signed by the CEOs, Presidents, or equivalent fiduciary officers of the two organizations. The novation agreement must state that all rights, duties and obligations of the award are transferred without further claim and that the new recipient agrees to accept them. Furthermore, the new recipient must meet statutory and regulatory eligibility requirements. In the case of successor-in-interest organizations, the recipient shall submit relevant documentation reflecting the relationship between the recipient and the successor organization.
 - b. The Grants Officer will consult with the DOC Office of General Counsel on the legal merits of the proposed novation. If the novation is determined to be in order, the Grants Officer will request that the proposed new recipient submit an application and an amended proposal (if appropriate) to effect the change in award recipient. The application must include an original proposal and detailed budget narrative. The following forms must be submitted, as applicable: the SF-424, SF-424A, SF-424B, SF-424C, SF-424D, SF-511, CD-346, SF-LLL, or any other approved program specific forms. The Grants Officer will then obtain a review and written recommendation regarding the proposed novation from the Program Officer as to the programmatic capacity to produce the desired results of the proposed agreement. The Program Officer should examine whether the scope of work has changed or if there are other issues arising that would put the initial competitive selection in jeopardy because of differences between the original and the new recipient and review any related budgetary changes. The Grants Officer must make a responsibility determination regarding the new recipient. If the Grants Officer then determines that the award should continue, he/she will issue an amendment to the award to effect the transfer to the subsuming organization.

Assistance and Business Rules Related to Transfer of Award:

The most common reason for a Transfer of Award is due to the transfer of the Principal Investigator from one organization to another. Please discuss the Transfer of Award with your NOAA Program

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Officer early in the planning stages. Due to budgetary and other administrative considerations, it may be necessary to take an alternative approach, e.g. a sub-award to the new organization.

- The organization that agrees to the transfer of the award initiates their part of the Transfer of Award by submitting the request through Grants Online through the e Transfer of Award action request.
- A short description of the reason for the Transfer of Award and identification of the replacement recipient is required in the justification text box.
- The NOAA Program Officer will work with the replacement recipient on submission of an application for the new award.
- Upon submission to NOAA by the recipient's Authorized Representative, the Transfer of Award request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of Transfer of Award request will produce a termination amendment. The recipient's Authorized Representative will be notified of the amendment after it is approved by the Grants Officer. This amendment must be accepted by the recipient in order to take effect.

8) Foreign Travel

The Department of Commerce Financial Assistance Standard Terms and Conditions, p. 22, states the following:

The recipient shall comply with the provisions of the Fly America Act (49 USC § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.

- a. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- b. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 USC § 40118(b). DOC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
- c. If a foreign air carrier is anticipated to be used for any part of foreign travel, the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to

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adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

Assistance and Business Rules Related to Foreign Travel:

- You must certify your compliance (or non-compliance) with the Fly America Act as part of the award action request. Please explain your certification answer in the justification.
- In order to approve the request, the Grants Officer requires enough details about your flight in order to determine if you are in compliance with the Fly America Act. Please provide origin, destination, airline, flight dates/times, and other pertinent information in the justification.
- Upon submission to NOAA by the recipient's Authorized Representative, the Foreign Travel request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Foreign Travel request does not normally result in an amendment to the award. The recipient's Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

9) Change in Principal Investigator

Assistance and Business Rules Related to Change in Principal Investigator:

- Please discuss the request for a Change in Principal Investigator with your NOAA Program Officer early in the planning stages. Selection of applications for award are made partly on the qualifications of the Principal Investigator. NOAA may wish to consider alternative remedies, e.g. transferring the award to the current Principal Investigator's new organization.
- All of the new Principal Investigator fields must be filled out. As an alternative to typing in the PI information, you can click the "Search PI" link which will display all of the personnel from your organization that have the Recipient Investigator role. Clicking the "select" link for that person will fill out the information automatically on the Change in Principal Investigator screen.
- If your original application included a resume or Curriculum Vitae for the Principal Investigator, or if the NOAA Program Officer requires it, you must submit the same for the proposed Principal Investigator.
- Upon submission to NOAA by the recipient's Authorized Representative, the Change in Principal Investigator request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Change in Principal Investigator request does not normally result in an amendment to the award. The recipient's Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.
- After approval of a Change in Principal Investigator request, the recipient's Administrator(s) will be notified and assigned a task to "Manage Recipient Users". They should complete this task by assigning the new Principal Investigator to the Award and removing the old assignment. NOAA personnel cannot perform this task. The assigned recipient Investigator(s) will receive notifications of required Progress Reports, so it is important that they be assigned to their awards.

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- Changing the Principal Investigator associated with an award in the Grants Online Manage Recipient Users or View/Manage Award-Related Personnel features DOES NOT constitute notification or approval by NOAA of the change.
- Adding Recipient Investigators (who are not Principal Investigators) to the award through the Grants Online Manage Recipient Users or View/Manage Award-Related Personnel features is not prohibited. If you desire to give personnel a Recipient Investigator capability into specific awards, NOAA has no objection to you adding them as Recipient Investigators without going through any permission procedures.

10) Sole Source Contract

Assistance and Business Rules Related to Sole Source Contract:

- **Contract Definition:** The legal instrument reflecting a relationship between a recipient or sub-recipient and contractor or between such contractor and subcontractor whenever the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services.
- For the purchase of equipment, technology, or services under a NOAA award, recipients must follow their own policies and procedures on procurement as long as those requirements conform to the Federal procurement requirements set forth in 15 CFR § 14.44 and 15 CFR § 24.36 (as applicable). The Recipient Authorized Representative should submit an award action request for a sole source contract, if the proposed contract was not described in the funded application, and if it is determined that the award of a contract through a competitive process is infeasible, and if one of the following circumstances applies:
 1. The item/service is available only from one source.
 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
 3. Results of a competition are determined inadequate after solicitation of a number of sources.
- The recipient must seek written authorization from NOAA for sole source procurements in excess of \$100,000 if the proposed contract was not described in the funded application. Approval for sole source procurements from the NOAA Grants Officer must be received prior to purchasing equipment, technology or services, obligating funding for a contract, or entering into a contract with award funds.
- The justification must certify that the award of the contract through full and open competition is infeasible. The request must also identify which of the three circumstances identified above apply to the procurement transaction. In addition, the request should include the following:
 1. A brief description of the project and the purpose of contract.
 2. An explanation as to why it is necessary to contract in a noncompetitive manner. The explanation must contain the following:
 - a. Expertise of the contractor
 - b. Management
 - c. Responsiveness
 - d. Knowledge of project
 - e. Experience of contractor personnel

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- f. Results of a market survey to determine competition availability; if no survey is conducted, please explain why not
- 3. Time Constraints.
 - a. When the contractual coverage is required by your organization and why
 - b. Impact on project if deadline/dates are not met
 - c. How long it would take an alternative contractor to reach the same required level of competence (equate to dollar amounts, if desired).
- 4. Uniqueness.
- 5. Additional supporting information
- 6. A declaration that this action/choice is in the best interest of the agency.
- You may enter the justification in the provided text box, but it is probably more appropriate to attach it as a file.
- Upon submission to NOAA by the Recipient Authorized Representative, the Sole Source Contract request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Sole Source Contract request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

11) Change in Institution Name

Assistance and Business Rules Related to Change in Institution Name:

- The Change in Institution Name award action request may not be used for transferring awards between organizations.
- A certification that the organization's EIN and DUNS numbers have not changed, or inclusion of the new numbers are required as part of the justification.
- Upon submission to NOAA by the Recipient Authorized Representative, the Change in Institution Name request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Change in Institution Name request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

12) Other

Assistance and Business Rules Related to "Other":

- The "Other" Award Action Request may or may not produce an amendment. Use this award action request if you have a request that does not fit under any other category. Please work with your Program Officer to determine if you should submit the "Other" award action request.
- The "Other" award action request requires both a description and a justification. Please provide sufficient information in both text areas to allow NOAA personnel to make an appropriate decision.

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- Upon submission to NOAA by the Recipient Authorized Representative, the "Other" award action request will automatically be routed to the correct NOAA personnel for review and approval.
- If the approval of an "Other" award action request will produce an amendment. The Recipient Authorized Representatives will be notified of the amendment after it is approved by the Grants Officer. This amendment must be accepted by the Recipient in order to take effect.

13) Change in Key Person Specified in the Application

15 CFR Part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations" states the following:

§ 14.25 Revision of budget and program plans.

...

(c) For non-construction awards, recipients shall request prior approvals from the Grants Officer for one or more of the following program or budget related reasons.

...

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

15 CFR Part 24, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments" states the following:

§ 24.30 Changes.

...

(d) *Programmatic changes.* Recipients or sub-recipients must obtain the prior approval of the awarding agency whenever any of the following actions are anticipated:

...

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

Assistance and Business Rules Related to Change in Key Person Specified in the Application:

- Please discuss the request for a Change in Key Person Specified in the Application with your NOAA Program Officer prior to submission of the award action request through Grants Online.
- All of the new Key Person fields must be completed. As an alternative to typing in the Key Person information, you can click the "Search Person" link which will display all of the personnel from your organization that have a Recipient User role. Clicking "Select" link for that person will fill out the information automatically on the Change in Key Person Specified in the Application screen.
- If your original application included a resume or Curriculum Vitae for the Key Person, or if the NOAA Program Officer requires it, you must submit the same for the proposed Key Person.

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- Upon submission to NOAA by the Recipient Authorized Representative, the Change in Key Person Specified in the Application request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Change in Key Person Specified in the application request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.
- After approval of a Change in Key Person Specified in the application request, the Recipient Administrator(s) will be notified and assigned a task to "Manage Recipient Users". They should complete this task by assigning the new Key Person to the award and removing the old assignment. NOAA personnel cannot perform this task. The assigned Key Person(s) will receive notifications of required Progress Reports and required Federal Financial Reports, so it is important that they be assigned to their awards.
- Changing Key Persons associated with an award in the Grants Online Manage Recipient Users or View/Manage Award-Related Personnel features does not constitute notification or approval by NOAA of the change.
- Adding Key Persons who are not specified on the application to the award through the Grants Online Manage Recipient Users or View/Manage Award-Related Personnel features is not prohibited. If you desire to give personnel a view capability into specific Awards, NOAA has no objection to you adding them as Key Persons without going through any permission procedures.

14) Absence of More Than 3 months or 25% by Project Director or Principal Investigator

15 CFR Part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations" states the following:

§ 14.25 Revision of budget and program plans.

...
(c) For non-construction awards, recipients shall request prior approvals from the Grants Officer for one or more of the following program or budget related reasons. Approvals will be provided in writing by the Grants Officer
...

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

Assistance and Business Rules Related to Absence of More Than 3 months or 25% by Project Director or Principal Investigator:

- If attaching the justification, please just enter "See attachment" in the justification text area.
- Upon submission to NOAA by the Recipient Authorized Representative, the Absence of Project Director or Principal Investigator request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of an Absence of Project Director or Principal Investigator request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will

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be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

15) Satisfied Special Award Conditions

Assistance and Business Rules Related to Satisfied Special Award Conditions:

- Many awards contain Special Award Conditions that require evidence of completion. Examples are special fishing permits, environmental assessments, property deeds, and building permits.
- The Special Award Conditions are available in a drop-down list on the Award Action Request details page. Please choose the appropriate condition that is being satisfied.
 - After selecting the Special Award Condition (SAC), the SAC Description text box will automatically be filled out with the Special Award Condition details.
 - The Due Date field cannot be filled out. This field is populated automatically by the information associated with the selected Special Award Condition details, if applicable.
 - Many older awards that were migrated from NOAA's older database will not have the individual Special Award Conditions available. In this case, select the closest Special Award Condition to that which you are satisfying and reference the relevant Special Award Condition. If no Special Award Conditions exist for the older award, please contact the Help Desk for assistance in getting the condition migrated for availability.
- Fill out the justification in the provided text area and attach associated files after you click the Save button.
- Upon submission to NOAA by the Recipient Authorized Representative, the Satisfied Special Award Conditions request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Satisfied Special Award Conditions request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

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16) Inclusion of Costs that Require Prior Approval Based on Cost Principles

15 CFR Part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations" states the following:

§ 14.25 Revision of budget and program plans.

...

(c) For non-construction awards, recipients shall request prior approvals from the Grants Officer for the reasons outlined in 15 CFR Part 14.25. Approvals will be provided through NOAA's Grants Online system by the Grants Officer.

...

Assistance and Business Rules Related to Inclusion of Costs that Require Prior Approval Based on Cost Principles:

- The cost amount and a justification are required.
- If attaching the justification, please just enter "See attachment" in the justification text area.
- Upon submission to NOAA by the Recipient Authorized Representative, the Inclusion of Cost request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of an Inclusion of Cost request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

17) Transfer of Funds Allotted for Training to Other Categories or Expenses

15 CFR Part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations" states the following:

§ 14.25 Revision of budget and program plans.

...

(c) For non-construction awards, recipients shall request prior approvals from the Grants Officer for the reasons outlined in 15 CFR Part 14.25. Approvals will be provided through NOAA's Grants Online system, by the Grants Officer.

...

15 CFR Part 24, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments" states the following:

NOAA Administrative Standard Award Conditions

§ 24.30 Changes.

...
(c) *Budget changes* - (1) Non-construction projects. Except as stated in other regulations or an award document, recipients shall obtain the prior approval of the awarding agency whenever any of the following changes are anticipated under a non-construction award:

...
(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

Assistance and Business Rules Related to Transfer of Funds Allotted for Training to Other Categories of Expenses:

- The transfer amount and a justification are required.
- If attaching the justification, please enter "See attachment" in the justification text area.
- Upon submission to NOAA by the Recipient Authorized Representative, the Transfer Training Funds request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Transfer Training Funds request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

18) Sub Award, Transfer or Contracting Out of Any Work Under the Award if Not Described in the Approved Application

Assistance and Business Rules Related to Sub award, transfer or contracting out of any work under the award if not described in the approved application:

- If not described in the approved application, the recipient may not grant a sub-award, transfer, or contract out any work under the award, without approval from the Grants Officer.
- You must choose the method of selection (competitive or non-competitive), a description of the work, and a justification. If the sub-award was chosen non-competitively, then the recipient must provide a sole source justification.
- Upon submission to NOAA by the Recipient Authorized Representative, the Sub-Award request will automatically be routed to the correct NOAA personnel for review and approval.
- This action results in an amendment to the award. It is not considered to be completed until the Recipient Authorized Representative has accepted the Amendment. Tasks and notifications will be generated for the Recipient Authorized Representatives after the Grants Officer approves the Amendment.

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19) Pre-Award Cost

15 CFR Part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations" states the following:

§ 14.25 Revision of Budget and Program Plans.

...
(8)(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of 15 CFR Part 14.25, the Grants Officer may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Grants Officer after coordination with the DOC operating unit. All pre-award costs are incurred at the recipient's risk (i.e., the DOC is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

Assistance and Business Rules Related to Pre-Award Cost:

- This Award Action Request would only be used if the Recipient received the Award more than 90 days prior to the award start date and needed to incur pre-award costs during the period that was more than 90 days prior to the start of the award.
- Upon submission to NOAA by the Recipient Authorized Representative, the Pre-Award Cost request will automatically be routed to the correct NOAA personnel for review and approval.
- The approval of a Pre-Award Cost request does not normally result in an amendment to the award. The Recipient Authorized Representative(s) will be notified by Grants Online of the approval or rejection of the request. An amendment to the award may result from this request if NOAA determines that it is appropriate to do so.

20) Indirect Costs

1. Changes in Indirect Cost Rates

- a. If the rate changes during the award period, the Recipient shall provide a copy of the new negotiated agreement to the Grants Officer showing the effective date of the new rate, as well as provide a list of all awards that will be affected by the new rate.
- b. The recipient is limited to the total allocable indirect costs based on a rate approved by their cognizant Federal agency, the Federal agency which provides the most Federal funding. If the negotiated rate changes during the award period, prior approval shall be required from the Grants Officer for budget transfers from indirect to direct costs, or vice versa, if the change in the amount of total indirect costs on the approved budget exceeds 10% of the approved total indirect cost line item.

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- c. If the Recipient has waived any portion of the approved indirect cost rate at time of award, no claim shall be made against this award at a later date.
- 2. Changes in Indirect Costs Not Involving Rate Changes
 - a. The Recipient may transfer funds between direct costs and indirect costs without prior approval if ALL of the following conditions apply as long as such transfer is noted in the remarks section of the final Federal Financial Report (SF-425):
 - 1. If a transfer of funds among direct cost categories would result in a revision to the amount of indirect costs approved in the line item budget but does not exceed the cumulative budget transfer threshold of 10% that would require prior approval;
 - 2. If the authorized transfer of funds and the adjustment of the amount of indirect costs do not exceed the approved total project costs;
 - 3. If the indirect cost rate does not change; and
 - 4. If the adjustment of the amount of indirect costs does not result in a change to the approved scope of work of the award.
- 3. Expired Indirect Cost Rates
 - a. If the recipient's Indirect Cost Rate Agreement negotiated by their cognizant Federal agency expires before the start date of the award, then the recipient may continue to use the last approved negotiated rate as long as the recipient submits a request to renegotiate the agreement with their cognizant Federal agency no more than 90 days after the award start date or approval date by the Grants Officer, whichever is later.
 - b. A copy of the request to renegotiate the indirect cost rate agreement shall be provided to the Grants Officer with a list of all awards that may be affected by the renegotiation. If the recipient fails to submit required documentation to their cognizant Federal agency to update their negotiated rate agreement, the Grants Officer may amend the award to preclude recovery of any indirect costs under the award until a satisfactory negotiation is reached, or the cognizant agency has notified NOAA of an acceptable arrangement.

21) Program Income

- 4. Program income earned during the award period shall be retained by the Recipient and shall be added to funds committed to the award and used for the purposes and under the conditions applicable to the use of the award funds.

Program income shall be reported on the Federal Financial Report form (SF-425).

NOAA Administrative Standard Award Conditions**22) Homeland Security Presidential Directive – 12**

If the performance of this grant award requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system personal identity verification procedures must be implemented. Any items or services delivered under this financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive – 12, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall insert this clause in all sub-awards or contracts when the sub-award recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

23). Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

(a) This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology.

(b) In performing this financial assistance award, the recipient may gain access to export controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

(c) Definitions

1. Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. & 734.2(B)(2)(ii).

2. Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 C.F.R. & 730 et seq.), implemented by the DOC Bureau of Industry and Security, or the International Traffic in Arms Regulations (ITAR) (22 C.F.R. & 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

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(d) The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

(e) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

(f) The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (sub-awards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

24. Termination for Convenience

15 CFR Part 24, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments" states the following:

24.44 Termination for Convenience

Except as provided in 24.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the recipient or sub-recipient in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the recipient or sub-recipient upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either 24.43 or paragraph (a) of this section.

Assistance and Business Rules Related to Termination for Convenience:

- This Award Action Request would primarily be used if the Recipient finishes the project tasks significantly prior to the award project period end date and completes or anticipates completion of the award's financial transactions within 90 days of the requested early termination date.

NOAA Administrative Standard Award Conditions

- Do not submit this Award Action Request if there is a Change in Scope for the Award. In that case, discuss the Change in Scope with your Program Officer and submit a Change in Scope Award Action Request.
- Upon submission to the appropriate Federal Agency by the Recipient Authorized Representatives, the Termination for Convenience request will automatically be routed to the correct Federal Agency personnel for review and approval.
- This action results in an amendment to the award. It is not considered to be completed until the Recipient Authorized Representative has accepted the Amendment. Tasks and notifications will be generated for the Recipient Authorized Representatives after the Grants Officer approves the Amendment.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



March 2008

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

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PREFACE

The recipient and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the Federal Register, EOs, OMB circulars, Department of Commerce (DOC) Financial Assistance Standard Terms and Conditions, agency standard award conditions (if any), and special award conditions. Special award conditions may amend or take precedence over DOC standard terms and conditions, on a case-by-case basis, when allowed by the DOC standard term and condition.

Some of the DOC terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, or regulations published in the Federal Register or Code of Federal Regulations (CFR), EOs, OMB circulars or the assurances (Forms SF-424B, 424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular.

A. FINANCIAL REQUIREMENTS

.01 Financial Reports

- a. The recipient shall submit a "Financial Status Report" (SF-269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-269 shall be submitted within 90 days after the expiration date of the award.
- b. The reports must be submitted to the Grants Officer in hard copy (no more than an original and two copies), or electronically when specified in the special award conditions.

.02 Award Payments

- a. The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the

recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 and the Cash Management Improvement Act. The DOC Award Number must be included on all payment-related correspondence, information, and forms.

- b. When the "Request for Advance or Reimbursement" (SF-270) is used to request payment, the recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. When the SF-270 is used, the recipient must complete the SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form," and return it to the Grants Officer.
- c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (1) ASAP account number – the award number found on the cover sheet of the award; (2) Agency Location Code (ALC); and Region Code. Recipients enrolled in the ASAP system do not need to submit a "Request for Advance or Reimbursement" (SF-270), for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to DOC. If a recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

.03 Federal and Non-Federal Sharing

- a. Awards which include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal

share shall not exceed the total Federal dollar amount authorized by the award.

- b. The non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the award.

.04 Budget Changes and Transfer of Funds Among Categories

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the recipient in writing.
- b. Transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$100,000 or less. For awards in which the Federal share of the project exceeds \$100,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct cost transfers exceed 10 percent of the total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criteria apply to the cumulative amount of transfer of funds among programs, functions, and activities. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget.
- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

.05 Indirect Costs

- a. Indirect costs will not be allowable charges against the award unless specifically included as a cost item in the approved budget incorporated into the award. (The term "indirect cost" has been replaced with the term "facilities and administrative costs" under OMB Circular A-21, "Cost Principles for Educational Institutions.")
- b. Excess indirect costs may not be used to offset unallowable direct costs.

- c. If the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:

1. (a) State, Local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)

For the above listed organizations, cognizant federal agency is generally defined as the agency that provides the largest dollar amount of direct federal funding. For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry forward provisions for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(b) Commercial Organizations

For commercial organizations, cognizant federal agency is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. If the only federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant federal agency for the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a fixed rate with carryforward provisions for the recipient. Fixed rate means an indirect cost rate which has the same characteristics as a pre-determined 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 the subsequent period.

DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 CFR Part 31, "Contract Cost Principles and Procedures." For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>

2. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room 6412
Washington, DC 20230

3. The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carryforward provision used in calculating next year's rate. This calculation of actual indirect costs and the carryforward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.
- d. When DOC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- e. If the recipient fails to submit the required documentation to DOC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
- f. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:
 1. The line item amount for the Federal share of indirect costs contained in the approved budget of the award; or
 2. The Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

.06 Incurring Costs of Obligating Federal Funds Beyond the Expiration Date

- a. The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award. The only costs which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities. Closeout activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer.
- b. Unless otherwise authorized in 15 CFR § 14.25(e)(2) or a special award condition,

any extension of the award period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.

- c. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.07 Tax Refunds

Refunds of FICA/FUTA taxes received by the recipient during or after the award period must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. The recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the award end date.

B. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

- a. The recipient shall submit performance (technical) reports in triplicate (one original and two copies) or electronically to the Federal Program Officer as specified in the special award conditions in the same frequency as the Financial Status Report (SF-269) unless otherwise authorized by the Grants Officer.
- b. Unless otherwise specified in the award provisions, performance (technical) reports shall contain brief information as prescribed in the applicable uniform administrative requirements incorporated into the award.

.02 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the recipient as high risk and assignment of special award conditions or other further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions."

.03 Programmatic Changes

The recipient shall report programmatic changes to the Grants Officer, and shall request prior approvals in accordance with 15 CFR § 14.25 or 15 CFR § 24.30.

.04 Other Federal Awards with Similar Programmatic Activities

The recipient shall immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.05 Non-Compliance With Award Provisions

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DOC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DOC active awards, and termination of any DOC active awards.

.06 Prohibition Against Assignment by the Recipient

The recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.07 Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- b. The acceptance of this award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

C. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

.01 Statutory Provisions

- a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d *et seq.*) and DOC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 USC §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DOC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 *et seq.*) and DOC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e. The Americans with Disabilities Act of 1990 (42 USC §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

.02 Other Provisions

- a. Parts II and III of EO 11246 (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and 12086 (43 FR 46501, 1978), require Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 CFR § 60-1.4(b), 1991).

- b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons.

.03 Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 USC App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, state or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Recipients that are subject to the provisions of OMB Circular A-133 and that expend \$500,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by

OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

- b. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 CFR § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have an audit performed when the federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.
 1. For awards less than 24 months, an audit is required within 90 days from the project expiration date, including the close-out period for the award.
 2. For 2-, or 3 -year awards, an audit is required within 90 days after the end of the first year and within 90 days from the project expiration date including the close-out period for the award.
 3. For 4-, or 5-year awards, an audit is required within 90 days after the end of the first year and third year, and within 90 days from the project expiration date including the close-out period for the award.
- c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at the following address:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

.02 Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence

whenever audit results are disputed.

- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 3. The DOC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an Audit Resolution Determination Letter. The recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.
 4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 5. The DOC shall review the recipient's appeal and notify the recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed the Federal Government

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted

below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program, 31 C.F.R. § 285.5, and may result in DOC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions". Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

.02 Late Payment Charges

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. 3701 *et seq.*), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the *Federal Register* by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge shall be assessed to cover processing and handling the amount due.

.03 Barring Delinquent Federal Debtors From Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B, unless waived, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien On Eligibility For Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant, or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. INDIVIDUAL BACKGROUND SCREENING

An individual background screening will be performed by the OIG on key individuals of organizational units associated with the application at the beginning of the award and at three year intervals thereafter for the life of the award unless (1) the proposed award amount is \$100,000 or less; (2) applicants are accredited colleges and universities; (3) applicants are units of a State or local government; (4) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (5) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant's business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this award shall complete Form CD-346, "Applicant for Funding Assistance." An original signature is required. The form is to be submitted to the Grants Specialist named in the award document within 30 days of receipt of this award.

.01 Results of Individual Background Screening

DOC reserves the right to take any of the actions described in section F.02 if any of the following occurs as a result of the individual background screening:

- a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance" within 30 days of receipt of this award;
- b. A key individual makes a false statement or omits a material fact on the Form CD-346;
- c. The individual background screening reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual.

.02 Action(s) Taken as a Result of Individual Background Screening

If any situation noted in F.01 occurs, DOC, at its discretion, may take one or more of the following actions:

- a. Consider suspension/termination of an award immediately for cause;
- b. Require the removal of any key individual from association with management and/or implementation of the award and require Grants Officer approval of personnel

replacements;

- c. Require the recipient to make other changes as appropriate; and/or
- d. Designate the recipient as high risk and amend the award to assign special award conditions, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements.

G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The recipient shall comply with the provisions of Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

H. DRUG-FREE WORKPLACE

The recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DOC implementing regulations published at 15 CFR Part 29, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (published in the *Federal Register* on November 26, 2003, 68 FR 66534), which require that the recipient take steps to provide a drug-free workplace.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

The recipient shall comply with the provisions of 31 U.S.C. § 1352 and DOC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

.02 Disclosure of Lobbying Activities

The recipient receiving in excess of \$100,000 in Federal funding shall submit a

completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Code of Conduct for Recipients

Pursuant to the certification in SF-424B, paragraph 3, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.

.02 Applicability of Award Provisions to Subrecipients

- a. The recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative, and audit requirements.
- b. A recipient is responsible for subrecipient monitoring, including the following:
 1. Award Identification - At the time of the award, identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.
 2. During-the-Award Monitoring - Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 3. Subrecipient Audits - Ensuring that subrecipients expending \$500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of OMB Circular A-133, and that the required audits are completed within 9 months of the end of the subrecipient's audit period. In addition, the recipient is required to issue a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings.

In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

.03 Competition and Codes of Conduct for Subawards

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

- a. The recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a

DOC official) are subject to 2 CFR Part 1326, Subpart C "Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying--Lower Tier Covered Transactions," completed without modification.

- b. The recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)."
- c. The recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

.05 Minority Owned Business Enterprise

DOC encourages recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

.06 Subaward and/or Contract to a Federal Agency

- a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the recipient in writing of the final determination.

K. PROPERTY**.01 Standards**

The recipient shall comply with the property management standards as stipulated in the applicable uniform administrative requirements.

.02 Real Property

The recipient shall execute a security interest or other statement of the Federal Interest in real property acquired or improved with Federal funds, acceptable in form and substance to the DOC, which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The recipient must provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from the Grants Officer. No funds under this award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to the DOC are made.

L. ENVIRONMENTAL REQUIREMENTS

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

.01 The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act. Recipients may also be requested to assist NOAA in drafting of an environmental assessment, if the Department determines an assessment is required, when the award activities remain subject to Federal authority and control. If additional information is required during the period of the award, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a project may have on the environment.

.02 Floodplain Management, EO 11988 and, Protection of Wetlands, EO 11990, May 24, 1977

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

.03 Clean Air Act, Clean Water Act, and EO 11738

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§ 1251 et seq.), and EO 11738, and shall not use a facility on EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR § 15.5, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

.04 The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

.05 The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)

Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

.06 The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)

Funded projects must be consistent with a coastal state's approved management program for the coastal zone.

.07 The Coastal Barriers Resources Act, (16 U.S.C. § 3501 et seq.)

Restrictions are placed on Federal Funding for actions within the Coastal Barrier System.

.08 The Wild and Scenic Rivers Act, as amended (16 U.S.C. §§ 1271 et seq.)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

.09 The Safe Drinking Water Act of 1974, as amended (42 U.S.C. §§ 300f-j)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

.10 The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§ 6901 et seq.)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

.11 The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 et seq.)

These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.

.12 Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February 11, 1994.

This order identified and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

M. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits).
- b. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or

presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

- c. False Claims Act (31 U.S.C. 3729 *et seq.*), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.
- d. Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

.02 Foreign Travel

- a. The recipient shall comply with the provisions of the Fly America Act (49 USC § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 USC § 40118(b). DOC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
- d. If a foreign air carrier is anticipated to be used for any part of foreign travel, the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

.03 American-Made Equipment and Products

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.

.04 Intellectual Property Rights

a. Inventions. The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14, which is hereby incorporated by reference into this award.

1. Ownership.

- (a) Recipient. The recipient has the right to own any invention it makes (conceived or first actually reduced to practice) or made by its employees. The recipient may not assign its rights to a third party without the permission of DOC unless it is to a patent management organization (i.e., a university's Research Foundation.) The recipient's ownership rights are subject to the Government's nonexclusive paid-up license and other rights.
- (b) Department. If the recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DOC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.
- (c) Inventor/Employee. If neither the recipient nor the Department is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DOC, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.
- (d) Joint inventions. Inventions made jointly by a recipient and a DOC employee will be owned jointly by the recipient and DOC. However, DOC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one recipient and DOC employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. 35 U.S.C. § 202(e) also

authorizes the recipient to transfer its rights to the Government which can agree to share royalties similarly as described above.

2. Responsibilities - iEdison. The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iEdison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

b. Patent Notification Procedures.

Pursuant to E.O. 12889, DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient must notify the Grants Officer.

However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

c. Data, Databases, and Software.

The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. Copyright.

The recipient may copyright any work produced under a DOC Federal financial assistance award subject to DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in

the United States. On occasion, DOC may ask the recipient to transfer to DOC its copyright in a particular work when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

.05 Increasing Seat Belt Use in the United States

Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

.06 Research Involving Human Subjects

- a. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under this award unless expressly authorized by Special Award Condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. DOC regulations, 15 CFR Part 27, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:
 1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines, see 15 CFR § 27.103;
 2. Documentation to support an exemption for the project under 15 CFR § 27.101(b);
 3. Documentation to support deferral for an exemption or IRB review under 15 CFR § 27.118;
 4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred

and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

.07 Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee unless specifically approved in the terms of the award. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

.08 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

Pursuant to EO 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," unless the project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not:

- a. include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or
- b. otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

.09 Minority Serving Institutions (MSIs) Initiative

Pursuant to Eos13256, 13230, and 13270, DOC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance

programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

.10 Research Misconduct

Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6, 2000, a final policy that addressed research misconduct. The policy was developed by the National Science and Technology Council (65 FR 76260). The DOC requires that any allegation be submitted to the Grants Officer, who will also notify the OIG of such allegation. Generally, the recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

.11 Publications, Videos and Acknowledgement of Sponsorship

Publication of the results or findings of a research project in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally funded research. The recipient is required to submit a copy to the funding agency and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material (including Internet sites and videos) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [recipient name] under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce." This also applies to videos produced under DOC financial assistance awards.

.12 Care and Use of Live Vertebrate Animals

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Public Law

89-544), as amended, (7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 CFR Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); The Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

.13 Homeland Security Presidential Directive – 12

If the performance of a grant award requires recipient organization personnel to have unsupervised physical access to a Federally controlled facility for more than 180 days or access to a Federal information system, such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that they are eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive -12, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

.14 Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

- a. This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology.
- b. In performing this financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled information and technology.

c. Definitions

1. Deemed Export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii).
 2. Export-controlled information and technology. Export-controlled information and technology subject to the EAR (15 CFR §§ 730-774), implemented by the DOC Bureau of Industry and Security, or the International Traffic In Arms Regulations (ITAR) (22 CFR §§ 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.
- d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.
- e. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.
- f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

.15 The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175.

This Act authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.

.16 The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282).

This Act requires that the Federal government establish a single searchable awards website by January 1, 2008 to enable the public to see where Federal funds for grant and contract awards are being spent. Subaward and subcontract data will be required on the website by January 1, 2009. Funding data retroactive to October 1, 2006 must be reported by all Federal agencies and their recipient and subrecipient organizations.

Data elements will include:

Name of entity receiving award;

Award amount;

Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

Location of: entity, primary location of performance (City/State/Congressional District/Country; and

Unique identifier of entity.

The data will be required within 30 days of an award. The DOC will be implementing this Act, which will require recipients and subrecipients to report the required data.