EXHIBIT 1

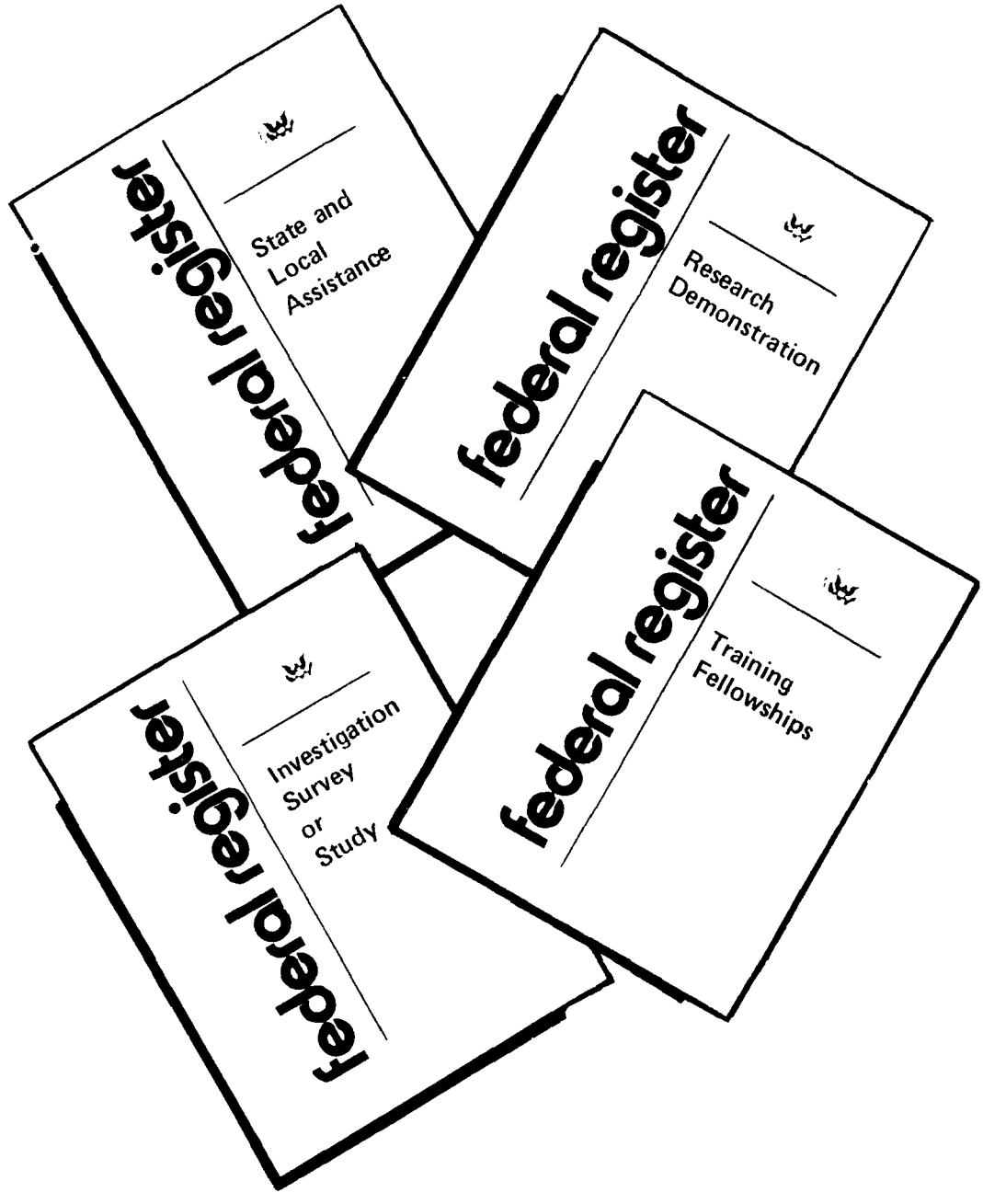
United States
Environmental Protection
Agency

Grants Administration
Division (PM-216)
Washington, D.C. 20460

EPA GAD/6-79-01
June 1979

EPA

General Grant Regulations and Procedures Applicable To



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ENVIRONMENTAL PROTECTION AGENCY

(40 CFR 30, Revised as of June 30, 1978)

PART 30—GENERAL GRANT REGULATIONS AND PROCEDURES

(Editor's note: 40 CFR 30 was replaced in its entirety by a new 40 CFR 30 on May 8, 1975, in 40 FR 20231.)

AUTHORITY: Sec. 20 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135); (33 U.S.C. 1251; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3; 1857, 1891, and 3251) et seq.

§ 30.100 Purpose.

This Subchapter establishes and codifies uniform policies and procedures for all grants awarded by the U.S. Environmental Protection Agency (EPA).

§ 30.101 Authority.

This Subchapter is promulgated by the Administrator of the Environmental Protection Agency pursuant to the authority conferred by Reorganization Plan No. 3 of 1970 and pursuant to the following statutes which authorize the award of assistance by the Environmental Protection Agency:

(a) Clean Water Act, as amended (33 U.S.C. §§ 1251 et seq.).

[43 FR 28484, June 30, 1978]

(b) The Clean Air Act, as amended (42 U.S.C. 1857 et seq.);

(c) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.);

[42 FR 56050, October 20, 1977]

(d) The Safe Drinking Water Act (42 U.S.C. 300j-1, 300j-2, 300j-3);

(e) Section 301 et seq. of the Public Health Service Act, as amended (42 U.S.C. 241, 242b, 243, and 246);

(f) Sections 20 and 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135); and

(g) Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501); and

(h) Toxic Substances Control Act (15 U.S.C. 2601).

[43 FR 28484, June 30, 1978]

§ 30.105 Applicability and scope

(a) Parts 30 through 34 of this Subchapter contain policies and procedures which apply to all grants made by the Environmental Protection Agency and are designed to achieve maximum uniformity throughout the various grant programs of the Environmental Protection Agency and, where possible, consistency with other Federal agencies. These policies and procedures are mandatory with respect to all Environmental Protection Agency grants and apply to grants awarded or administered within and outside the United States, unless otherwise specified. Supplementary policies and procedures applicable to only certain grant programs are issued in regulations specifically pertaining to those programs under Part 35 (State and Local Assistance), Part 40 (Research and Demonstration), Part 45 (Training) and Part 46 (Fellowships). Grants or agreements entered into with funds under the Scientific Activities Overseas Program which utilize U.S.-owned excess foreign currencies shall not be subject to this Subchapter.

(b) Assistance agreements designated as grants or cooperative agreements under the Federal Grant and Cooperative Agreement Act shall be subject to part 30 and other provisions of this subchapter which are applicable to grants.

[43 FR 28484, June 30, 1978]

§ 30.110 Publication.

This Subchapter is published (in Title 40) in the daily issue of the FEDERAL REGISTER and in cumulated form in the Code of Federal Regulations.

§ 30.115 Copies.

Copies of this Subchapter in FEDERAL REGISTER and Code of Federal Regula-

tions form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 30.120 Citation

This Subchapter will be cited in accordance with FEDERAL REGISTER standards. For example, this section, when referred to in divisions of this Subchapter, should be cited as "40 CFR 30.120."

§ 30.125 Public comment.

This Subchapter will be amended from time to time to establish new or improved grant policies and procedures, to simplify and abbreviate grant application procedures, to simplify and standardize grant conditions and related requirements, to include or provide for statutory changes, and to improve Agency and grantee administration of grants. Therefore, public comment is solicited on a continuous basis and may be addressed to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460.

§ 30.130 Grant information.

Application forms and information concerning Agency grants may be obtained through the Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460, or any EPA regional grants administration office. Addresses of EPA Regional Offices are as follows:

Region	Address	States
I	John F. Kennedy Federal Bldg., Boston, Mass. 02203	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II	26 Federal Plaza, New York, N.Y. 10007	New Jersey, New York, Puerto Rico, Virgin Islands.
III	6th and Walnut, Curtis Bldg., Philadelphia, Pa. 19106.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV	345 Courtland St., N.E., Atlanta, Ga 30308	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V	230 South Dearborn St., Chicago, Ill. 60604	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI	1201 Elm St., Dallas, Tex 75270	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII	1735 Baltimore Ave., Kansas City, Mo. 64108	Iowa, Kansas, Missouri, Nebraska.
VIII	Lincoln Tower, 1860 Lincoln St., Denver, Colo. 80203	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX	215 Fremont St., San Francisco, Calif 94105	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of Pacific Islands, Wake Island.
X	1200 6th Ave., Seattle, Wash. 98101	Alaska, Idaho, Oregon, Washington.

§ 30.135 Definitions.

All terms used in this Subchapter which are defined in the statutes cited in § 30.101 and which are not defined in this Section, shall have the meaning given to them in the relevant statutes. As used throughout this Subchapter, the words and terms defined in this Section shall have the meanings set forth below, unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion thereof. The words and terms defined in this Section shall have the meanings set forth herein whenever used in any correspondence, directives, orders, or other documents of the Environmental Protection Agency relating to grants, unless the context clearly requires a different meaning.

§ 30.135–1 Administrator.

The Administrator of the Environmental Protection Agency, or any person authorized to act for him.

§ 30.135–2 Agency.

The United States Environmental Protection Agency (EPA).

§ 30.135–3 Allowable costs.

Those eligible, reasonable, necessary, and allocable costs which are permitted under the appropriate Federal cost principles, in accordance with EPA policy, within the scope of the project and authorized for EPA participation.

[41 FR 20656, May 20, 1976]

§ 30.135–4 Applicant.

Any individual, agency, or entity which has filed a preapplication or an application for a grant pursuant to this Subchapter.

§ 30.135–5 Budget.

The financial plan for expenditure of all Federal and non-Federal funds for a project, including other Federal assistance, developed by cost components in the grant application.

§ 30 135–6 Budget period.

The period specified in the grant agreement during which granted Federal funds are authorized to be expended, obligated, or firmly committed by the grantee for the purposes specified in the grant agreement.

§ 30.135–7 Educational institution.

Any institution which (a) has a faculty, (b) offers courses of instruction, and (c) is authorized to award a degree or certificate upon completion of a specific course of study.

§ 30.135–8 Eligible costs.

Those costs in which Federal participation is authorized pursuant to applicable statute.

[41 FR 20656, May 20, 1976]

§ 30.135–9 Federal assistance.

The entire Federal contribution for a project including, but not limited to, the EPA grant amount.

§ 30.135–10 Grant.

An award of funds or other assistance by a written grant agreement purusant to this Subchapter, except fellowships.

§ 30.135–11 Grant agreement.

The written agreement and amendments thereto between EPA and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties pursuant to § 30.345.

§ 30.135–12 Grant approving official.

The EPA official designated to approve grants and take other grant related actions authorized by Environmental Protection Agency Orders or this Subchapter (sometimes referred to as the Decision Official).

§ 30.135–13 Grant award official.

The EPA official authorized to execute a grant agreement on behalf of the Government.

§ 30.135–14 Grantee.

Any individual, agency, or entity which has been awarded a grant pursuant to § 30.345.

§ 30.135–15 In-kind contribution.

The value of a non-cash contribution provided by (a) the grantee, (b) other public agencies and institutions, (c) private organizations and individuals, or (d) EPA. An in-kind contribution may consist of charges for real property and equipment and value of goods and services directly benefiting and specifically identifiable to the grant program.

§ 30.135–16 Nonprofit organization.

Any corporation, trust, foundation, or institution (a) which is entitled to ex-

emption under section 501(c)(3) of the Internal Revenue Code, or (b) which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

§ 30.135–17 Project.

The undertaking identified in the grant agreement which will receive EPA assistance. The term project may refer to a program (e.g., State water pollution control program, air pollution control program) for the budget period for which EPA assistance is provided.

§ 30.135–18 Project costs.

All costs incurred by a grantee in accomplishing the objectives of a grant project, not limited to those costs which are allowable in computing the final EPA grant amount or total Federal assistance.

§ 30.135–19 Project Officer.

The EPA official designated in the grant agreement as the Agency's principal contact with the grantee on a particular grant. This person is the individual responsible for the performance and/or coordination of project monitoring.

§ 30.135–20 Project period.

The period of time specified in the grant agreement as estimated to be required for completion of the project for which Federal grant support has been requested. It is composed of one or more budget periods.

§ 30.135–21 Regional Administrator.

The Regional Administrator of one of the 10 EPA Regional Offices, or any person authorized to act for him

§ 30.135–22 Subagreement.

A written agreement between an EPA grantee and another party (other than another public agency) and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded. These agreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

[43 FR 28484, June 30, 1978]

Subpart A—Basic Policies

§ 30.200 Grant simplification goals and policy.

It is EPA policy that, consistent with protection of the public interest, procedures used in administering and implementing grant programs shall encourage the minimization of paperwork and intraagency decision procedures, and the best use of available manpower and funds, to prevent needless duplication and unnecessary delays.

§ 30.205 Role of EPA.

The Environmental Protection Agency has a mandate to protect and enhance the environment. Grants and fellowships are among EPA's principal means of achieving its objectives. EPA financial assistance may be awarded to support State and local governments, research, demonstration, or training projects, fellowships and such other programs that advance the Agency's mission.

§ 30.210 Role of the grantee.

An award of a grant shall be deemed to constitute a public trust. It is the responsibility of the grantee to comply with this Subchapter and all terms and conditions of the grant agreement, efficiently and effectively manage grant funds within the approved budget, complete the undertaking in a diligent and professional manner, and monitor and report performance. This responsibility may be neither delegated nor transferred by the grantee.

§ 30.215 Records of grant actions.

(a) An official EPA file shall be established for each EPA grant. To the extent that retained copies of documents do not represent all significant actions taken, suitable memoranda or summary statements of such undocumented actions must be prepared promptly and retained in the grant file.

(b) The grantee shall establish an official file for each grant received from EPA. The file should contain documentation of all actions taken with respect to the grant (see § 30.805).

§ 30.220 Consolidated grants.

A consolidated grant is a grant funded under more than one grant authority by EPA or a grant awarded in conjunction with one or more Federal agencies (e.g., Joint Funded Assistance). Application for and award and administration of a consolidated grant must conform to this Subchapter, except as the Director, Grants Administration Division, may otherwise direct with respect to substantutory requirements. Those conditions and procedures will conform to this Subchapter to the greatest extent practicable.

[43 FR 28484, June 30, 1978]

§ 30.225 Foreign grants.

(a) A foreign grant, as used in this Part, means an EPA award for such project, all or any part of which will be performed in a foreign country by (1) a U.S. grantee, (2) a foreign grantee, or (3) an international organization.

(b) Grant applications for work performed in the United States shall generally be given preference over applications for similar work to be performed in a foreign country.

(c) Foreign grants shall comply with this Subchapter and shall be awarded and administered pursuant to such additional conditions and procedures as may be established by EPA. Grants or agreements entered into with funds under the Scientific Activities Overseas Program which utilize U.S.-owned excess foreign currencies shall not be subject to this Subchapter.

§ 30.225–1 Clearance requirements.

The total amount of foreign awards financed by EPA during a fiscal year may not exceed any ceilings on foreign obligations which may be established for that fiscal year by the Office of Management and Budget. Department of State clearance must be obtained by EPA through the EPA Office of International Activities prior to the award of a foreign grant.

§ 30.225–2 Criteria for award.

All of the following criteria must be met before a foreign grant may be awarded:

(a) The foreign proposal is outstanding or original in concept and important to the achievement of EPA program objectives;

(b) The proposed work must be performed outside the United States because of unusual personnel or material resources available, or other existing conditions;

(c) The proposed work is urgently needed by the sponsoring program office and constitutes a timely opportunity which would be lost if not supported at this time; and

(d) An adequate level of funding cannot be obtained for the foreign work by the applicant without financial support from EPA.

§ 30.225–3 Allowability of costs.

(a) Travel costs are allowable for foreign grants if itemized in the application and approved by EPA as part of the grant agreement or if approved in writing by EPA in advance of each trip.

(b) Indirect costs are not allowable for foreign grants unless an established or provisional indirect cost rate is in effect at the time of grant award. In the case of a U.S. grantee performing only a part of a project in a foreign country, indirect costs are al-

lowed for that part of the work performed in the United States.

[43 FR 28484, June 30, 1978]

(c) [Revoked, 41 FR 20656, May 20, 1976]

§ 30.225–4 Payments.

(a) All payments will be made in U.S. currency unless otherwise specified in the grant agreement. If payment is made in foreign currency, payments will be in an amount equal at the time of payment to the United States dollars awarded.

(b) Refunds and rebates should be made in the currency of the original payment and shall be in an amount equal, at the time of payment, to United States dollars awarded.

§ 30.230 Grants administration review.

The Director, Grants Administration Division, shall conduct such review, as he deems appropriate, of the administration of each EPA grant program or of grants awarded by a particular EPA office to determine compliance with the policies and procedures of this Subchapter and to determine further steps necessary to implement § 30.200.

§ 30.235 Disclosure of information.

(a) EPA policy concerning release of information under the Freedom of Information Act, 5 U.S.C. 552, is stated in Part 2 of this Chapter. Applicants for grants, grantees, and their contractors should be aware that information provided to EPA is subject to disclosure to others pursuant to the Freedom of Information Act. In addition EPA acquires the right, unless otherwise provided in a grant agreement, to use and disclose project data, pursuant to Appendix C to this Part.

(b) Any person who submits to EPA any information under this Part, and who desires that EPA not disclose any or all of the information, may place on (or attach to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "business confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. Applicants should also comply with further instructions in application forms concerning the assertion of confidentiality claims. See §§ 2.203 and 2.204 of this chapter.

[41 FR 36918, September 1, 1976]

(c) Unless a specific provision (special condition) in the grant otherwise provides, information submitted in an application or other submission with a restrictive marking will nevertheless be subject to the Government's duty to disclose information pursuant to the Freedom of Information Act and the Government's rights to utilize data pursuant to Appendix C of this Part.

§ 30.245 Fraud and other unlawful or corrupt practices.

(a) The award and administration of EPA grants, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct; Federal administrative or other legally available remedies will be pursued, however, to the extent appropriate.

(b) The grantee must effectively pursue available State or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee must advise the Project Officer immediately when such allegation or evidence comes to its attention, and must periodically advise the Project Officer of the status and ultimate disposition of any matter, including those referred pursuant to Paragraph (c) of this section.

(c) If any allegations, evidence or even appearance of such illegality or corrupt practices comes to the attention of the EPA Project Officer, he must promptly report briefly in writing the substance of the allegations or evidence to the Director, EPA Security and Inspection Division. When so advised by the Director, EPA Security and Inspection Division, he must bring the matter to the attention of the grantee for action.

(d) If any allegations, evidence or even appearance of such illegality or corrupt practices comes to the attention of any other EPA employee, he must promptly report briefly in writing the substance of the allegation or evidence to the Director, EPA Security and Inspection Division.

(e) A person, firm, or organization which is demonstrated upon adequate evidence to have been involved in bribery or other unlawful or corrupt practices on a Federally-assisted project may be determined nonresponsible and ineligible by the Director, Grant Administration Division, or an EPA grant award or for the award of a contract under an EPA grant, pursuant to § 30.340–2(c). The Director, Grants Administration Division, shall make such determination whenever he determines there is adequate evidence of such involvement, after opportunity for conference (with right of counsel) has been afforded to the affected person, firm, or organization. Such determination shall be binding upon EPA grant personnel. The Director, Grants Administration Division, shall notify EPA grant personnel and other appropriate persons of such determination or of any termination, modification, or suspension of the determination. The grantee may appeal a determination of the Director, Grants Administration Division, made pursuant to this section (see Subpart J of this part).

Subpart B—Application and Award

§ 30.300 Preapplication procedures.

(a) Informal inquiries by potential grant applicants prior to application submission are encouraged to expedite preparation and evaluation of the grant application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged briefings of individuals or classes of potential applicants. Questions should be directed to the appropriate Environmental Protection Agency program office from which funding is being sought or to the grants administration office in Headquarters or in the region in which the applicant is located. Inquiries may be directed to State officials for applications which include State participation in the review process (e.g., grants for construction of treatment works.)

(b) Submission of preapplications to EPA is encouraged for all research, demonstration, and training grant programs to (1) establish communication between EPA and the applicant; (2) determine applicant's eligibility; (3) determine how well the project can compete with similar applications; and (4) eliminate any proposal which has no chance for funding.

(c) An applicant submitting a preapplication to the grants administration office shall be promptly notified that (1) the preapplication has been received; (2) it has been forwarded to the appropriate program for an expression of interest, and (3) the program office will contact the applicant directly regarding possible followup action.

(d) Generally, preapplication processing requires 45 days and is not part of the 90 day review period for formal grant applications.

§ 30.305 A–95 procedures.

[41 FR 20656, May 20, 1976]

(a) Office of Management and Budget Circular A–95 (revised) (41 FR 2052, January 13, 1976) provides for State and

areawide clearinghouse evaluation, review, and coordination of Federally-assisted programs and projects. Therefore, applicants applying for a planning, program, survey, demonstration, or construction grant must comply with appropriate coordination procedures outlined in the A-95 Circular. Generally, coordination is required prior to submitting an application. However, in certain cases clearinghouses will be afforded the opportunity to comment during the initial phases of project work in conjunction with the development of plans and application materials.

(b) A-95 procedures include but are not limited to the provisions set forth below in § 30.305-1 through § 30.305-8.

§ 30.305-1 Specific areas of clearinghouse evaluation.

[41 FR 20656, May 20, 1976]

The following specific areas are normally considered during clearinghouse evaluation. It should be recognized, however, that clearinghouses are responsible for the comprehensive planning needs of their jurisdictional area and may, therefore, consider areas other than those listed.

(a) The extent to which the project is consistent with or contributes to the fulfillment of the State, areawide, and local comprehensive plans.

(b) The extent to which the proposed project:

(1) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(2) Might be revised to increase its effectiveness or efficiency.

(c) The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development as specified in Section 401 of the Intergovernmental Cooperation Act of 1968, including:

(1) Appropriate land uses for housing, commercial, industrial, government, institutional, and other purposes;

(2) Wise development and consideration of natural resources, including land, water, mineral, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical, archeological, architectural, and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

(d) The extent to which the project significantly affects the environment including:

(1) The environmental impact of the proposed project;

(2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;

(3) Alternatives to the proposed project;

(4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and

(5) Any irreversible or irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

(e) The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

(f) In the case of a project for which assistance is being sought by a special purpose unit of government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied for or plans to apply for assistance for the same or a similar type project.

§ 30.305-2 Notification of intent (A-95, Part I).

[41 FR 20656, May 20, 1976]

(a) General (for specific requirements for the construction grants program see § 30.305-8). Applicants or potential applicants for assistance under an EPA grant are required to notify both State and areawide planning and development clearinghouses, in the jurisdiction in which the project is to be located, of their intent to apply for EPA assistance. In the case of an application in any State for an activity that is Statewide or broader in nature (such as for various types of research) and does not affect nor have specific applicability to areawide or local planning and programs, the notification need be sent only to the State clearinghouse. Involvement of areawide clearinghouses in the review in such cases will be at the initiative of the State clearinghouse. If notification of intent to apply for EPA assistance was not furnished the clearinghouse(s), the completed application must be submitted to the clearinghouse(s) prior to submission to EPA. However, prior notification of intent to apply is preferable to submitting the final completed application. In addition, grantees must notify State and areawide clearinghouse(s) of any major modifications in a project. The current list of EPA grant programs which must comply with the A-95 procedures are listed below. Any additions to this listing will be indicated in the Catalog of Federal Domestic Assistance (see § 30.305-2.c.(5)).

(1) 66.001-Air Pollution Control Program Grants;

(2) 66.005-Air Pollution Control Survey and Demonstration Grants;

(3) 66.451 Solid and Hazardous Waste Management Program Support Grants;

(4) 66.452 Solid Waste Management Demonstration Grants;

[42 FR 56050, October 20, 1977]

(5) 66.418-Construction Grants for Wastewater Treatment Works;

(6) 66.419-Water Pollution Control-State and Interstate Program Grants;

(7) 66.420-Water Pollution Control-State and Local Manpower Program Development;

(8) 66.426-Water Pollution Control State and Areawide Waste Treatment Management Planning Grants;

(9) 66.432-State Public Water System Supervision Program Grants;

(10) 66.433-State Underground Water Source Protection Program Grants;

(11) 66.505-Water Pollution Control-Research, Developmental, and Demonstration Grants (Demonstration only);

(12) 66.506-Safe Drinking Water Research and Demonstration Grants (Demonstration Only);

(13) 66.600-Environmental Protection Consolidated Grants-Program Support;

(14) 66.602 Environmental Protection Consolidated Grants—Special Purpose;

(15) 66.453 Solid Waste Management Training Grants;

(16) 66.504 Solid Waste Disposal Research Grants.

(17) 66.700 Pesticides enforcement and applicator training and certification grant program.

(18) 66.438 Water pollution control State management assistance grants.

[43 FR 28484, June 30, 1978]

Applications from Federally recognized Indian Tribes are excluded from this requirement. However, they may voluntarily participate in the procedures of this section and are encouraged to do so. EPA will notify the appropriate State and areawide clearinghouse(s) of any applications from Federally recognized Indian tribes upon their receipt.

(b) Notification will normally precede the preparation of the application. It will be mailed to the clearinghouse at the earliest feasible time to assure maximum time for effective coordination and to avoid delay in the timely submission of

the completed application to EPA. Earliest feasible time means at such time as the applicant determines it will develop an application.

(c) The notification to each clearinghouse will be accompanied by a summary description which should include the following:

(1) Identity of the applicant agency organization, or individual.

(2) The geographic location of the project to be assisted. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that might be affected by the proposed projects.

(4) A statement as to whether or not the applicant has been advised by EPA that he will be required to submit environmental impact information in connection with the proposed project.

(5) The EPA program title and number under which assistance will be sought as indicated in the latest Catalog of Federal Domestic Assistance (The Catalog is issued annually in the spring and is updated during the year). In the case of programs not listed therein, programs will be identified by Public Law number or U.S. Code citation. Applicants uncertain as to appropriate program identification should contact the EPA program or grants administration office.

(6) The estimated date the applicant expects to formally file an application.

(7) When available any more detailed documentation describing the proposed project (e.g., plans and preapplication material).

§ 30.305–3 Time Limitations.

[41 FR 20656, May 20, 1976]

(a) *Time limitations.* (1) State and areawide clearinghouse(s) may have a period of 30 calendar days after receipt of a project notification of intent to apply for assistance in which to inform State and multistate agencies and local or regional governments or agencies that may be affected by the project, to arrange, as may be necessary, to consult with the applicant thereon and to complete review and submit comments to the applicant. If the review cannot be completed during this period, however, the clearinghouse(s) may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed. Clearinghouses are strongly urged to notify applicants if they cannot complete their review within the 30 day comment period.

(2) When no notification of intent to apply for assistance has been submitted and the clearinghouse has received instead a completed application, it may have 60 calendar days from date of receipt to review the completed application. However, if clearinghouses cannot complete their reviews within a 30 calendar day period they are strongly urged to give the applicant formal notice to that effect at the beginning of the comment period. Where reviews have been completed prior to completion of an application, a copy of the completed application will be supplied to the clearinghouse, upon request, when the application is submitted to EPA.

(b) *Submission of Comments.* (1) Areawide clearinghouses will include, as attachments to their comments: (i) all written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties, when they are at variance with the clearinghouse comments; and (ii) a list of parties from whom comments were solicited.

(2) Applicants will include with the completed application all comments and recommendations made by or through clearinghouse(s), with a statement that such comments have been considered prior to submission of the application. Where no comments have been received from a clearinghouse(s) a statement must be included with the application that the procedures outlined in this section have been followed and that no comments or recommendations have been received

§ 30.305–4 EPA processing.

[41 FR 20656, May 20, 1976]

(a) Applications that do not evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant with instruction to fulfill the requirements of Part I of OMB Circular A–95.

(b) Any comments accompanying applications must be utilized in evaluating the applications.

(c) EPA will notify clearinghouse(s) within seven (7) working days of any major action taken on applications reviewed by the clearinghouse(s). Major actions will include awards (including subsequent Step 2 and Step 3 awards for wastewater treatment projects), rejections, returns for amendments, deferrals, or withdrawals. The standard multipurpose form, Standard Form 424, as prescribed by Federal Management Circular 74–7, will be used for this purpose.

(d) Where a clearinghouse has recommended against approval of an application or approval only wth specific and major substantive changes, and EPA approves the project without incorporating the recommendations of the clearinghouse, EPA will provide the clearinghouse, in writing, with an explanation therefor along with the notice of action under subsection 30.305–4c.

(e) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or Federally-assisted project, the EPA program office reviewing the application will consult with the agency or agencies assisting the referenced projects prior to approving the application.

(f) If comments accompanying an application from a special purpose unit of government indicate that a similar application is forthcoming from the general purpose unit of government in the areas in which the applicant and/or the proposed project is located, preference will be given to the general purpose unit as specified in Section 402 of the Intergovernmental Cooperation Act of 1968. Where such preference cannot be so accorded, EPA will notify in writing, the unit of general local government and the Office of Management and Budget of the reasons therefor.

§ 30.305–5 Programs requiring state plans and jointly funded projects (A–95 Part III).

[41 FR 20656, May 20, 1976]

(a) *Applicability.* This section applies to air pollution control program grants, water pollution control State and interstate program grants, solid and hazardous waste management program support grants, State public water system supervision program grants, State underground water source protection program grants, safe drinking water State and local program development grants, and environmental protection consolidated grants-program support to the extent they involve State plans.

[43 FR 28484, June 30, 1978]

(b) *Definitions.* (1) State Plan. A State plan is a plan prepared by a State agency that includes any required supporting planning reports or documentation that indicates the programs, projects, and activities for which EPA funds will be used.

(2) Jointly Funded Projects. A jointly funded project is a project for which assistance is sought, on a combined or coordinated basis, involving two or more Federal programs or funding authorities.

(c) *Review.* (1) Prior to funding any grant requiring, by statute or EPA administrative regulations, a State plan as a condition of assistance, the EPA program office must insure that the Gov-

ernor, or his designated agency, has been given the opportunity to comment on the relationship of the program to be funded to the State plan. EPA encourages the Governor to include the appropriate areawide clearinghouse in State plan review.

(2) Prior to funding a jointly funded project, the EPA program office must insure that the State and areawide clearinghouse(s) have been given the opportunity to comment on the relationship of the proposed jointly funded project to State or areawide comprehensive plans and programs.

(d) *Time Limitations and Submission of Comments.* (1) The Governor or his designated agency may have a period of 45 calendar days for review and comment.

(2) Applicants must secure and submit with the application comments received pursuant to § 30.305–5c. If the applicant fails to receive comments within the prescribed 45 calendar day period, a statement must be included with the application that the procedures outlined in this section have been followed and no comments or recommendations have been received.

§ 30.305–6 Coordination of planning in multijurisdictional areas (A–95, Part IV).

[41 FR 20656, May 20, 1976]

(a) Applicability. This section applies only to Water Pollution Control State and Areawide Waste Treatment Management Planning Grants.

(b) Requirements of Applicants. (1) Applicants for State and Areawide Waste Treatment Management Planning grants must demonstrate in the application that the proposed activity is consistent and takes into account the relationship with affected State, local and Federal programs, and with other applicable resource and developmental planning programs in the multijurisdictional areas.

(i) For areawide designated planning agencies, the application must adequately:

(A) Certify that affected general purpose units of local governments within the boundaries of the designated planning area have submitted or intend to submit resolutions of intent to have in operation a coordinated waste treatment management system and that such affected units of local government have the legal authority to enter into agreements for coordinated wastewater management.

(B) Provide a certification document submitted by the State designated planning agency which states that the State has reviewed the application pursuant to 40 CFR 35.208–2(b).

(ii) For State designated planning agencies, the application must show evidence that adequate communication was made with chief elected officials of local units of governments in the designation of local multijurisdictional areas.

(iii) For intrastate and interstate areawide planning agencies, the application must provide a certification document submitted by the State planning agency in the State which includes the largest portion of the area's population pursuant to 40 CFR 35.210–1(d).

(2) The completed application will be submitted to the Office of the Governor(s) of the State(s) before it is submitted to EPA. The Governor(s) shall have 45 calendar days in which to certify that the proposed work complies or does not comply with all State requirements; that the proposed planning work program is or is not adequate and necessary to accomplish the development of a plan; that the planning will or will not duplicate any work which has been done or is being done to meet the facilities planning requirements of 40 CFR 35.917 through 35.917–9; and that the State(s) either recommends or does not recommend that the grant application should be approved by EPA.

§ 30.305–7 Confidential information.

[41 FR 20656, May 20, 1976]

Under some programs, applicants are required to submit confidential information to EPA. Such information may relate to the applicant's financial status or structure, personnel, or may involve proprietory information and need not be included with applications submitted to clearinghouse(s) for review. EPA's policy concerning disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, is stated in 40 CFR Chapter 1, Part 2.

§ 30.305–8 Specific requirements for the Construction Grant Program.

[41 FR 20656, May 20, 1976]

(a) *General.* Applicants for grants for the planning or construction of a wastewater treatment facility (P.L. 92–500, 40 CFR Part 35) must comply with the following specific requirements. Where provisions of this section differ from the general A–95 procedures set forth in other sections of Part 30 the requirements of this section shall prevail.

(b) *Specific Procedures.* (1) Plans of Study (POS) for facilities planning and any related Step 1 application materials should be submitted to the appropriate A–95 clearinghouse prior to the time for formal submission to the State and EPA of application for Step 1 assistance. The submission of the POS and related materials shall constitute a notification of intent to apply for assistance as provided in § 30.305–2 and § 30.305–3 above. The clearinghouse shall have 30 calendar days to review the POS and related materials. The comments of the clearinghouse on the POS should then accompany the application through the review process. The POS should be sent to the clearinghouse sufficiently early to avoid delays in the later submission of the Step 1 application.

(2) Thirty (30) calendar or more days prior to the public hearing on the draft facility plan, or, if no public hearing is held, a reasonable time before submittal of a facility plan to the State and EPA for approval, the draft facility plan, and any associated grant application materials, should be submitted to the A–95 clearinghouse for a second review. The submission of the draft facility plan and related materials shall constitute a notification of intent to apply for assistance as provided in § 30.305–2 and § 30.305–3 above. The clearinghouse shall have 30 calendar days to review the draft facility plan.

(3) Any prior clearinghouse comments on the facility plan will be considered as part of the application for any subsequent Step 2 or Step 3 grant. EPA will notify the clearinghouse of subsequent Step 2 or Step 3 awards within 7 work days after grant award. Where an application is approved over clearinghouse objections, an explanation must be furnished to the clearinghouse as to why any specific recommendation was not followed.

(4) Once A–95 review has been obtained on a POS and a Step 1 facility plan, no further A–95 review of the Step 2 and Step 3 applications, which implement the plan, will be required except (i) when there are significant departures from or additions to what was covered in the Step 1 facility, (ii) when the clearinghouse requests opportunity for additional review on a specific project, or (iii) when State policy requires additional A–95 review of Step 2 or 3 grant applications. The clearinghouse shall have 30 calendar days to make these additional reviews, when required."

§ 30.310 Unsolicited proposal.

(a) For purposes of this Subchapter, an unsolicited proposal is a written offer to perform work which (1) does not result from (i) a formal written EPA request for contract proposals or quotations, or (ii) an oral quotation solicited under EPA small purchase procedures, (2) is not submitted on a grant preapplication or application form, and (3) is in-

tended to result in award of an EPA grant or contract.

(b) Unsolicited proposals received by any organizational element of EPA shall be forwarded immediately to the Grants Administration Division for official receipt and processing. The Grants Administration Division will acknowledge receipt to the person or organization submitting the proposal and transmit the proposal to the appropriate program office for evaluation. If the program office decides to consider the proposal for a grant award, a grant application pursuant to § 30.315 will be required. If the proposal is to be recommended for funding under the contract mechanism, appropriate notification will be forwarded from the program office to the Grants Administration Division for closeout of the file.

§ 30.315 Application requirements.

Submittals which substantially comply with this Subchapter shall be deemed to be applications. An application shall include the completed application form, technical documents and supplementary materials furnished by the applicant. Submittals which do not substantially comply with this Subchapter shall be returned to the applicant.

§ 30.315–1 Signature.

(a) Applications must be signed by the applicant or a person authorized to obligate the applicant to the terms and conditions of the grant, if approved. At least one copy of the application must have an original signature.

(b) Each grant application shall constitute an offer to accept the requirements of this Subchapter and the terms and conditions of the grant agreement.

(c) An applicant may be prosecuted under Federal, State, or local statutes for any false statement, misrepresentation, or concealment made as part of an application for EPA grant funds.

[43 FR 28484, June 30, 1978]

§ 30.315–2 Forms.

The following forms shall be used in applying for an EPA grant.

Type of application	Type of applicant	
	Other than State and local	State and local governmental agencies
Preapplication (optional).	EPA Form 5700–12 (optional).	EPA Form 5700–30.
Research, demonstration, and training grants.	EPA Form 5700–12.	EPA Form 5700–12 (or EPA Form 5700–33).
Program and planning grants.	Not applicable....	EPA Form 5700–33.
Consolidated grants.	EPA Form 5700–12.	Do.
Wastewater treatment construction grants.	Not applicable....	EPA Form 5700–32.
Water pollution control State management assistance grants.	Not applicable.	EPA Form 5700–31.

[43 FR 28484, June 30, 1978]

§ 30.315–3 Time of submission.

Applications should be submitted well in advance of the desired grant award date. Generally, processing of a complete grant application requires 90 days after receipt of the application by EPA.

§ 30.315–4 Place of submission.

Place of submission varies with type of grant for which application is being made. Therefore, instructions regarding place of submission are included in each grant application kit.

§ 30.320 Use and disclosure of information.

(a) All grant applications, preapplications, and unsolicited proposals, when received by EPA, constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and must be disclosed to the requester unless exempt from disclosure under 5 U.S.C. 552(b). EPA regulations implementing 5 U.S.C. 552 are published in Part 2 of this Chapter.

(b) An assertion of entitlement to confidential treatment of part or all of the information in an application may be made using the procedure described in § 30.235(b). See also § § 2.203 and 2.204 of this chapter.

[41 FR 36918, September 1, 1976]

(c) Any person who submits a grant application, preapplication or unsolicited proposal to EPA shall be deemed by EPA to have thereby consented to review of that application, preapplication or proposal by extramural reviewers, as appropriate under § 40.150(a) of this Chapter, unless a specific and conspicuous statement to the contrary appears on the face of the document. Extramural reviewers' recommendations shall not be disclosed.

(d) If a grant or subagreement is awarded to a submitter in response to his application, preapplication or unsolicited proposal, EPA shall treat the information in the application, preapplication, unsolicited proposal or resulting grant or contract as available to the public and free from any limitation on use or disclosure, notwithstanding any legend asserting a claim for nondisclosure except to the extent otherwise expressly provided by special condition in the grant.

§ 30.325 Evaluation of application.

Each applicant shall be notified that the application has been received and is in the process of evaluation pursuant to this Subchapter. Each application shall be subjected to a (a) preliminary administrative review to determine the completeness of the application, (b) program, technical, and scientific evaluation to determine the merit and relevance of the project to EPA program objectives, (c) budget evaluation to determine whether proposed project costs are eligible, reasonable, applicable, and allowable, and (d) final administrative evaluation. Recommendations and comments received as a result of extramural review pursuant to § 40.150(a) of this Subchapter shall be considered in the evaluation process.

§ 30.330 Supplemental information.

The applicant may, at any stage during the evaluation process, be requested to furnish documents or information required by this Subchapter and necessary to complete the application. The evaluation may be suspended until such additional information or documents have been received.

§ 30.335 Criteria for award of grant.

Each application shall be evaluated in accordance with the requirements and criteria established pursuant to this Subchapter and promulgated herein. Program award criteria may be found in Parts 35, 40, 45, and 46 of this Subchapter. Grants may be awarded without regard to substatutory criteria in exceptional cases if a deviation pursuant to Subpart I of this Subchapter has been approved.

§ 30.340 Responsible grantee.

The policy and procedures established by this section shall be followed to deter-

mine, prior to award of any grant, whether an applicant will qualify as a responsible grantee. A responsible grantee is one which meets, and will maintain for the life of the grant, the minimum standards set forth in § 30.340–2 and such additional standards as may be prescribed and promulgated for a specific purpose.

§ 30.340–1 General policy.

The award of grants to applicants who are not responsible is a disservice to the public, which is entitled to receive full benefit from the award of grants for the protection and enhancement of the environment. It frequently is inequitable to the applicants themselves, who may suffer hardship, sometimes even financial failure, as a result of inability to meet grant or project requirements. Moreover, such awards are unfair to other competing applicants capable of performance, and may discourage them from applying for future grants. It is essential, therefore, that precautions be taken to award grants only to reliable and capable applicants who can reasonably be expected to comply with grant and project requirements.

§ 30.340–2 Standards.

To qualify as responsible, an applicant must meet and maintain for the life of the proposed grant the following standards as they relate to a particular project:

(a) Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(b) Be able to comply with the proposed or required completion schedule for the project;

(c) Have a satisfactory record of integrity, judgment, and performance, including in particular, any prior performance upon grants and contracts from the Federal Government;

(d) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and assets. Applicable standards are further defined in § 30.800;

(e) Maintain a standard of procurement which will comply with Part 33 of this Subchapter;

(f) Maintain a property management system which provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property. Applicable standards are further defined in § 30.810;

(g) Conform with the civil rights, equal employment opportunity, and labor law requirements of this Chapter;

(h) Be otherwise qualified and eligible to receive a grant award under applicable laws and regulations.

§ 30.340–3 Determination of responsibility.

Submission of a grant application shall constitute an applicant's assurance that he can and will meet the standards set forth in § 30.340–2. An applicant may be presumed to be responsible in the absence of any question as to his ability to meet the standards. This presumption of responsibility, however, shall not preclude EPA from performing a preaward audit or other review of an applicant's ability to comply with any or all of the above standards. Any applicant who is determined to be not responsible will be notified in writing of such finding and the basis therefor. A copy of such written notification shall be included in the official EPA file.

§ 30.345 Award of grant.

Generally, within 90 days after receipt of a completed application (excluding suspension periods for submission of supplemental information), the EPA Grant Approving Official will take one of the following actions: (a) Approve for grant award, (b) defer due to lack of funding, or (c) disapprove the application. The applicant shall be promptly notified in writing of any deferral or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or a reapplication. The applicant shall not be notified by EPA of an approval or grant award prior to transmittal of the grant agreement for execution by the applicant pursuant to § 30.345–3.

§ 30.345–1 Amount and term of grant.

The amount and term of a grant shall be determined at the time of grant award.

§ 30.345–2 Federal share.

The Federal share shall be set forth in the grant agreement expressed both as a dollar amount and as a percentage of approved eligible project costs. Such dollar amount shall represent the grant ceiling. The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee becomes aware that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the then-approved estimated total project cost, the grantee must notify the Project Officer promptly in writing to that effect, pursuant to § 30.900. The United States shall not be obligated to participate in costs incurred in excess of the budget approved in the grant agreement or any amendments thereto. Grant payments will be made pursuant to § 30.615.

§ 30.345–3 Grant agreement.

Upon execution of the grant agreement by EPA, the appropriate EPA grants administration office will transmit the grant agreement (certified mail, return receipt requested) to the applicant for execution. The grant agreement must be executed by the applicant and returned within 3 calendar weeks after receipt, or within any extension of such time that may be granted by the EPA grants administration office. The grant agreement shall set forth the approved project scope, budget (including the EPA share), total project costs, and the approved commencement and completion dates for the project or major phases thereof.

§ 30.345–4 Costs incurred prior to execution.

Except as may be otherwise provided by statute or this subchapter, costs may not be incurred prior to the execution of the grant agreement by both parties thereto. However, costs incurred after the date of execution of the grant agreement by the EPA grant award official are allowable, if (a) there is explicit provision in the grant agreement, and (b) the agreement is executed without change by the grantee.

[43 FR 28484, June 30, 1978]

§ 30.345–5 Effect of grant award.

(a) The grant shall become effective and shall constitute an obligation of Federal funds in the amount and for the purposes stated in the grant agreement, at the time of execution of the grant agreement by the EPA grant award official.

(b) Neither the approval of a project nor the award of any grant shall commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

§ 30.350 Limitation on award.

(a) No grant may be awarded if the project will be performed at a facility listed by the Director, Office of Federal Activities, in violation of the requirements set forth in § 30.420–3 and Part 15 of this Chapter.

(b) No grant may be awarded if there is a personal or organizational conflict of interest, or the appearance of such conflict of interest (see § 30.420).

§ 30.355 Continuation grants.

(a) When an original grant award includes a provision for more than one budget period within the project period, EPA presumes that continuation grants for the subsequent budget periods will be awarded, subject to availability of funds and Agency priorities, as determined by the Administrator, if the grantee:

(1) Has demonstrated satisfactory performance during all previous budget periods; and

(2) Submits no later than 90 days prior to the end of the budget period a continuation application which includes a detailed progress report; a financial statement for the current budget period, including an estimate of the amount of unspent, uncommitted funds which will be carried over beyond the term of the prior grant; a budget for the new budget period; an updated work plan revised to account for actual progress accomplished during the current budget period; and any other reports as may be required by the grant agreement.

(b) Review of continuation applications will be conducted expeditiously. Generally, no extramural review will be required.

(c) Costs incurred after the end of the previous budget period may be allowed under the continuation grant provided that no longer than 30 days has elapsed between the end of the budget period and the execution of the continuation grant agreement.

Subpart C—Other Federal Requirements

§ 30.400 General grant conditions.

It shall be a condition of every EPA grant award that the grantee comply with the applicable provisions of this subchapter and special conditions in the grant agreement (see § 30.425).

[43 FR 28484, June 30, 1978]

§ 30.405 Statutory conditions.

Compliance with the following statutory requirements, in addition to such other statutory provisions as may be applicable to particular grants or grantees or classes of grants or grantees, is a condition to each EPA grant.

§ 30.405–1 National Environmental Policy Act.

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended, and regulations issued thereunder, 40 CFR Part 6, particularly as it relates to the assessment of the environmental impact of federally assisted projects. Where an environmental assessment is required by 40 CFR Part 6, an adequate environmental assessment must be prepared for each project by the applicant or grantee.

§ 30.405–2 Uniform Relocation Assistance and Real Property Acquisition Policies Act.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., 4651 et seq., and the regulations issued thereunder, 40 CFR Part 4. Grantees must assure that any acquisition of interest in real property or any displacement of persons, businesses, or farm operations is conducted in compliance with the requirements of the act and the regulations.

[43 FR 28484, June 30, 1978]

§ 30.405–3 Civil Rights Act of 1964.

The Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., as amended, and particularly Title VI thereof, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, as implemented by regulations issued thereunder, 40 CFR Part 7. The grantee must assure compliance with the provisions of the Act and regulations.

§ 30.405–4 Federal Water Pollution Control Act Amendments of 1972, Section 13.

Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) provides that no person in the United States shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving assistance under the Federal Water Pollution Control Act, as amended (86 Stat. 816) or the Environmental Financing Act (86 Stat. 899). The applicant or grantee must assure compliance with the provisions of section 13 and the regulations issued thereunder including 40 CFR Part 12.

§ 30.405–5 Title IX of the Education Amendments of 1972.

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

§ 30.405–6 Hatch Act.

The Hatch Act, 5 U.S.C. 1501 et seq., as amended, relating to certain political activities of certain State and local employees. State and local government grantees must ensure compliance on the part of their employees who are covered by the Hatch Act. A State or local officer or employee is covered by the Hatch Act on political activity if his principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. He is subject to the Act, if as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants. Specifically excluded is an individual who exercises no functions in connection with that activity; or an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

§ 30.405–7 National Historic Preservation Act.

The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., as amended, relating to the preservation of historic landmarks. Applicants must consult the National Register of Historic Places (published in the FEDERAL REGISTER) to determine if a National Register property (or one eligible for inclusion in the Register) is located within the area of the proposed project's environmental impact and observe required procedures.

§ 30.405–8 Public Law 93–291.

Public Law 93–291 (referred to as Archeological and Historic Preservation Act of 1974) relating to potential loss or destruction of significant scientific, historical, or archeological data in connection with Federally assisted activities.

§ 30.405–9 Demonstration Cities and Metropolitan Development Act and Intergovernmental Cooperation Act.

The Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 et seq., as amended, and particularly Section 204 thereof, requires that applications for Federal assistance for a wide variety of public facilities projects in metropolitan areas must be accompanied by the comments of an areawide comprehensive planning agency covering the relationship of the proposed project to the planned development of the area. The Intergovernmental Coop-

eration Act of 1968, 42 U.S.C. 4201 et seq., as amended, requires coordination by and among local, regional, State, and Federal agencies with reference to plans, programs, and development projects and activities. Compliance with these two Acts is ensured by adherence to procedures in OMB Circular No. A-95 (revised) (38 FR 32874, Nov. 28, 1973). Applicants must follow the coordination procedures established by that Circular prior to submitting an application (see § 30.305).

§ 30.405–10 Flood Disaster Protection Act.

(a) *General.* (1) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973), requires grantees to purchase flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal assistance for construction purposes or for the acquisition of any real or nonexpendable personal property in an identified special flood hazard area that is located within any community currently participating in the National Flood Insurance Program. The National Flood Insurance Program is a Federal program authorized by the National Flood Insurance Act of 1968, 42 U.S.C. 4001-4127, as amended.

(2) For any community that is not participating in the flood insurance program on the date of execution of the grant agreement by both parties, the statutory requirement for the purchase of flood insurance does not apply. However, after July 1, 1975, or one year after notification of identification as a flood-prone community, whichever is later, the requirement will apply to all identified special flood hazard areas within the United States, which have been delineated on Flood Hazard Boundary Maps or Flood Insurance Rate Maps issued by the Department of Housing and Urban Development (HUD). Thereafter, no financial assistance can legally be provided for real or nonexpendable personal property or for construction purposes in these areas unless the community has entered the program and flood insurance is purchased.

(3) Regulations pertaining to the National Flood Insurance Program are published in Title 24 of the Code of Federal Regulations, commencing at Part 1909. HUD guidelines regarding the mandatory purchase of insurance have been published in the FEDERAL REGISTER at 39 FR 26186-93, July 17, 1974. Additional information may be obtained from the regional offices of the Department of Housing and Urban Development, or from the Federal Insurance Administration, HUD, Washington, D.C. 20410.

(b) *Wastewater treatment construction grants.* (1) The grantee (or the construction contractor, as appropriate) must acquire any flood insurance made available to it under the National Flood Insurance Act of 1968 as amended beginning with the period of construction and maintain such insurance for the entire useful life of the project, if the total value of insurable improvements is $10,000 or more.

(2) The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program such as bridges, dams, water and sewer lines, and underground structures, and excluding the cost of the land, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, whichever is less.

(3) The required insurance premium for the period of construction is an allowable project cost.

(c) *Other grant programs.* (1) A grantee must acquire and maintain any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, if the approved project includes (i) any construction-type activity, or (ii) any acquisition of real or nonexpendable personal property, and the total cost of such activities and acquisition is $10,000 or more.

(2) The amount of insurance required is the total cost of any insurable nonexpendable personal or real property acquired, improved, or constructed, excluding the cost of land, with any portion of this grant, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, as amended, whichever is less, for the entire useful life of the property.

(3) The required insurance premium for the period of project support is an allowable project cost.

(4) If EPA provides financial assistance for personal property to a grantee that the Agency has previously assisted with respect to real estate at the same facility in the same location, EPA must require flood insurance on the previously-assisted building as well as on the personal property. The amount of flood insurance reqiured on the building will be based upon its current value, however, and not on the amount of assistance previously provided.

§ 30.405–11 Clean Air Act, Section 306.

Section 306 of the Clean Air Act, 42 U.S.C. 1857h-4, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities (see § 30.410–4, Executive Order 11738).

§ 30.405–12 Federal Water Pollution Control Act, Section 508.

Section 508 of the Federal Water Pollution Control Act, 33 U.S.C. 1251, as amended, prohibiting award of assistance by way of grant, loan, or contract to noncomplying facilities (see § 30.410–4, Executive Order 11738).

§ 30.410 Executive Orders.

Compliance with the following Executive Orders is a condition of each EPA grant.

§ 30.410–1 Executive Order 11246.

Executive Order 11246 dated September 24, 1965, as amended, with regard to equal employment opportunities, and all rules, regulations and procedures prescribed pursuant thereto (40 CFR Part 8).

§ 30.410-2 Executive Order 11988.

Executive Order 11988 dated May 24, 1977, provides that each Federal agency shall evaluate the potential effects of any actions it may take in a floodplain. Any action taken on a floodplain shall seek to reduce the risk of flood loss to minimize potential harm to people and property and to restore and preserve the natural and beneficial values served by the floodplain.

[43 FR 28484, June 30, 1978]

§ 30.410–3 Executive Order 11514.

Executive Order 11514 dated March 5, 1970, providing for the protection and enhancement of environmental quality in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (40 CFR Part 6).

§ 30.410–4 Executive Order 11738.

Executive Order 11738 dated September 12, 1973, which prohibits any Federal agency, grantee, contractor, or subcontractor from entering into, renewing, or extending any nonexempt grant or subagreement (contract or subcontract) which in the performance of the grant or subagreement utilizes any facility included on the EPA List of Violating Facilities (40 CFR Part 15). By so doing, the Executive Order requires compliance with the Clean Air Act and the Federal Water Pollution Control Act (see § 30.-420-3).

§ 30.410-5 Executive Order 11990.

Executive Order 11990 dated May 24, 1977, provides that each Federal agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of

the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands.

[43 FR 28484, June 30, 1978]

§ 30.415 Additional requirements—federally assisted construction.

Grants for projects that involve construction are subject to the following additional requirements.

§ 30.415–1 Davis-Bacon Act.

The Davis-Bacon Act, as amended, 40 U.S.C. 276a et seq., and the regulations issued thereunder, 29 CFR 5.1 et seq., respecting wage rates for federally assisted construction contracts in excess of $2,000.

§ 30.415–2 The Copeland Act.

The Copeland (Anti-Kickback) Act, 18 U.S.C. 874, 40 U.S.C. 276c, and the regulations issued thereunder, 29 CFR 3.1 et seq.

§ 30.415–3 The Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 et seq., and the regulations issued thereunder, 29 CFR Parts 5 and 1518.

§ 30.415–4 Convict labor.

Convict labor shall not be used in EPA assisted construction unless it is labor performed by convicts who are on work release, parole or probation.

§ 30.420 Additional requirements—all EPA grants.

Compliance with the following requirements is a condition of each EPA grant.

§ 30.420–1 Prohibition against contingent fees.

No person or agency may be employed or retained to solicit or secure a grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For violation of this prohibition, EPA shall have the right to annul the grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of any commission, percentage, brokerage or contingent fee.

§ 30.420–2 Officials not to benefit.

No member of, or delegate to Congress or Resident Commissioner, shall be permitted to any share or part of a grant, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to a grant if made with a corporation for its general benefit.

§ 30.420–3 Prohibition against violating facilities.

(a) *List of violating facilities.* Pursuant to 40 CFR Part 15, the Director, Office of Federal Activities, EPA, shall maintain a list that includes those facilities which have been designated to be in noncompliance with either the Clean Air Act or the Federal Water Pollution Control Act and with which no Federal agency, grantee, contractor, or subcontractor shall enter into, renew, or extend any nonexempt grant, contract, or subcontract. For the purpose of this subsection, the term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by an applicant, contractor, subcontractor, or grantee to be utilized in the performance of a grant, contract or subcontract. Where a location or site of construction or other operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility, except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographic area.

(b) *Exempt transactions.* The following are exempt:

(1) Grants, contracts, and subcontracts not exceeding $100,000.

(2) Contracts and subcontracts for indefinite quantities that are not anticipated to exceed $100,000 for any 12 month period.

(3) Grants, contracts, or subcontracts, where the principal purpose is to assist a facility or facilities to comply with any Federal, State, or local law, regulation, limitation, guideline, standard, or other requirement relating to the abatement, control, or prevention of environmental pollution. This exemption does not apply to (i) subcontracts for materials, supplies, or equipment where an existing facility is modified or altered or (ii) grants, contracts, or subcontracts for new construction.

(4) Facilities located outside the United States.

(5) The foregoing exemptions shall not apply to the use of a facility that has been convicted of a violation under section 113(c)(1) of the Clean Air Act, or under section 309(c) of the Federal Water Pollution Control Act. The List of Violating Facilities will specify which facilities have been convicted.

(c) *Grant condition.* No nonexempt project work may be performed at a facility listed by the Director, Office of Federal Activities, EPA, in violation of the requirements of 40 CFR Part 15.

(d) *Contract stipulations.* Each grantee, contractor, and subcontractor must include or cause to be included in every nonexempt subagreement (including contract or subcontract) the criteria and requirements in paragraphs (d) through (f) of this section.

(e) *Notification.* Each applicant, grantee, bidder, contractor, and subcontractor must give prompt notification if at any time prior to or after the award of a nonexempt grant or contract, notification is received from the Director, Office of Federal Activities, indicating that a facility to be utilized in the performance of a nonexempt grant or subagreement has been listed or is under consideration to be listed on the EPA List of Violating Facilities.

(1) An applicant or grantee must notify the project officer.

(2) A bidder, contractor or subcontractor must notify the grantee which will notify the Project Officer.

(f) *Deferral of award.* The Director, Office of Federal Activities, EPA may request that the award of the grant, contract or subcontract be withheld for a period not to exceed 15 working days.

(g) *Compliance.* Each applicant, grantee, bidder, contractor, and subcontractor must comply with all the requirements of Section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information as well as all other requirements specified in section 114 and section 308 of the Clean Air Act and Federal Water Pollution Control Act, respectively, and all regulations and guidelines issued thereunder.

(h) *Failure to comply.* In the event any grantee, contractor or subcontractor fails to comply with clean air or water, standards at any facility used in the performance of a nonexempt grant or subagreement, the grantee, contractor, or subcontractor shall undertake the necessary corrective action to bring the facility into compliance. If the grantee, contractor, or subcontractor is unable or unable or unwilling to do so, the grant will be suspended, annulled, or terminated, in whole or in part, unless the best interests of the Government would not thereby be served.

§ 30.420–4 Conflict of interest.

(a) The purpose of this section is to establish policies and procedures for the prevention of conflicts of interest, and the appearance of such conflicts of interest, involving former and current EPA employees in the award and administration of grants. This section does not apply to

former EPA employees performing duties as an elected or appointed official or full time employee of a State or local government (excluding State or local institutions of higher education and hospitals).

(b) It is EPA policy that personal or organizational conflict of interest, or the appearance of such conflict of interest, be prevented in the award and administration of EPA grants, including subagreements.

(c) Conflict of interest provisions for EPA employees are published in 40 CFR Part 3. In cases where an employee's action in the review, award, or administration of a grant would create an apparent conflict of interest, the employee shall disqualify himself and refer any necessary action to his superior.

(d) 18 U.S.C. 207 establishes penalties for certain actions on the part of former Federal employees.

(e) It shall be improper for a grant to be awarded, or for a subagreement to be awarded or approved, when the grant applicant or proposed contractor employs a person who served in EPA as a regular employee or as a special employee if either one of the following conditions exist:

(1) If the grant relates to a project in which the former EPA employee participated personally and substantially as an EPA employee, through decision, approval, disapproval, recommendation, and if the former EPA employee (i) was involved in developing or negotiating the application for the prospective grantee; (ii) will be involved in the management or administration of the project, or (iii) has a substantial financial interest (generally, a 20% or greater stock, partnership, or equivalent interest);

(2) If the former EPA employee's official duties involved, within one year prior to the termination of his employment with EPA, decision, approval, disapproval, or recommendation responsibilities concerning the subject matter of the grant or application, and the former EPA employee, within one year following the termination of his employment with EPA, (i) was involved in developing or negotiating the application for the prospective grantee; (ii) will be involved in management or administration of the project; or (iii) has a substantial financial interest (generally a 20% or greater stock, partnership or equivalent interest);

[43 FR 28484, June 30, 1978]

(f) Costs incurred on grants in violation of subparagraph (e) above shall be unallowable costs.

(g) Definitions pertaining to this section may be found in 40 CFR 3.102.

(h) The provisions of this section may be waived only by the Administrator or Deputy Administrator (1) upon a written determination of the General Counsel that the award or the administration of the project would not be likely to involve a violation of 18 U.S.C. 207 or other EPA regulations respecting conflicts of interest, 40 CFR Part 3, and (2) if the Administrator or Deputy Administrator determines that the best interests of the Government would be served by an award of the grant or subagreement or existing administration of the grant in view of the limited extent of the conflict of interest and the outstanding expertise of the former employee.

§ 30.420–5 Employment practices.

A grantee or a party to a subagreement shall not discriminate, directly or indirectly, on the grounds of race, color, religion, sex, age, or national origin in its employment practices under any project, program, or activity receiving assistance from EPA. Each grantee or party to a subagreement shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

§ 30.420–6 Conservation and efficient use of energy.

Grantees must participate in the National Energy Conservation Program by fostering, promoting, and achieving energy conservation in their grant programs. Grantees must utilize to the maximum practical extent the most energy-efficient equipment, materials, and construction and operating procedures available.

§ 30.425 Special conditions.

The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or of EPA objectives. However, special conditions inconsistent with the provision and intent of this Subchapter may not be utilized.

§ 30.430 Noncompliance.

Noncompliance with the provisions of this subchapter or of the grant agreement shall be cause for any one or more of the following sanctions, as determined appropriate by the grant award official, upon the recommendation of the Project Officer, subject to consultation with the Office of General Counsel:

(a) The grant may be terminated or annulled under § 30.920 of this subchapter;

(b) Project costs directly related to the noncompliance may be disallowed;

(c) Payment otherwise due to the grantee may be withheld (see § 30.615-3 of this subchapter);

(d) Project work may be suspended under §30.915 of this subchapter;

(e) A noncomplying grantee may be found nonresponsible or ineligible for future Federal assistance or a noncomplying contractor may be found nonresponsible or ineligible for approval for future contract award under EPA grants;

(f) An injunction may be entered or other equitable relief afforded by a court of appropriate jurisdiction;

(g) Such other administrative or judicial action may be instituted as may be legally available and appropriate.

[43 FR 28484, June 30, 1978]

Subpart D—Patents, Data, and Copyrights

§ 30.500 General.

This subpart sets forth policy and procedure regarding patents, data, and copyrights under EPA grants or fellowships, and the grant clauses and regulations which define and implement that policy.

§ 30.502 Definitions.

Definitions applicable to this Subpart D, in addition to those in § 30.135, are set forth in Appendixes B and C to this Part.

§ 30.505 Required provision regarding patent and copyright infringement.

(a) The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee shall furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

(c) The grantee shall include in each subagreement (including any tier subagreement) in excess of $10,000 a clause substantially similar to the foregoing provisions.

§ 30.510 Patents and inventions.

It is the policy of EPA to allocate rights to inventions that result from fed-

erally supported grants or fellowships in accordance with the guidance and criteria set forth in the Statement of Government Patent Policy by the President of the United States on August 23, 1971 (36 FR 16887), hereinafter referred to as "Statement." Section 1 of the Statement sets forth three major categories (1(a), 1(b), and 1(c)) of contract or grant objectives, and prescribes the manner for allocation of rights to inventions that result from a grant or contract which falls within the particular category.

(a) Under Section 1(a) of the Statement, the United States, at the time of grant award, normally acquires or reserves the right to acquire the principal or exclusive rights to any invention made under the grant or contract. Generally, this is implemented by the United States taking all domestic rights to such invention. However, section 1(a) permits the grantee in exceptional circumstances, to acquire greater rights than a nonexclusive license at the time of grant award where the Administrator certifies that such action will best serve the public interest. Section 1(a) also prescribe circumstances under which the grantee or contractor may acquire such greater rights after an invention is identified.

(b) Under section 1(b) of the Statement, the grantee normally acquires principal rights at the time of grant award.

(c) Section 1(c) applies to grants that are not covered by Section 1(a) or 1(b), and provides that allocation of rights is deferred until after inventions have been identified.

§ 30.515 Required patent provision.

(a) Every EPA grant involving research, developmental, experimental, or demonstration work shall be deemed subject to Section 1(a) of the Statement and shall be subject to the patent provisions set forth in Appendix B to this Part. The requirement is not applicable to fellowships.

(b) Inventions made under the Resource Conservation and Recovery Act of 1976 are subject to section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974. This is implemented by Appendix B.

[42 FR 56050, October 20, 1977]

§ 30.520 Optional patent provision.

The following clause may be inserted as a special condition in the grant agreement when requested by an applicant or grantee:

Authorization and consent. The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this grant project or any part hereof or any amendment hereto or any subagreement hereunder (including any lower tier subcontract).

§ 30.525 Data and copyrights.

EPA's data policy is to expedite general utilization or further development of new or improved pollution prevention and abatement technology and procedures developed under EPA grants and fellowships. Therefore, it is most important that the results of EPA sponsored research include data that is sufficient to enable those skilled in the particular area to promptly utilize or further develop such technology and procedures. Availability of adequate data permits accurate assessment of the progress achieved under a grant or fellowship so that EPA priorities can be established. Access to data accumulated by the grantee shall be made available to the Project Officer on request.

§ 30.530 Required data and copyright provision.

Every EPA grant or fellowship shall be subject to the rights in data and copyrights provisions set forth in Appendix C to this Part.

§ 30.540 Deviations.

Any request for deviation from the patent provisions in Appendix B and from the rights in data and copyrights provisions in Appendix C to this Part must be submitted in writing pursuant to Subpart I of this Regulation. No deviation or waiver of patent or data rights shall be granted without the concurrence of the EPA Patent Counsel.

Subpart E—Administration and Performance of Grants

§ 30.600 General.

The grantee bears primary responsibility for the administration and success of the grant project, including any subagreements made by the grantee for accomplishing grant objectives. Although grantees are encouraged to seek the advice and opinions of EPA on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to EPA. The primary concern of EPA is that grant funds awarded be used in conformance with applicable Federal requirements to achieve grant and program objectives and to make optimum contributions to the betterment of the environment.

§ 30.605 Access.

The grantee and its contractor and subcontractors must ensure that the Project Officer and any authorized representative of EPA, the Comptroller General of the United States or the Department of Labor, shall at all reasonable times during the period of EPA grant support and until three years following final settlement have access to the facilities, premises and records (as defined in § 30.805) related to the project. In addition, any person designated by the Project Officer shall have access, upon reasonable notice to the grantee by the Project Officer, to visit the facilities and premises related to the project. All subagreements (including any tier subagreement) in excess of $10,000 are subject to the requirements of this section and grantees must include in all such subagreements a clause which will ensure the access required by this section.

§ 30.610 Rebudgeting of funds.

(a) *Notice.* Prompt notification of all rebudgeting in excess of $1,000 is required under § 30.900(b). Such notification may be accomplished by submission of a revised copy of the budget forms contained in the grant application or in a letter.

[43 FR 28484, June 30, 1978]

(b) *Prior approval required.* Approval of minor adjustments to an approved budget is not required. Prior written EPA approval is required for any of the following changes under any grant except wastewater treatment construction grants (see Part 35, Subparts C and E of this subchapter):

(1) Where the total Federal share exceeds $100,000 and the cumulative amount of transfers among cost categories or program elements exceeds or is expected to exceed $10,000 or 5 percent of the budget period costs, whichever is greater.

(2) Where the total Federal share is $100,000 or less, and the cumulative amount of transfers among cost categories or program elements exceeds or is expected to exceed 10 percent of such budget period costs.

[43 FR 28484, June 30, 1978]

(3) Rebudgeting which involves the transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

(4) Rebudgeting which pertains to the addition of items requiring approval pursuant to Federal Management Circulars 73–8 and 74–4;

(5) Any transfers between construction and nonconstruction work;

(6) Any transfer of funds allotted for training allowances (direct payments to trainees);

[43 FR 28484, June 30, 1978]

(7) Rebudgeting which indicates the need for additional EPA funds.

(c) *Approval.* Where approval of rebudgeting is required, approval or disapproval shall be promptly communicated in writing to the grantee within three (3) weeks from date of receipt of notification.

§ 30.615 Payment.

All payments are made subject to such conditions as are imposed by or pursuant to this Subchapter for allowable project costs. The payment basis and method of payment will be set forth in the grant agreement. Any adjustment to the amount of payment requested by a grantee will be explained in writing.

§ 30.615–1 Method of payment.

[41 FR 56196, December 27, 1976]

(a) Payment for waste treatment construction grants will be on a reimbursable basis (see §§35.845, 35.937-10, 35.938-6, and 35.945).

[43 FR 28484, June 30, 1978]

(b) Payment for other grant programs will be on an advance basis. Grantees must request the initial advance payment on SF270, Request for Advance or Reimbursement. The initial advance will be based on the grantee's projected cash requirements, not to exceed the first three months. The cash advance will be issued either in one check or one check each month at the agency's option. As the grantee incurs expenditures under the grant, the grantee will submit a request for payment at least quarterly, but generally no more frequently than monthly. This request will report cumulative expenditures incurred under the grant and the grantee's projected cash requirements for the next advance period. The agency will make payment for any expenditure exceeding the previous advance and will provide for the grantee's projected cash requirements for the next advance period.

(c) Payment for certain grants authorized advance financing will be made by letter-of-credit. Detailed procedures will be provided to the grantee when a grantee meets the Treasury Department's criteria for this method of payment.

(d) For grants paid on an advance basis, payments will be made in a manner that will minimize the time elapsing between the transfer of funds from the United States Treasury and the disbursement of those funds by the grantee. For grants which are paid on a reimbursable basis, payment will be made promptly upon submission by the grantee of the properly completed payment request. Grantees not complying with the timing requirements under advance payment methods may be transferred to the reimbursable payment method.

§ 30.615–2 Cash depositories.

(a) Physical segregation of cash depositories for EPA funds is neither required nor encouraged. However, a separate bank account shall be used when payments under a letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by the grantee, EPA, and the bank involved.

[41 FR 56196, December 27, 1976]

(b) Grantees are encouraged to use minority-owned banks (a bank which is owned by at least 50 percent minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230.

[43 FR 28484, June 30, 1978]

§ 30.615–3 Withholding of funds.

(a) It is EPA policy that full and prompt payment be made to the grantee for eligible project costs. Except as otherwise provided by this subchapter, the EPA grant approving official may only authorize the withholding of a grant payment where he determines in writing that a grantee has failed to comply with project objectives, grant award conditions, or EPA reporting requirements. Under such conditions, the EPA grant award official will inform the grantee by written notice that payments will not be made for obligations incurred after a specified date until the conditions are corrected. Such withholding shall be limited to that amount necessary to assure compliance.

(b) The grant approving official may authorize withholding of payment to the extent of any indebtedness to the United States, unless he determines that collection of the indebtedness will impare accomplishment of the project objectives and that continuation of the project is in the best interest of the United States.

[43 FR 28484, June 30, 1978]

§ 30.615–4 Assignment.

The right to receive payment under a grant may not be assigned, nor may payments due under a grant be similarly encumbered.

§ 30.620 Grant related income.

(a) "Grant related income" means income generated from charges which are directly related to a principal project objective (such as the sale of a solid waste by-product or of copies of reports or studies) except as otherwise provied by statute or the grant agreement.

[43 FR 28484, June 30, 1978]

(b) Except as otherwise provided herein a grantee is accountable to EPA for all grant related income. Grantees are required to record the receipt and expenditure of all grant related income. The net amount of such income shall be retained by the grantee and, except as may be otherwise provided in the grant agreement, shall be used to further support the project; or for grants with institutions of higher education, hospitals, and other nonprofit organizations may be used to finance the non-Federal share of the project, if approved by EPA. To the extent such funds are not used for the project, such amounts shall be deducted from the total project costs for the purpose of determining the net costs on which the EPA share will be based. In no event will EPA be entitled to a credit in excess of the grant amount.

[41 FR 56196, December 27, 1976]

(c) Revenue generated under the governing powers of a State or local government which may have been generated without grant support is not considered grant related income. Such revenues shall include fines or penalties levied under judicial or penal power and used as means to enforce laws; license or permit fees for the purpose of regulation, special assessment to abate nuisances and public irritations, inspection fees, and taxes.

§ 30.620–1 Proceeds from sale of real or personal property.

Income derived from the sale of real or personal property shall be treated in accordance with § 30.810.

§ 30.620–2 Royalties received from copyrights and patents.

[41 FR 56196, December 27, 1976]

Unless the grant agreement provides otherwise, grantees (other than profit making) shall have no obligations to EPA with respect to royalties they receive as a result of copyrights or patents produced under the grant. However, nothing in this section shall be construed to diminish or eliminate any

rights or privileges flowing to the Federal Government as a result of the provisions of 40 CFR Part 30, Appendix B—Patents and Inventions or Appendix C—Rights in Data and Copyrights.

30.620–3 Interest earned on grant funds.

(a) All grantees except those listed below must return to EPA all interest earned on Federal funds pending their disbursement for project purposes (see 42 Comp. Gen. 289).

(b) The only grantees exempt from this requirement are:

(1) A State and any agency or instrumentality of a State, pending their disbursement for project purposes (Section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4201 et seq.); and

(2) A tribal organization (sections 102, 103, or 104 of the Indian Self Determination Act, Pub. L. 93-638).

[43 FR 28484, June 30, 1978]

§ 30.625 Grantee publications and publicity.

Pursuant to the Government Printing and Binding Regulations, no grant may be awarded primarily or substantially for the purpose of having material printed for the use of any Federal Department or Agency.

§ 30.625–1 Publicity.

Press releases and other public dissemination of information by the grantee concerning the project work shall acknowledge EPA grant support.

§ 30.625–2 Publications.

(a) *Policy.* EPA encourages and, when specified in the grant agreement, may require publication and distribution of reports of grant activity. The preparation, content, and editing of publications are the responsibilities of the grantee. Except for the final report, review of publications prior to distribution will not normally be made by EPA. Grantees must give notice in writing to the Project Officer at least 30 days prior to publication or other dissemination of project information (other than publicity) unless a shorter period has been approved by the Project Officer. This notice policy is intended to provide the EPA Project Officer with a minimal opportunity to discuss publication format, content, or to coordinate appropriate Agency activities; censorship is not intended nor permitted. This procedure does not apply to seminars, participation on panels, reporting to other research sponsors, or other similar nonpublishing activities.

(b) *Acknowledgement of support.* An acknowledgement of EPA support must be made in connection with the publishing of any material based on, or developed under, a project supported by EPA.

The acknowledgement shall be in the form of a statement substantially as follows:

This project has been financed (in part/entirely) with Federal funds from the Environmental Protection Agency under grant number_____. The contents do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

(c) *Copies of publications.* Upon publication, a minimum of six copies of the publication shall be furnished to the Project Officer. The Project Officer shall promptly file one copy of all publications resulting from EPA grant support in the official EPA grant file, EPA Headquarters Library, and with the National Technical Information Service, U.S. Department of Commerce.

§ 30.625–3 Signs.

A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility (e.g., mobile laboratories, construction and demolition sites, buildings in which a substantial portion of the work is EPA-funded, etc.). The sign must identify the project and EPA grant support. Grantees may obtain information pertaining to the design and specifications for the signs from their Project Officer. Costs of preparation and erection of the project identification sign are allowable project costs.

§ 30.630 Surveys and questionnaires.

(a) Costs associated with the collection of data or information through surveys or questionnaires by a grantee (or party to subagreement) shall be allowable project costs only if prior written approval of the Project Officer has been obtained for such survey or questionnaire. The Project Officer shall not give such approval without the concurrence of the EPA Headquarters Reports Management Officer to assure compliance with the Federal Reports Act of 1942 (44 U.S.C. 3501–3511).

(b) A grantee (or party to subagreement) collecting information from the public on his own initiative may not represent that the information is being collected by or for EPA without prior agency approval. If reference is to be made to EPA, or the purpose of the grant is for collection of information from the public, prior clearance of plans and report forms must be requested by the grantee through the Project Officer.

§ 30.635 Reports.

§ 30.635–1 Interim progress reports.

(a) It is EPA policy that where progress reports are required such reports shall be submitted to the Project Officer no more frequently than quarterly. Specific reporting requirements are set forth in Parts 35, 40, and 45 of this Subchapter.

(b) Between the required performance reporting dates, the grantee shall promptly notify the Project Officer, in accordance with § 30.900–1, of events which have significant impact upon the project.

§ 30.635–2 Final report.

(a) For all EPA research, demonstration, and training grants, the grantee shall prepare and submit to the Project Officer an acceptable final report prior to the end of the project period. An acceptable report shall document project activities over the entire period of grant support and shall describe the grantee's achievements with respect to stated project purposes and objectives. Where appropriate, the report shall set forth in complete detail all technical aspects of the project, both negative and positive, grantee's findings, conclusions, and results, including, as applicable, an evaluation of the technical effectiveness and economic feasibility of the methods or techniques investigated or demonstrated. Grantees are required to submit a draft final report to the Project Officer at least 90 days prior to the end of the approved project period. The final report shall adequately reflect (e.g., as a footnote or an appendix) EPA comments when required by the Project Officer. Prior to the end of the project period, one reproducible copy suitable for printing and such other copies as may be stipulated in the grant agreement shall be transmitted to the Project Officer.

(b) State or local program grants and grants for construction of waste treatment works do not require a final report.

(c) For all planning grants, the plan itself constitutes the final report.

(d) One copy of all final reports must be filed in the EPA Headquarters Library and the appropriate EPA official grant file.

§ 30.635–3 Financial reports.

(a) For all EPA grants, except for fellowships and wastewater treatment construction grants, the grantee must submit a financial status report to the grants administration office (1) within 90 days after the end of each budget period, and (2) no later than 90 days following the end of the project period or the date of complete termination of

grant support, whichever occurs first, or within such additional time as EPA may allow for good cause.

(b) For wastewater treatment construction grants, the grantee is required to submit an Outlay Report and Request for Reimbursement for Construction Programs which will also serve as the financial report.

§ 30.635–4 Invention reports.

As provided in Appendix B of this Part, prompt reporting to the Project Officer of all inventions is required for EPA grants involving experimental, developmental, research or demonstration work. In addition:

(a) An annual invention statement is required with a continuation application.

(b) A final invention report is required to be submitted to the grants administration office within 90 days after completion of the project period.

(c) When a project director or principal investigator changes institutions or ceases to direct a project, an invention statement must be promptly submitted to the grants administration office with a listing of all inventions during his administration of the grant.

§ 30.635–5 Property reports.

(a) For all EPA grants a physical inventory of property shall be taken by the grantee and the results reconciled with the grantee's property records at least once every 2 years The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(b) For all EPA grants except grants for construction of waste treatment works the grantee must submit at the end of each project period a complete inventory of all property for which the grantee is accountable pursuant to § 30.-810. The submission must indicate the condition of each property item and recommendation for disposition. For the purposes of this subsection property for which the grantee is accountable means (1) property for which disposition instructions must be requested from EPA, or (2) property for which EPA must be compensated for its share.

(c) For all EPA grants, grantees shall submit an annual inventory of federally-owned property in their possession.

[41 FR 56196, December 27, 1976]

§ 30.635-6 [Reserved]

[43 FR 28484, June 30, 1978]

§ 30.635–7 Compliance.

Failure to comply with these reporting requirements in a timely manner will result in appropriate action pursuant to § 30.430.

§ 30.640 Utilization of Government procurement sources.

(a) Use of General Services Administration sources of supply and services by grantees is not allowed (see 37 FR 24113, November 14, 1972).

(b) Utilization of Government excess property by EPA grantees is not allowed.

§ 30.645 Force account work.

(a) Except as is otherwise provided in 40 CFR 35.936-14, the grantee must obtain specific written prior approval from the Project Officer for the utilization of the "force account" method (i.e., utilization of the grantee's own employees for construction, construction-related activities, or for facility repair or improvement) in lieu of subagreement for any construction activity in excess of $10,000 unless the force account method is stipulated in the grant agreement.

(b) The Project Officer, with the concurrence of the EPA grant approving official, may authorize in writing the use of the force account method in lieu of contracting if he determines, based on the grantee's certification, that the grantee possesses the necessary competence required to accomplish such work and (1) the work can be accomplished more economically by the use of the force account method, or (2) emergency circumstances so dictate.

[43 FR 28484, June 30, 1978]

(c) Authorizations to utilize the force account method will identify applicable Federal requirements and the allowability of various cost items.

Subpart F—Project Costs

§ 30.700 Use of funds.

(a) All Federal assistance received under an EPA grant shall be expended by the grantee solely for the reasonable and eligible costs of the approved project in accordance with the terms of the grant agreement and this subchapter. All project expenditures by the grantee shall be deemed to include the Federal share.

(b) The grantee may not delegate nor transfer his responsibility for the use of grant funds.

(c) No profit or other increment above cost in the nature of profit is allowed.

§ 30.705 Allowable costs.

Project costs shall be allowable if payment is authorized by applicable statutory provisions and the following conditions are met:

(a) The costs must be reasonable and within the scope of the project;

(b) The cost is allocable to the extent of benefit properly attributable to the project;

(c) Such costs must be accorded consistent treatment through application of generally accepted accounting principles;

(d) The cost must not be allocable to or included as a cost of any other federally assisted program in any accounting period (either current or prior); and

(e) The cost must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this Subchapter, including appropriate Federal cost principles of this Subpart.

§ 30.705-1 Payment to consultants.

For all grants awarded by EPA, the maximum daily rate paid to consultants retained by EPA, grantees, or contractors and subcontractors of grantees will not exceed the maximum daily rate for GS-18. This limitation applies only to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. Contracts negotiated with engineering or other firms under §§ 35.510-5 and 35.937-5 are not affected This rate does not include transportation and subsistence costs for travel performed, which will be paid in accordance with the normal travel reimbursement practices. (SOURCE: The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1978, Pub. L. 95-119, dated October 4, 1977.)

[43 FR 28484, June 30, 1978]

§ 30.710 Federal cost principles.

The following cost principles are applicable to all EPA grants and subagreements of grantees, except as otherwise provided by statute or this Subchapter:

(a) *For state and local governments.* Federal Management Circular 74–4 (34 CFR Part 255) provides principles for determining allowable costs for all grants and subagreements awarded to State and local governments.

(b) *For educational institutions.* (1) Federal Management Circular 73–8 (34 CFR Part 254) provides cost principles for research and development, training, and other educational services under grants and subagreements with educational institutions.

(2) Federal Management Circular 73-6 (34 CFR Part 252) provides principles for coordinating (i) the establishment of indirect cost rates for, and (ii) the auditing of grants and subagreements with educational institutions.

(c) *For other nonprofit institutions.* Department of Health, Education, and Welfare publication OASC-5 (Revised) will be used for grants and subagreements awarded to other nonprofit institutions.

(d) *For all other grants and subagreements.* Federal Procurement Regulations (41 CFR Ch. I, Subpart 1-15.2 or 1-15.4, as appropriate) provide, to the greatest practical extent, comparable principles and procedures for use in cost-reimbursement for all other grants and subagreements.

[40 FR 20232, May 8, 1975, as amended at 41 FR 20658, May 20, 1976]

§ 30.715 Direct and indirect costs.

(a) Project costs will generally be comprised of allowable direct costs and allowable indirect costs.

(b) Each item of cost must be treated consistently as either a direct or an indirect cost.

(c) Any cost allocable to a particular grant or cost objective under the appropriate Federal cost principles may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

§ 30.715-1 Direct costs.

Direct costs are those than can be identified specifically with a particular cost objective. These costs may be charged directly to a project.

§ 30.715-2 Indirect costs.

[41 FR 20656, May 20, 1976]

Indirect costs are those incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. Federal Management Circulars 73-6 and 74-4 govern the methods that may be used in determining the amount of grantee departmental indirect cost allocable to a grant program. These directives provide for the assignment of cognizance to single Federal Departments and agencies for conducting indirect cost negotiations and audits at educational institutions and State and local governments. Procedures governing the application and disposition of indirect costs for subagreements with commercial organizations and architectural and engineering firms are covered by 41 CFR 1-15.2 and 1-15.4 respectively. The rate(s) negotiated by the cognizant Federal agency are normally accepted by all Federal agencies. Organizations not covered by the above directives may have rates established by negotiation with EPA or another Federal agency. The following guidance is furnished:

(a) EPA uses the latest available negotiated rate as a basis for computing indirect costs for the applicant. In those cases where the indirect cost budgeted in the grant agreement is based on a provisional rate, the actual indirect costs may be adjusted only as follows:

(1) If a final rate is established and that rate is less than the provisional rate, the indirect costs will be adjusted downward.

(2) If a final rate is greater than the provisional rate, the grantee may transfer funds from the direct cost categories to indirect costs; however, payment may not exceed the total approved grant amount.

[43 FR 28484, June 30, 1978]

(b) A special indirect cost rate may be applied to a project (or portion of a project) to be carried out at an off-campus or off-site location. A special indirect cost rate may be negotiated for a large nonrecurring project when such project costs would distort the normal direct cost base used in computing the overhead rate.

(c) The following guidelines are to be used for determining the allowability and reimbursement of indirect costs claimed by a grantee:

(1) For indirect costs to be allowable under a grant, they must be provided for in the grant agreement.

(2) Provisional indirect cost rates may be used for billing purposes under EPA grants. Fixed or predetermined indirect cost rates may also be used where there is advance agreement between the grantee and the grant award official.

(3) A separate indirect cost proposal must be prepared for each fiscal year for which the grantee desires to claim indirect costs. However, there are different requirements for State agencies than for local agencies with respect to the submission of indirect cost proposals to the Federal Government: (i) All State unit indirect cost proposals must be submitted to the cognizant Federal agency within 6 months after the close of each fiscal year; and (ii) local unit indirect cost proposals must be retained but need not be submitted for approval unless required for a pending grant award or requested by the cognizant Federal agency or its authorized representative. Pertinent financial records which substantiate the claim for indirect cost reimbursement must be retained by the grantee. If the required data is not retained and made available to the auditor upon his request at the time he initiates his audit of grant costs, the claim for indirect costs will be disallowed for that year.

(4) The audit of an indirect cost proposal will provide the basis for determining acceptable indirect cost rates.

[43 FR 28484, June 30, 1978]

§ 30.720 Cost sharing.

(a) Except as may be otherwise provided by law or this Subchapter, EPA grantees must share project costs. If there is no statutory matching requirement, a grantee must contribute not less than 5% of allowable project costs within each budget period. Such contributions may be reflected in either direct or indirect costs; in-kind contributions are permitted.

[41 FR 20656, May 20, 1976]

(b) Cost sharing must be negotiated prior to award of a grant and must be set forth in the grant agreement as a percentage of the total allowable project costs for each budget period. Criteria to be used in the negotiation concerning the extent of cost sharing may include the benefits the grantee will derive from the project; the financial risk the grantee will bear; and the resources the grantee has available.

(c) Contributions to cost sharing are allowable only if they: Are verifiable from the grantee's records; are not included as cost sharing or matching contributions for any other federally assisted program; are otherwise properly allocable to the project; constitute allowable project costs; are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to and; are provided for in the approved budget.

[43 FR 28484, June 30, 1978]

(d) Institutional cost sharing agreements are not permitted.

§ 30.725 Cost and price analysis.

§ 30.725-1 Policy.

The reasonableness of the price or cost of each grant application or negotiated subagreement proposal must be considered. The method and degree of analysis shall depend on the circumstances of the particular grant or subagreement action.

§ 30.725–2 Price analysis.

A price analysis is the process of examining and evaluating a prospective price by comparison without evaluation of the composition of separate cost elements and proposed profit.

§ 30.725–3 Cost analysis.

A cost analysis is the process of examining, verifying and evaluating cost data and the judgmental factors applied in projecting from the basic cost data to a reasonable estimated price that will be representative of the total cost of performance of the grant or negotiated subagreement.

§ 30.725–4 Reequirements.

(a) A formal cost analysis shall be made and a summary of findings prepared for all research, demonstration, planning and training grant applications deemed relevant and requesting EPA funds in excess of $150,000 for the budget period.

(b) A formal cost analysis shall be made and a summary of findings prepared for all grant applications from profit making organizations deemed relevant.

(c) Any other grant application or subagreement may receive a cost analysis where EPA's program office or grants administration office considers it appropriate.

(d) Price analysis techniques may be used instead of or to supplement cost analysis wherever appropriate.

Subpart G—Grantee Accountability

§ 30.800 Financial management.

The grantee is responsible for maintaining a financial management system which shall adequately provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with EPA reporting requirements. Accounting for project funds will be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

(b) Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all project funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized projects.

(d) Comparison of actual with budgeted amounts for each grant. If appropriate and required by the grant agreement, relation of financial information with performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury through his commercial bank as close as possible to the time of making the disbursements.

(f) Procedures for determining the allowability and allocability of costs in accordance with the provisions of § 30.705.

(g) Accounting records which are supported by source documentation.

(h) Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with the terms of the grant agreement. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds. Audits should be made in accordance with generally accepted auditing standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. It is not required that each grant awarded a grantee be audited. Generally, examination should be conducted on an organization-wide basis. The grantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size and complexity of the activity. The grantee shall provide EPA with a copy of audits made by the grantee or at his direction.

[43 FR 28484, June 30, 1978]

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 30.805 Records.

The following record and audit policies are applicable to all EPA grants and to all subagreements in excess of $10,000 under grants.

(a) The grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (1) the amount, receipt, and disposition by the grantee of all assistance received for the project, including both Federal assistance and any matching share or cost sharing, and (2) the total costs of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the EPA grant has been awarded. In addition, contractors of grantees, including contractors for professional services, shall also maintain books, documents, papers, and records which are pertinent to a specific EPA grant award. The foregoing constitute "records" for the purposes of this subpart.

(b) The grantee's records and the records of his contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying, and audit by EPA, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(c) The grantee and contractors of grantees shall preserve and make their records available to EPA, the Comptroller General of the United States, Department of Labor, or any authorized representative until expiration of 3 years, except that (1) if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved, (2) records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition, and (3) when records are transferred to or maintained by EPA, the 3-year retention requirement is not applicable to the grantee. The 3-year retention period starts (i) from the date of submission of the final financial status report for project grants, or, for grants which are awarded annually, from the date of the submission of the annual financial status report, (ii) from the date of approval of the final payment request for the last project of a construction grant for WWT works, and (iii) for such longer period, if any, as is required by applicable statute or lawful requirement, or by paragraphs (c)(2) (i) or (ii) of this section.

[43 FR 28484, June 30, 1978]

(i) If a grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

(ii) Records which relate to (a) appeals under the Subpart J—Disputes, of this Part, (b) litigation on the settlement of claims arising out of the performance of the project for which a grant was awarded, or (c) costs and expenses of the project to which exception has been taken by EPA or any of its duly authorized representatives, shall be retained until any appeals, litigation, claims or exceptions have been finally resolved.

§ 30.810 Property.

Except as otherwise prescribed by statute or the grant agreement, §§ 30.810–1 through 30.810–9 prescribe policies and procedures governing management and ownership of real property and tangible personal property whose acquisition cost is borne in whole or in part by EPA as a direct cost under a grant. Grantees are authorized to use their own property management standards and procedures as long as the minimum standards of these sections are included.

§ 30.810–1 Definitions.

The following definitions apply for the purpose of §§ 30.180–1 through 30.810–9.

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

[43 FR 28484, June 30, 1978]

(b) *Real property.* Except as otherwise defined by State law, land or any interest therein including land improvements, structures, fixtures and appurtenances thereto, but excluding movable machinery and equipment.

(c) *Personal property.* Except as otherwise defined by State law, tangible property of any kind except real property.

(d) *Nonexpendable personal property.* Tangible personal property having a useful life of more than 1 year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all nonexpendable personal property as defined herein.

(e) *Expendable personal property.* Expendable personal property refers to all tangible personal property (including consumable materials) other than nonexpendable personal property.

§ 30.810–2 Purchase of property.

Expenditures of project funds for property may be allowed as direct costs only to the extent that such property is necessary for the approved project during the project period. Purchase orders for purchase of personal property are subagreements as defined in this Part.

§ 30.810–3 Property management standards.

The grantee's property management standards for nonexpendable personal property shall include as a minimum the following elements:

(a) Accurately maintained property records which include:

(1) A description of the property,

(2) Manufacturer's serial number, model number, or other identification number,

(3) Source of the property, including contract or grant number,

(4) Whether title vests in the grantee or the Federal Government,

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost,

(6) Location, use, condition of property, and date the information was reported.

[41 FR 56196, December 27, 1976]

(7) Ultimate disposition data, including sales price or the method used to determine current fair market value where a grantee compensates EPA for its share.

8) Unit acquisition cost.

[41 FR 56196, December 27, 1976]

(b) A physical inventory of property that is taken, and the results reconciled with the property records, at least once every 2 years. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(c) A control system which insures adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the grantee shall promptly notify the Project Officer.

(d) Adequate maintenance procedures which insure that the property is maintained in good condition and that instruments used for precision measurement are periodically calibrated.

(e) Proper sales procedures for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) Identification of property owned by the Federal Government to indicate Federal ownership.

§ 30.810–4 Title to property.

Except as may be otherwise provided by law or in this Subchapter or in the grant agreement, title to all real or personal property whose acquisition cost is a direct cost under a grant project shall vest in the grantee, subject to such interest in the United States as may be provided for in this Subchapter or in the grant agreement. For all property with an acquisition cost of $10,000 or more per unit the grantee shall assure that the interest of the United States in the property is adequately reflected and protected in compliance with all recordation or registration requirements of the Uniform Commercial Code or other applicable local laws.

§ 30.810–5 Real property.

(a) The grantee shall use the real property for the purpose of the original grant.

(b) The grantee shall obtain approval from EPA for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by EPA.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the grantee shall request disposition instructions from EPA.

(d) EPA shall observe the following rules in the disposition instructions for real property:

(1) In the case of real property furnished by EPA or purchased wholly with EPA funds, the grantee shall return all such real property to the control of EPA.

(2) In the case of real property purchased in part with EPA funds, the grantee, at the direction of the Project Officer, may:

(i) Retain title with Federal restrictions removed if it compensates the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the current fair market value of the property, or

(ii) Sell the property under guidelines provided by EPA, using proper sales procedures that provide for competition to the extent practicable and result in the highest possible return, and, except as provided in §30.810-5(d)(3), pay the Federal Government an amount computed by applying the Federal percentage of participation in the net cost of the project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds), or

[43 FR 28484, June 30, 1978]

(iii) Transfer title of the property to the Federal Government with its consent provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the net cost of the project to the current fair market value of the property.

(3) In the case of real property purchased in part with EPA funds allotted for purposes set forth in §35.940-3(a), the grantee, at the direction of the Project Officer, may sell the real property under procedures approved by EPA and may retain the amount of the Federal interest, as determined in §30.810-5(d)(2)(ii), to be used solely for paying the eligible costs (in accordance with §35.940) of the upgrading, expansion, replacement, or reconstruction of treatment works associated with the project.

[43 FR 28484, June 30, 1978]

§ 30.810–6 Federally-owned nonexpendable personal property.

(a) Title to federally owned property (property to which the Federal Government retains title) remains vested by law in the Federal Government.

(b) Upon termination of the grant or need for the property, such property shall be reported to EPA for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of EPA review. Under no circumstances shall grantees sell Government-owned property.

§ 30.810–7 Nonexpendable personal property acquired with Federal funds.

(a) *Use.*

(1) When nonexpendable personal property is acquired by a grantee as a direct cost under a grant, the grantee shall retain the property in the grant program for its useful life or as long as there is a need for the property to accomplish the purpose of the grant program, whichever is shorter.

(2) During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government is permissible subject to prior approval by EPA. User charges will be made, if appropriate.

(3) Except as may be provided in the grant agreement, when there is no longer a need for such property for the grant program, the grantee may utilize the property in the following order of priority:

(i) Other grant activities sponsored by EPA,

(ii) Grant activities sponsored by other Federal agencies.

[41 FR 56196, December 27, 1976]

(b) *Disposition.* When the grantee no longer has need for the property in any of its Federal grant programs, property disposition will be as follows:

(1) For all grantees except profit-making organizations, nonexpendable property with an acquisition cost of less than $1,000 may be used for a grantee's own activities without reimbursement to the Federal Government or the grantee may sell the property and retain the proceeds. Profit-making organizations may retain the property provided that EPA is compensated for its proportionate share of the property. Compensation shall be computed by applying the percentage of EPA participation in the cost of the project to the fair market value of the property.

(2) Nonexpendable property with an acquisition cost of $1,000 or more may be retained by the grantee provided that EPA is compensated for its proportionate share of the current market value of the property.

(3) When a grantee does not wish to retain property with an acquisition cost of $1,000 or more, as provided in paragraph (b)(2) of this section, or when a profit-making organization does not wish to retain property as provided in (b)(1) of this section, the grantee shall request disposition instructions from EPA. EPA shall determine whether the property can be used to meet other Agency requirements; if not, EPA shall report the availability of the property to the General Services Administration to determine whether a requirement for the property exists in other Federal agencies.

(4) EPA shall observe the following rules in the disposition instructions for nonexpendable personal property with an acquisition cost of $1,000 or more.

(i) EPA may waive title to the property with all Federal restrictions and conditions removed, if the grantee is a nonprofit institution of higher education or nonprofit research organization, in accordance with the provisions of the Grants Act (Pub. L. 85-934).

(ii) EPA may instruct the grantee to ship the property elsewhere. Compensation will be made to the grantee by the benefiting Federal agency. Compensation shall be computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(iii) EPA may instruct the grantee to otherwise dispose of the property. Compensation will be made to the grantee by EPA. Compensation shall be computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any costs incurred in its disposition.

(iv) EPA shall issue disposition instructions to the grantee within 120 days. If disposition instructions are not received within 120 days after reporting, the grantee shall sell the property and reimburse EPA an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds, less $100 or 10 percent of the proceeds, whichever is greater, for selling and handling expenses.

§ 30.810–8 Expendable personal property acquired with grant funds.

Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value upon termination or at the conclusion of the project period, and the property is not currently needed for any other federally-sponsored project or program, the grantee shall retain the property for use on nonfederally-sponsored activities, or sell it, but must in either case, compensate EPA for its share. The amount of such compensation shall be computed by applying the percentage of Federal participation in the net cost of the project to the current fair market value of the property.

[41 FR 56196, December 27, 1976]

§ 30.810–9 Property reports.

Property reports must be furnished in accordance with § 30.635–5.

§ 30.815 Final settlement.

Upon submission of the final financial status report pursuant to § 30.635–3, there shall be payable to the United States as final settlement the total sum of (a) any unexpended grant funds, (b) any amounts payable for equipment, materials, or supplies, pursuant to § 30.-810, (c) other grant related income, pursuant to § 30.620, and (d) an amount equivalent to that portion of project costs which are unallowable, in proportion to the EPA share and to the extent grant payments therefor have been made. Any settlement made prior to the final audit is subject to adjustment based on the audit. Final settlement will not be considered complete until all audit findings, appeals, litigations, or claims have been resolved. Any debt owed by the grantee to the United States, and not paid at the time of final settlement shall be recovered from the grantee or its successors by setoff or other action as provided by law.

§ 30.820 Audit.

(a) Preaward or interim audits may be performed on grant applications and awards.

(b) A final audit shall be requested by the grant award official after the submission of or the due date of the final financial status report under § 30.635-3. Any settlement made prior to the final audit is subject to adjustment based on the audit. Grantees and subcontractors of grantees shall preserve and make their records available under § 30.805.

[43 FR 28484, June 30, 1978]

Subpart H—Modification, Suspension and Termination

§ 30.900 Project changes and grant modifications.

(a) A grant modification means any written alteration in the grant amount, grant terms or conditions, budget or project period, or other administrative, technical, or financial agreement whether accomplished by unilateral action of the grantee or the Government in accordance with a provision of the grant agreement or this Subchapter, or by mutual action of the parties to the grant.

(b) The grantee must promptly notify the Project Officer in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification, such as:

(1) Rebudgeting (see § 30.610);

(2) Changes in approved technical plans or specifications for the project;

(3) Changes which may affect the approved scope or objective of a project;

(4) Significant changed conditions at the project site;

(5) Acceleration or deceleration in the time for performance of the project. or any major phase thereof;

(6) Changes which may increase or substantially decrease the total cost of a project (see § 30.900–1); or

(7) Changes in the Project Director or other key personnel identified in the grant agreement or a reduction in time or effort devoted to the project on the part of such personnel.

(c) Grant modifications are of four general types: formal grant amendments, administrative grant changes, transfer of grants and change of name agreements, and grantee project changes (see § 30.900–1 through § 30.900–4).

(d) A copy of each document pertaining to grant modifications or requests therefor (any administrative change, approved or disapproved project changes and any letter of approval or disapproval, grant amendment, or agreement for transfer of a grant or change of name agreement) shall be retained in the official EPA grant file.

(e) The document which effects a grant modification shall establish the effective date of the action. If no such date is specified, then the date of execution of the document shall be the effective date for the action.

§ 30.900–1 Formal grant amendments.

(a) Project changes which substantially alter the cost or time of performance of the project or any major phase thereof, which substantially alter the objective or scope of the project, or which substantially reduce the time or effort devoted to the project on the part of key personnel will require a formal grant amendment to increase or decrease the dollar amount, the term, or other principal provisions of a grant. This should not be constructed as to apply to estimated payment schedules under grants for construction of treatment works.

(b) No formal grant amendment may be entered into unless the Project Officer has received timely notification of the proposed project change. However, if the Project Officer determines that circumstances justify such action, he may receive and act upon any request for formal grant amendment submitted (1) prior to final payment under grants for which payments of the Federal share have been made by reimbursement and (2) prior to grant closeout of other grants. Formal grant amendments may be executed subsequently only with respect to matters which are the subject of final audit or dispute appeals.

(c) A formal grant amendment shall be effected only by a written amendment to the grant agreement. Such amendments shall be bilaterally executed by the EPA grant award official and the authorized representative of the grantee. However, in cases where this Subchapter or the grant agreement give the government a unilateral right (for example, the suspension or termination rights set forth in §§ 30.915 and 30.920, the withholding of grant payment pursuant to §30.615-3, or the reduction of the grant amount under §35.556 of this subchapter, any such right may be exercised by the appropriate EPA official (generally, the grant award official) in accordance with this Subchapter.

(d) The grants administration office shall prepare all formal grant amendments after approval of the modification by the Project Officer or Grant Approving Official, as appropriate.

§ 30.900–2 Administrative grant changes.

These changes, such as a change in the designation of the Project Officer, or of the office to which a report is to be transmitted, or a change in the payment schedule for grants for construction of treatment works, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Government or the grantee. Such changes may be issued unilaterally by the EPA grant award official or Project Officer and do not require the concurrence of the grantee. Such changes must be in writing and will generally be effected by a letter (certified mail, return receipt requested) to the grantee.

§ 30.900–3 Transfer of grants; change of name agreements.

Transfers of grants and change of name agreements require the prior written approval of the grant award official. The grant award official may not approve any transfer of a grant without the concurrence of the grant approving official and consultation with the Regional Counsel or the Assistant General Counsel, Grants, nor may he approve any change of name agreement without consultation with the Regional Counsel or the Assistant General Counsel, Grants. The grants administration office shall prepare the necessary documents upon receipt from the Project Officer of appropriate information and documentation submitted by the grantee.

§ 30.900–4 Grantee project changes.

Project changes not covered by §§ 30.900–1 through 30.900–3 shall be considered grantee project changes not requiring formal grant amendments.

(a) Rebudgeting changes may require prior written approval pursuant to § 30.610.

(b) All other grantee project changes shall be considered approved unless the Project Officer notifies the grantee of disapproval, with adequate explanation of the reason therefor, or the necessity for the execution of a grant amendment, in writing (certified mail, return receipt requested) not later than 3 weeks after receipt of notice pursuant to § 30.900(b). No action taken pursuant to this section shall commit or obligate the United States to any increase in the amount of a grant or payments thereunder, but shall not preclude consideration of a request for a formal grant amendment pursuant to § 30.900–1.

§ 30.915 Suspension of grants—stop work orders.

Work on a project or on a portion or phase of a project for which a grant has been awarded may be ordered stopped by the grant award official, except for grants to educational institutions or nonprofit research organizations.

§ 30.915–1 Use of stop-work orders.

Work stoppage may be required for good cause such as default by the grantee, failure to comply with the terms and conditions of the grant, realignment of programs, lack of adequate funding, or advancements in the state of the art. Inasmuch as stop-work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only after concurrence by the grant approving official and the Regional Counsel or the Assistant General Counsel, Grants. Generally, use of a stop-work order will be limited to those situations where it is advisable to suspend work on the project or a portion or phase of the project for important program or agency considerations and a supplemental agreement providing for such suspension is not feasible. Although a stop-work order may be used pending a decision to terminate by mutual agreement or for other cause, it will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

§ 30.915–2 Contents of stop-work orders.

Prior to issuance, stop-work orders should be discussed with the grantee and should be appropriately modified, in the light of such discussions. Stop-work orders should include (a) a clear description of the work to be suspended, (b) instructions as to the issuance of further orders by the grantee for materials or services, (c) guidance as to action to be taken on subagreements, and (d) other suggestions to the grantee for minimizing costs.

§ 30.915–3 Issuance of stop-work order.

After appropriate concurrence in the proposed action has been obtained, the EPA grant award official may, by written order to the grantee (certified mail, return receipt requested), require the grantee to stop all, or any part of the project work for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. The grants administration office shall prepare the stop-work order. Any such order shall be specifically identified as a stop-work order issued pursuant to this section.

§ 30.915–4 Effect of stop-work order.

(a) Upon receipt of a stop-work order, the grantee shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed. EPA shall either:

(1) Cancel the stop-work order, in full or in part,

(2) Terminate the work covered by such order as provided in § 30.920, or

(3) Authorize resumption of work.

(b) If a stop-work order is canceled or the period of the order or any extension thereof expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly, if:

(1) The stop-work order results in an increase in the time required for, or an increase in the grantee's cost properly allocable to the performance of any part of the project, and

(2) The grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage. However, if the Project Officer determines the circumstances justify such action, he may receive and act upon any such claim asserted in accordance with § 30.900–1(b).

(c) If a stop-work order is not canceled and the grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(d) Costs incurred by the grantee or its contractors, subcontractors, or representatives, after a stop-work order is delivered, or within any extension of the stop-work period to which the parties shall have agreed, with respect to the project work suspended by such order or agreement which are not authorized by this Section or specifically authorized in writing by the grant award official, shall not be allowable costs.

§ 30.915–5 Disputes provision.

Failure to agree upon the amount of an equitable adjustment due under a stop-work order shall constitute a dispute (see Subpart J of this part).

§ 30.920 Termination of grants.

A grant may be terminated in whole or in part by the grant award official upon the recommendation of the Project Officer and after concurrence of the grant approving official in the proposed action and consultation with the Regional Counsel or the Assistant General Counsel, Grants.

§ 30.920–1 Termination agreement.

The parties may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this Subchapter. The agreement shall establish the effective date of termination of the project and grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party. The grants administration office will prepare the termination document.

§ 30.920–2 Project termination by grantee.

A grantee may not unilaterally terminate the project work for which a grant has been awarded, except for good cause. The grantee must promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee. If the Project Officer determines, with the concurrence of the EPA grant approving official, that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, the EPA grant award official may enter into a termination agreement or unilaterally terminate the grant pursuant to § 30.920–3, effective with the

date of cessation of the project work by the grantee. If the Project Officer, with the concurrence of the EPA grant approving official, determines that a grantee has ceased work on the project without good cause, the grant award official may unilaterally terminate the grant pursuant to § 30.920–3 or annul the grant pursuant to § 30.920–5.

§ 30.920–3 Grant termination by EPA.

(a) *Notice of intent to terminate.* After concurrence in the issuance of a termination notice has been obtained from the EPA grant approving official and the Regional Counsel or the Assistant General Counsel, Grants, the grant award official shall give not less than ten (10) days written notice to the grantee (certified mail, return receipt requested) of intent to terminate a grant in whole or in part.

(b) *Termination action.* The grantee must be afforded an opportunity for consultation prior to any termination. After the EPA grant approving official and the Regional Council or the Assistant General Counsel, Grants, have been informed of any expressed views of the grantee and concur in the proposed termination, the grant award official may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(c) *Basis for termination.* A grant may be terminated by EPA for good cause subject to negotiation and payment of appropriate termination settlement costs.

(d) *Method of Termination.* The preferred method of grant termination shall be by mutual agreement through a bilaterally executed grant agreement providing for payment of termination costs. However, if such agreement is not feasible, then the grant award official may unilaterally terminate the grant, in whole or in part.

[43 FR 28484, June 30, 1978]

§ 30.920–4 Effect of termination.

Upon termination, the grantee must refund or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion thereof as may be required to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable. The grantee shall not make any new commitments without EPA approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the Project Officer the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conformance with applicable Federal cost principles listed in § 30.710.

§ 30.920–5 Annulment of grant.

(a) The grant award official may unilaterally annul the grant if the Project Officer determines, with the concurrence of the appropriate Assistant Administrator or Regional Administrator and the Regional Counsel or Assistant General Counsel, Grants, that:

(1) There has been no substantial performance of the project work without good cause;

(2) There is convincing evidence the grant was obtained by fraud; or

(3) There is convincing evidence of gross abuse or corrupt practices in the administration of the project.

(4) The grantee has inordinately delayed completion of the project without good cause; or

(5) The grantee has failed to achieve the project purpose (e.g., preparation of a research report) or to utilize the project (e.g., construction) to the extent that the fundamental purpose of the grant is frustrated.

[43 FR 28484, June 30, 1978]

(b) In addition to such remedies as may be available to the United States under Federal, State, or local law, all EPA grant funds previously paid to the grantee shall be returned or credited to the United States, and no further payments shall be made to the grantee.

§ 30.920–6 Disputes provision.

The grantee may appeal a termination or annulment action taken pursuant to this section (see Subpart J of this part).

Subpart I—Deviations

§ 30.1000 General.

The Director, Grants Administration Division, is authorized to approve deviations from substatutory requirements of this Subchapter or grant related requirements of this Chapter when he determines that such deviations are essential to effect necessary grant actions or EPA objectives where special circumstances make such deviations in the best interest of the Government.

§ 30.1000–1 Applicability.

A deviation shall be considered to be any of the following:

(a) when limitations are imposed by this Subchapter or by grant related requirements of this Chapter upon the use of a procedure, form, grant clause, or any other grant action, the imposition of lesser or greater limitations,

(b) when a policy, procedure, method or practice of administering or conducting grant actions is prescribed by this Subchapter or by grant related requirements of this Chapter, any policy, procedure, method, or practice inconsistent therewith,

(c) when a prescribed grant clause is set forth verbatim in this Subchapter, use of a clause covering the same subject matter which varies from, or has the effect of altering, the prescribed clause or changing its application,

(d) when a limitation on award or grant condition is set forth in this Subchapter but not for use verbatim, use of a special condition covering the same subject matter which is inconsistent with the intent, principle, or substance of the limitation or condition, or related coverage of the subject matter,

(e) omission of any mandatory grant provision,

(f) when an EPA or other form is prescribed by this Subchapter, use of any other form for the same purpose, or

(g) alteration of an EPA or other form prescribed in this Subchapter.

§ 30.1000–2 Request for deviation.

A request for a deviation shall be submitted in writing to the Director, Grants Administration Division, as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(a) the name of the applicant or the grantee and the grant identification number of the application or grant affected, and the dollar value,

(b) identification of the section of this Subchapter or the grant related requirements of this Chapter from which a deviation is sought,

(c) an adequate description of the deviation and the circumstances in which it will be used, including any pertinent background information which will contribute to a fuller understanding of the deviation sought, and

(d) a statement as to whether the same or a similar deviation has been requested previously, and if so, circumstances of the previous request.

§ 30.1000–3 Approval of deviation.

Deviations may be approved only by the Director of the Grants Administration Division or his duly authorized representative. A copy of each such written approval shall be retained in the official EPA grant file. Concurrence in the approval of the deviation by the appropriate Assistant Administrator(s) is required prior to its effectiveness, where the deviation would involve more than a unique, special situation, e.g., will affect grantees as a class.

Subpart J—Disputes

§ 30.1100 Final Disputes Decision.

(a) Any dispute arising under a grant, or any preaward dispute authorized by this subchapter (see, for example, §§ 35.236 and 35.960), shall be decided, at the request of the applicant or grantee, by the Grant Approving Official or by the Project Officer (with the concurrence of the Grant Approving Official).

(b) Each final decision must adequately notify the recipient in writing (with proof of delivery) that the decision is a final decision which shall become final and conclusive, unless timely appealed. The following paragraph or alternate language approved by the Office of General Counsel must be utilized as the final paragraph of each final decision letter:

This is a final Disputes decision by me, the Grant Approving Official. Under applicable EPA regulations (see particularly Subpart J or 40 CFR Part 30), this decision will be final and conclusive *unless, within thirty (30) days from the date of receipt* of this decision, a brief written notice of appeal, addressed to the Administrator, Environmental Protection Agency (Attention: Office of General Counsel), is mailed by certified mail (return receipt requested) or otherwise delivered to [insert name and address of either the Grant Approving Official or the Project Officer, as appropriate]. (You will be notified of further procedural requirements applicable to your appeal by a subsequent letter.) Your notice of appeal need only indicate that an appeal is intended, refer to this final decision by date, and briefly state the ultimate reasons why the decision is considered to be erroneous.

(c) An EPA official who receives a notice of appeal from a final decision should preserve the envelope in which the appeal was transmitted and other data evidencing the date of mailing of the notice of appeal (or the date of receipt, if the notice was otherwise delivered) and should promptly forward such information and the original of the notice of appeal to the Office of the General Counsel.

[43 FR 28484, June 30, 1978]

§ 30.1105 Grantee appeal.

A decision of the Project Officer made pursuant to § 30.1100 shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the grantee mails (certified mail, return receipt requested) or otherwise delivers to EPA (generally, to the Project Officer) a written appeal addressed to the Administrator.

§ 30.1115 Rights of the grantee and the Government.

In connection with an appeal proceeding pursuant to § 30.1110 the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record.

§ 30.1120 Decision of the Administrator.

The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

§ 30.1125 Questions of law.

Any question of law may be considered in connection with decisions provided for by this Subpart. Nothing in the grant agreement or related regulations, however, shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

§ 30.1130 Delegation of authority.

The General Counsel is authorized to appoint hearing examiners to hear and decide grant appeals from final dispute determinations under this subpart.

[43 FR 28484, June 30, 1978]

§ 30.1150 Appeal procedures.

The procedures for grant appeals under this subpart shall be those designated by the General Counsel. A copy of such procedures may be obtained from the Office of General Counsel.

[43 FR 28484, June 30, 1978]

APPENDIX A—GENERAL GRANT CONDITIONS

a. General Conditions. The grantee covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this grant, in accordance with the applicable grant provisions of 40 CFR Subchapter B. The grantee warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with 40 CFR Subchapter B, the following General Conditions, the applicable supplemental conditions of 40 CFR Subchapter B, as amended, and any Special Conditions set forth in this grant agreement or any grant amendment.

1. *Access.* The grantee agrees that it will provide access to the facilities, premises and records related to the project as provided in §§ 30.605 and 30.805 of 40 CFR Subchapter B.

2. *Audit and records.* The grantee agrees that it will maintain an adequate system for financial management, property management and grantee audit in accordance with §§ 30.800 and 30.810-3, and that it will maintain, preserve and make available to the Government all project records for the purpose of inspection, interim and final audit, and copying as required by §§ 30.605 30.805, and 30.820 of 40 CFR Subchapter B.

3. *Reports.* The grantee agrees to timely file with EPA such reports as are specifically required by the grant agreement or pursuant to 40 CFR Subchapter B, including progress reports (§ 30.635-1), financial reports (§ 30.635-3), invention reports (§ 30.635-4), property reports (§ 30.635-5), relocation and acquisition reports (§ 30.635-6) and a final report (§ 30.635-2), and that failure to timely file a report may cause EPA to invoke the remedies provided in 40 CFR 30.430.

4. *Project changes; Grant modifications.* The grantee agrees that notification of project changes will be given pursuant to 40 CFR 30.900(b) and that all grant modifications will be effected in accordance with 40 CFR 30.900 through 30.900-4.

5. *Requirements pertaining to federally assisted construction.* The grantee agrees that it will comply, and that its contractors, subcontractors, employees and representatives will comply, with the requirements pertaining to federally assisted construction identified in 40 CFR 30.415.

6. *Suspension.* (a) The grantee agrees that the grant award official may, at any time, require the grantee to stop all, or any part, of the work within the scope of the project for which EPA grant assistance was awarded, by a written stop-work order, for a period of not more than forty-five (45) days after the order is delivered to the grantee, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this clause. Upon receipt of such an order, the grantee agrees to forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. This suspension article shall not be applicable to educational institutions or nonprofit research organizations.

(b) The grantee agrees that, within any such suspension period, EPA may either (1) cancel the stop-work order, in full or in part; or (2) initiate action to terminate the grant, in part or in full, as provided in Article 7, below; or (3) authorize resumption of work.

(c) If a stop-work order is canceled or if the suspension period or any extension thereof expires, the grantee agrees to promptly resume the previously suspended project work.

(d) An equitable adjustment shall be made in the project period, budget period, or the grant amount, or all of these as appropriate, if:

(1) the stop-work order results in an increase in the time required for, or in the grantee's costs properly allocable to, the performance of any part of the project, and

(2) the grantee asserts a written claim for such adjustment within sixty (60) days after the end of the period of work stoppage, *provided*, That if the Project Officer determines that the circumstances justify such action (for example, if the impact of cost or time factors resulting from a stop-work order could not have been ascertained prior to written submission of the claim), he may receive and act upon any such claim asserted at any time prior to final payment under this grant.

(e) If a stop-work order is not canceled and grant-related project work covered by such order is within the scope of a subsequently-issued termination order, the reasonable costs resulting from the stop-work order shall be allowed in arriving at the termination settlement.

(f) The grantee agrees that costs incurred by the grantee or its contractors, subcontractors or representatives, after a stop-work order is delivered, or within any extension of the suspension period to which the parties may have agreed, with respect to the project work suspended by such order or agreement, which are not authorized by this article or specifically authorized in writing by the Project Officer shall not be allowable costs.

7. *Termination; Annulment*—(a) *Grant Termination by EPA.* The grantee agrees that the grant award official may, at any time, after written notice and after opportunity for consultation has been afforded to the grantee, terminate the grant, in whole or in part, through a written termination notice specifying the effective date of the termination action.

(1) A grant may be terminated by EPA for good cause, subject to negotiation and payment of termination settlement costs.

(2) The grantee agrees that, upon such termination, it will return or credit to the United States that portion of grant funds paid or owed to the grantee and allocable to the terminated project work, except such portion as may be required by the grantee to meet commitments which had become firm prior to the effective date of termination and are otherwise allowable.

(3) Whenever feasible, the grant award official and the grantee shall enter into a termination agreement as soon as possible after any such termination action to establish the basis for settlement of grant termination costs and the amount and date of payment of any sums due to either party.

(b) *Project termination by grantee.* The grantee agrees that it will not unilaterally terminate work on the project for which EPA grant assistance has been awarded, except for good cause. The grantee further agrees:

(1) that it will promptly give written notice to the Project Officer of any complete or partial termination of the project work by the grantee, and

(2) that, if the Project Officer determines that the grantee has terminated the project work without good cause, the grant award official may annul the grant and all EPA grant funds previously paid or owing to the grantee shall be promptly returned or credited to the United States.

Upon request of the grantee, and if the Project Officer determines that there is good cause for the termination of all or any portion of the project work for which EPA grant assistance has been awarded, the grant award official and the grantee may enter into a written termination agreement establishing the effective date of the grant and project termination, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due to either party.

(c) *Annulment.* The grantee agrees that the grant may be annuled pursuant to 40 CFR 30.920-5.

8. *Disputes.* (a) Except as otherwise provided by law or regulations, any dispute arising under this grant agreement shall be decided by the grant approving official or the Project Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the grantee. Such a decision shall be final and conclusive unless, within thirty (30) days from the date of receipt, the grantee mails or otherwise delivers to EPA (generally to the Project Officer) a written appeal addressed to the Administrator.

(b) The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence.

(c) In connection with an appeal proceeding under this article, the grantee shall be afforded an opportunity to be heard, to be represented by legal counsel, to offer evidence and testimony in support of any appeal, and to cross-examine Government witnesses and to examine documentation or exhibits offered in evidence by the Government or admitted to the appeal record (subject to the Government's right to offer its own evidence and testimony, to cross-examine the appellant's witnesses, and to examine documentation or exhibits offered in evidence by the appellant or admitted to the appeal record). The appeal shall be determined solely upon the appeal record, in accordance with the applicable provisions of Subpart J of Part 30 of Title 40 CFR.

(d) This "Disputes" article shall not preclude consideration of any question of law in connection with decisions provided for by this article; provided, that nothing in this grant or related regulations shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

(9) *Patents; rights in data,* copyright. (a) Every EPA grant involving research, developmental, experimental, or demonstration work shall be subject to the patent provisions of Appendix B to 40 CFR Part 30.

(b) Every EPA grant shall be subject to the rights in data, and copyright provisions of Appendix C to 40 CFR Part 30.

10. *Notice and assistance regarding patent and copyright infringement.* (a) The grantee agrees to report to the Project Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee agrees to furnish to the Government, when requested by the Project Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

Note: EPA Form 5700-20, Grant Agreement/Amendment was filed as part of the original document.

Appendix B—Patents and Inventions

A. *Definitions.* (1) "Background Patent" means a foreign or domestic patent (regardless of its date of issue relative to the date of the EPA grant):

(i) Which the grantee, but not the Government, has the right to license to others, and

(ii) Infringement of which cannot be avoided upon the practice of a Subject Invention or Specified Work Object.

(2) "Commercial Item" means—

(i) Any machine, manufacture, or composition of matter which, at the time of a request for a license pursuant to Part D of this Appendix, has been sold, offered for sale or otherwise made available commercially to the public in the regular course of business, at terms reasonable in the circumstances, and

(ii) Any process which, at the time of a request for a license, is in commercial use, or is offered for commercial use, so the results of the process or the products produced thereby are or will be accessible to the public at terms reasonable in the circumstances.

(3) "Specified Work Object" means the specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is the subject of the experimental, developmental, research or demonstration work performed under this grant.

(4) "Grantee" is the party which has accepted this grant award and includes entities controlled by the grantee. The term "controlled" means the direct or indirect ownership of more than 50 percent of outstanding stock entitled to vote for the election of directors, or a directing influence over such stock; provided, however, that foreign entities not wholly owned by the grantee shall not be considered as "controlled."

(5) "Subagreement" includes subagreements at any tier under this grant.

(6) "Domestic" and "foreign" refer, respectively, (i) to the United States of America, including its territories and possessions, Puerto Rico and the District of Columbia and (ii) to countries other than the United States of America.

(7) "Government" means the Federal Government of the United States of America.

(8) "Subject Invention" means any invention, discovery, improvement or development (whether or not patentable) made in the course of or under this grant or any subagreement (at any tier) thereunder.

(9) "Made," when used in connection with any invention, means the conception or first actual reduction to practice of such invention.

(10) To "practice an invention or patent" means the right of a licensee on his own behalf to make, have made, use or have used,

sell or have sold, or otherwise dispose of according to law, any machine, design, manufacture, or composition of matter physically embodying the invention, or to use or have used the process or method comprising the invention.

(11) The phrase "to bring to the point of practical application" means to manufacture in the case of composition or product, to use in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(12) "Statement" means the President's Patent Policy Statement of August 23, 1971, 36 F.R. 16889, August 26, 1971.

B. *Domestic patent rights in Subject Inventions.* (1) The grantee agrees that he will promptly disclose to the Project Officer in writing each Subject Invention in a manner sufficiently complete as to technical details to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation and, as the case may be, the physical, chemical, biological, or electrical characteristics of the invention. However, if any Subject Invention is obviously unpatentable under the patent laws of the United States, such disclosure need not be made thereon. On request of the Project Officer, the grantee shall comment respecting the differences or similarities between the invention and the closest prior art drawn to his attention.

(2) Except in the instance of a determination, pursuant to paragraph (3) of this Section, by the Administrator to leave to the grantee rights greater than a nonexclusive license, the grantee agrees to grant and does hereby grant to the Government the full and entire domestic right, title, and interest in the Subject Invention, subject to retention by the grantee of a revocable, nonexclusive, royalty-free license to practice the Subject Invention. Any such license granted shall extend to any existing and future companies controlled by, controlling or under common control with the grantee and shall be assignable to the successor of the part of the grantee's business to which such invention pertains. Said license to the grantee may be revoked by the Administrator or his designee if it is determined that it is necessary to issue an exclusive license, pursuant to then applicable Government regulations, in order to more expeditiously bring the invention to commercialization; provided, however, that the grantee shall be provided the opportunity to present to the Administrator reasons why said license should not be revoked.

(3) Not later than three (3) months after the disclosure of a Subject Invention pursuant to paragraph (1) of this Section, and without regard to whether the invention is a primary object of this grant, the grantee may submit a request in writing to the Project Officer for a determination by the Administrator leaving the grantee greater rights than that reserved to the grantee in paragraph (2) of this Section. Such request should set forth information and facts which in the grantee's opinion, should justify a determination that:

(i) In the case of a Subject Invention which is clearly a primary object of this grant, the acquisition of such greater rights by the grantee is both consistent with the intent of Section 1(a) of the Statement and is either a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application or is justified because the Government's contribution to such invention is small compared to that of the grantee; or that

(ii) The Subject Invention is not a primary object of this grant, and that the acquisition of such greater rights will serve the public interest as expressed in the Statement, particularly when taking into account the scope and nature of the grantee's stated intentions to bring the invention to the point of practical application and the guidelines of Section 1(a) of the Statement. The Administrator will review the grantee's request for greater rights and will make a determination, either granting the request in whole or in part, or denying the request in its entirety. The grantee will be notified of such determination.

(4) In the event greater rights in any Subject Invention are vested in or granted to the grantee pursuant to paragraph (3) of this Section:

(i) The grantee's rights in such inventions shall, as a minimum, be subject to a nonexclusive, nontransferable, paid-up license to the Government to practice the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Administrator determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments; and said license shall include the right to sublicense any foreign government pursuant to any existing or future treaty or agreement if the Administrator determines it would be in the national interest to acquire this right; and

(ii) The grantee further agrees to and does hereby grant to the Government the right to require the granting of a license to a responsible applicant(s) under any such invention:

(a) On a nonexclusive or exclusive basis on terms that are reasonable under the circumstances, unless the grantee, its licensees or its assignees demonstrate to the Government, at the Government's request, that effective steps have been taken within three (3) years after a patent was issued on any such invention to bring it to the point of practical application, or that it has been made available for licensing royalty-free or in terms that are reasonable in the circumstances, or can show cause why the time period should be extended, or

(b) On a nonexclusive or exclusive basis on terms that are reasonable in the circumstances to the extent that the invention is required for public use by Governmental regulations or as may be necessary to fulfill health or safety needs or for such other public purposes as are stipulated in this grant, and

(iii) The grantee shall file in due form and within six (6) months of the granting of such greater rights a U.S. patent application claiming the Subject Invention and shall furnish, as soon as practicable, the information and materials required under paragraph (2) of Section F. As to each Subject Invention in which the grantee has been given greater rights, the grantee shall notify the Project Officer at the end of six (6) months period if he has failed to file or caused to be filed a patent application covering such invention. If the grantee has filed or caused to be filed such an application within a six (6) month period but elects not to continue prosecution of such application, he shall so notify the Project Officer, and EPA Patent Counsel not less than forty-five (45) days before the expiration of the response period. In either of the situations covered by the two immediately preceding sentences, the Government shall be entitled to all right, title, and interest in such Subject Invention subject to the reservation to the grantee of a revocable royalty-free, nonexclusive license therein

(iv) The grantee shall, if requested by the Government, either before or after final closeout of this grant, furnish written reports at reasonable intervals, as to:

(a) The commercial use that is being made or is intended to be made of such invention;

(b) The steps taken by the grantee to bring such invention to the point of practical application, or to make the invention available for licensing

(5) Even in the event the Government elects to take the full and entire domestic title and interest in a Subject Invention, the Project Officer may request, prior to grant closeout, that the grantee prepare a domestic patent application for filing in the United States Patent Office on such invention and deliver it to the Project Officer for filing by EPA. Reasonable costs incurred for the preparation of such application or any revision thereof requested by EPA shall be allowable project costs.

C. *Foreign rights and obligations.* (1) Subject to the waiver provisions of paragraph (2) of this section, it is agreed that the entire foreign right, title, and interest in any Subject Invention shall be in the Government, as represented for this purpose by the Administrator. The Government agrees to grant and does hereby grant to the grantee a royalty-free nonexclusive license to practice the invention under any patent obtained on such Subject Invention in any foreign country The license shall extend to existing and any future companies controlled by, controlling or under common control with the grantee, and shall be assignable to the successor of the part of the grantee's business to which such invention pertains.

(2) The grantee may request the foreign rights to a Subject Invention at any time subsequent to the reporting of such invention. The response to such request and notification thereof to the grantee will not be unreasonably delayed The Government will waive title to the grantee to such Subject Invention in foreign countries in which the Government will not file an application for a patent for such invention, or otherwise secure protection therefor Whenever the grantee is authorized to file in any foreign country the Government will not thereafter proceed with filing in such country except on the written agreement of the grantee, unless such authorization has been revoked pursuant to paragraph (3) of this Section.

(3) In the event the grantee is authorized to file a foreign patent application on a Subject Invention, the Government agrees that it will use its best efforts not to publish a description of such invention until a United States or foreign application on such invention is filed, whichever is earlier, but neither the Government, its officers, agents, or employees shall be liable for an inadvertent publication thereof. If the grantee is au-

thorized to file in any foreign country, he shall, on request of the Project Officer, furnish to the Government a patent specification in English within six (6) months after such authorization is granted, prior to any foreign filing and without additional compensation. The Project Officer, after concurrence by the EPA Patent Counsel, may revoke such authorization on failure on the part of the grantee to file any such foreign application within nine (9) months after such authorization has been granted.

(4) If the grantee files patent applications in foreign countries pursuant to authorization granted under paragraph (2) of this section, the grantee agrees to grant to the Government an irrevocable, nonexclusive, paid-up license to practice by or on its behalf the invention under any patents which may issue thereon in any foreign country. Such license shall include the right to issue sublicenses pursuant to any existing or future treaties or agreements between the Government and a foreign government for uses of such foreign government, provided the Administrator determines that it is in the national interest to acquire such right to sublicense.

(5) In the event the Government or the grantee elects not to continue prosecuting any foreign application or to maintain any foreign patent on a Subject Invention, the other party shall be notified no less than sixty (60) days before the expiration of the response period or maintenance tax due date, and upon written request, shall execute such instruments (prepared by the party wishing to continue the prosecution or to maintain such patent) as are necessary to enable such party to carry out its wishes in this regard.

D. *Licenses under background patents.* (1) The grantee agrees that he will make his Background Patent(s) available for use in conjunction with a Subject Invention or Specified Work Object for use in the specific field of technology in which the purpose of this grant or the work called for or required thereunder falls. This may be done (i) by making available, in quality, quantity, and price all of which are reasonable to the circumstances, an embodiment of the Subject Invention or Specified Work Object, which incorporates the invention covered by such Background Patent, as a Commercial Item, or (ii) by the sale of an embodiment of such Background Patent as a Commercial Item in a form which can be employed in the practice of a Subject Invention or Specified Work Object or can be so employed with relatively minor modifications, or (iii) by the licensing of the domestic Background Patent(s) at reasonable royalty to responsible applicants on their request.

(2) If the Administrator determines after a hearing that the quality, quantity, or price of embodiments of the Subject Invention or Specified Work Object sold or otherwise made available commercially as set forth in (D)(1)(i) is unreasonable in the circumstances, he may require the grantee to license such domestic Background Patent to a responsible applicant at reasonable terms, including a reasonable royalty, for use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and for use in connection with (i) a Specified Work Object, or (ii) a Subject Invention.

(3)(i) When a license to practice a domestic Background Patent in conjunction with a Subject Invention or Specified Work Object is requested in writing by a responsible applicant, for use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and such Background Patent is not available as set forth in D(1) (i) or (ii), the grantee shall have six (6) months from the date of his receipt of such request to decide whether to make such Background Patent so available. The grantee shall promptly notify EPA in writing of any request for a license to practice a Background Patent in conjunction with a Subject Invention or Specified Work Object, which the grantee or his exclusive licensee wish to attempt to make available as set forth in D(1) (i) or (ii).

(ii) If the grantee decides to make such domestic Background Patent so available either by himself or by an exclusive licensee, he shall so notify the Administrator within the said six (6) months, whereupon the Administrator shall then designate the reasonable time within which the grantee must make such Background Patent available in reasonable quantity and quality, and at a reasonable price. If the grantee or his exclusive licensee decides not to make such Background Patent so available, or fails to make it available within the time designated by the Administrator, the Background Patent shall be licensed to a responsible applicant at reasonable terms, including a reasonable royalty, in conjunction with (a) a Specified Work Object, or (b) a Subject Invention, and may be limited to the specific field of technology in which the purpose of this grant or the work called for thereunder falls.

(iii) The grantee agrees to grant or have granted to a designated applicant, upon the written request of the Government, a nonexclusive license at reasonable terms, including reasonable royalties, under any foreign Background Patent in furtherance of any treaty or agreement between the Government of the United States and a foreign government for practice by or on the behalf of such foreign government, if an embodiment of the Background Patent is not commercially available in that country; provided, however, that no such license will be required unless the Administrator determines that issuance of such license is in the national interest. Such license may be limited by the licensor to the practice of such Background Patent in conjunction with a Subject Invention or a Specified Work Object and for use in only the specific field of technology in which the purpose of this grant or the work called for thereunder falls

(iv) The grantee agrees it will not seek injunctive relief or other prohibition of the use of the invention in enforcing its rights against any responsible applicant for such license and that it will not join with others in any such action. It is understood and agreed that the foregoing shall not affect the grantee's right to injunctive relief or other prohibition of the use of Background Patents in areas not connected with the practice of a Subject Invention or Specified Work Object in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, or where the grantee has made available a Commercial Item as set out in paragraph D(1) (i) or (ii)

(4) For use in the specific field of technology in which the purpose of this grant or the work called for thereunder falls, and in conjunction with a Subject Invention or a Specified Work Object, the grantee agrees to grant to the Government a license under any Background Patent. Such license shall be nonexclusive, nontransferable, royalty-free and worldwide to practice such patent which is not available as a Commercial Item as specified in Paragraph D(1)(ii) for use of the Federal Government in connection with pilot plants, demonstration plants, test beds, and test modules. For all other Government uses, any royalty charged the Government under such license shall be reasonable and shall give due credit and allowance for the Government's contribution, if any, toward the making, commercial development, or enhancement of the invention(s) covered by the Background Patent.

(5) Any license granted under a process Background Patent for use with a specified Work Object shall be additionally limited to employment of the Background Patent under conditions and parameters reasonably equivalent to those called for or employed under this grant.

(6) It is understood and agreed that the grantee's obligation to grant licenses under Background Patents shall be limited to the extent of the grantee's right to grant the same without breaching any unexpired contract it had entered into prior to this grant or prior to the identification of a Background Patent, or without incurring any obligation to another solely on account of said grant. However, where such obligation is the payment of royalties or other compensation, the grantee's obligation to license his Background Patents shall continue and the reasonable license terms shall include such payments by the applicant as will at least fully compensate the grantee under said obligation to another.

(7) On the request of the Project Officer, the grantee shall identify and describe any license agreement which would limit his right to grant licenses under any Background Patent.

(8) In the event the grantee has a parent or an affiliated company, which has the right to license a patent which would be a Background Patent if owned by the grantee, but which is not available as a Commercial Item as specified in paragraph D(1) (i) or (ii), and a qualified applicant requests a license under such patent for use in the specific field of technology in which the purpose of this contract or the work called for thereunder falls, and in connection with the use of a Subject Invention or Specified Work Object, the grantee shall, at the written request of the Government, recommend to his parent company, or affiliated company, as the case may be, the granting of the requested license on reasonable terms, including reasonable royalties, and actively assist and participate with the Government and such applicant, as to technical matters and in liaison functions between the parties, as may reasonably be required in connection with any negotiations for issuance of such license. For the purpose of this subparagraph, (i) a parent company is one which owns or controls, through direct or indirect ownership of more than 50 percent of the outstanding stock entitled to vote for the election of directors, another company or other entity, and (ii) affiliated companies are companies or other entities owned or controlled by the same parent company.

E. *Related inventions* At the request of the Project Officer made during or subsequent to the term of this grant including any extensions for additional research and development work, the grantee shall furnish information concerning any invention which appears to the Project Officer to reasonably have the possibility of being a Subject Invention.

All information supplied by the grantee hereunder shall be of such nature and character as to enable the Project Officer, with the concurrence of the EPA Patent Counsel, reasonably to ascertain whether or not the invention concerned is a Subject Invention. Failure to furnish such information called for herein shall, in any subsequent proceeding, place on the grantee the burden of going forward with the evidence to establish that such invention is not a Subject Invention. If such evidence is not then presented, the invention shall be deemed to be a Subject Invention. After receipt of information furnished pursuant hereto, the Project Officer shall not unduly delay rendering his opinion on the matter. The Project Officer's decision shall be subject to the Disputes Clause of the grant. The grantee may furnish the information required under this Section E as grantee confidential information, which shall be identified as such.

F. *General provisions.* (1) The grantee shall obtain the execution of and deliver to the Project Officer any document, including domestic patent applications (see B(5) hereof), relating to Subject Inventions as the Project Officer may require under the terms hereof to enable the Government to file and prosecute patent applications therefor in any country and to evidence and preserve its rights. Each party hereto agrees to execute and deliver to the other party on its request suitable documents to evidence and preserve license rights derived from this Appendix

(2) The Government and the grantee shall promptly notify each other of the filing of a patent application on a Subject Invention in any country, identifying the country or countries in which such filing occurs and the date and serial number of the application, and on request shall furnish a copy of such application to the other party and a copy of any action on such patent application by any Patent Office and the responses thereto. Any applications or responses furnished shall be kept confidential, unless the Government has title to the invention.

(3) Any other provisions of this Appendix notwithstanding, the Project Officer, or any authorized EPA representative shall, until the expiration of three (3) years after submission of the final financial status report under this grant, have the right to examine in confidence any books, records, documents, and other supporting data of the grantee which the Project Officer or any authorized EPA representative shall reasonably deem directly pertinent to the discovery or identification of Subject Inventions or to the compliance by the grantee with the requirements of this Appendix.

(4) Notwithstanding the grant of a license under any patents to the Government pursuant to any provisions of this Appendix, the Government shall not be prevented from contesting the validity, enforceability, scope, or title of such licensed patent.

(5) The grantee shall furnish to the Project Officer every 12 months, or earlier as may be agreed in this grant (the initial period shall commence with the date of award of this grant) an interim report listing all Subject Inventions required to be disclosed which were made during the interim reporting period or certify that there are no such unreported inventions.

(6) The grantee shall submit a final report under this grant listing all Subject Inventions required to be disclosed which were made in the course of the work performed under this grant, and all subagreements subject to this Appendix. If to the best of the grantee's knowledge and belief, no Subject Inventions have resulted from this grant the grantee shall so certify to the Project Officer. If there are no such subagreements, a negative report is required.

(7) The interim and final reports submitted under F (5) and (6) and Subject Invention disclosures required under B(1) shall be submitted on EPA forms which will be furnished by the Project Officer on request 'Any equivalent form approved by the Project Officer with the concurrence of the EPA Patent Counsel may be used in lieu of EPA forms Such reports and disclosures shall be submitted in triplicate.

(8) Any action required by or of the Government under this patent provision shall be undertaken by the Project Officer or other authorized EPA official as its duly authorized representative unless otherwise stated.

(9) The Government may duplicate and disclose reports and disclosures of Subject Inventions required to be furnished by the grantee pursuant to this Appendix without additional compensation.

(10) The grantees shall furnish to the Project Officer, in writing, and as soon as practicable, information as to the date and identity of any first public use, sale or publication of any Subject Invention made by or known to the grantee, or of any contemplated publication of the grantee.

(11) The Administrator shall determine the responsibility of an applicant for a license under any provision of this patent provision when this matter is in dispute and his determination thereof shall be final and binding.

(12) The grantee shall furnish promptly to the Project Officer or other authorized EPA official on request an irrevocable power to inspect and make copies of each U.S. patent application filed by or on behalf of the grantee covering any Subject Invention.

(13) The grantee shall include in the first paragraph in any U.S. patent application which it may file on a Subject Invention the following statement:

This invention resulted from work done under Grant No. ____ with the Environmental Protection Agency and is subject to the terms and provisions of said Grant.

(14) All information furnished in confidence pursuant to this Appendix shall be clearly identified by an appropriate written legend. Such information shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and shall in any event cease to be confidential if it is or becomes generally available to the public, or has been made or becomes available to the Government (i) from other sources, or (ii) by the grantee without limitation as to use, or was already known to the Government when furnished to it.

(15) Any action by the Project Officer affecting the disposition of rights to patents or inventions pursuant to this Appendix shall be taken only after review by the Office of General Counsel.

G. *Warranties.* (1) The grantee warrants that whenever he has divested himself of the right to license any Background Patent (or any invention owned by the grantee which could become the subject of a Background Patent) prior to the date of this grant, such divestment was not done to avoid the licensing requirements set forth in Section D of this Appendix. After a Background Patent, or invention which could become the subject of a Background Patent, is identified, the grantee shall take no action which shall impair the performance of his obligation to issue Background Patent licenses pursuant to this grant.

(2) The grantee warrants that he will take no action which will impair his obligation to assign to the Government any invention first actually conceived or reduced to practice in the course of or under this grant

(3) The grantee warrants that he has full authority to make obligations of this Appendix effective by reason of agreements with all of the personnel, including consultants who might reasonably be expected to make inventions, and who will be employed in work on the project for which the grant has been awarded, to assign to the grantee all discoveries and inventions made within the scope of their employment

H. *Subagreements* This Appendix shall be included in any subagreement over $10,000 under this grant where a purpose of the subagreement is the conduct of experimental developmental, research, or demonstration work, unless the Grant Approving Official with the concurrence of the EPA Patent Counsel, authorizes the omission or modification of this Appendix The grantee shall not acquire any rights to Subject Inventions made under such subagreement for his own use (as distinguished from such rights as may be required solely to fulfil his grant obligations to the Government in performance of this grant). Upon completion of work under such a subagreement, the grantee shall promptly notify the Project Officer in writing of such completion, and shall upon request furnish a copy of the subagreement to the Project Officer. The grantee hereby assigns to the Government all rights of the grantee to enforce the obligations of the party to such subagreement with respect to Subject Inventions, Background Patents, and pursuant to Section E of this Appendix The grantee shall cooperate with the Government at the Government's request and expense in any legal action to secure the Government's rights.

Appendix C—Rights in Data and Copyrights

1. The term "Subject Data" as used herein includes writings, technical reports, sound recordings, magnetic recordings, computer programs, computerized data bases, pictorial reproductions, plans, drawings, specifications, or other graphical representations, and works of any similar nature (whether or not copyrighted) which are submitted with a proposal or grant application or which are specified to be delivered under this grant or which are developed or produced and paid for under this grant. The term does not include financial reports, cost analyses, and other information incidental to grant administration.

2 Except as may otherwise be provided in the grant agreement, when publications,

films, or similar materials are developed directly or indirectly from a project supported by the Environmental Protection Agency, the author is free to arrange for copyright without approval. However, such materials shall include acknowledgement of EPA grant assistance. The grantee agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data, or copyrightable material based on such data, now or hereafter covered by copyright

3 The grantee shall not include in the Subject Data any copyrighted matter, without the written approval of the Project Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in Article 2 above

4 The grantee shall report to the Project Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the grantee with respect to all Subject Data delivered under this grant

5 Nothing contained in this Appendix shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent

6. Unless otherwise limited below, the Government may, without additional compensation to the grantee, duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data

7. Notwithstanding any provisions of this grant concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate, or ignore any marking not authorized by the terms of this grant on any piece of Subject Data furnished under this grant.

8. Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed or investigated, if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items or processes which were developed at private expense and previously sold or offered for sale or commercially practiced in the case of a process, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed or investigated, if in lieu thereof the grantee shall identify such other item or processes and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a grantee's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the grantee has protected such information from unrestricted use by others.

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PART III

ENVIRONMENTAL PROTECTION AGENCY

■

WATER POLLUTION CONTROL

Construction Grants for Waste Treatment Works

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Final Construction Grant Regulations

Title II of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 33 U.S.C. 1251 et seq.) authorizes the award of construction grants for waste treatment works. The award of these grants creates a contractual obligation of the United States for payment of the Federal share of the construction costs of such projects.

Interim regulations were published in the FEDERAL REGISTER for this program on February 28, 1973 (38 FR 5329). Written comments received from interested parties are on file with the Environmental Protection Agency. The agency has carefully considered all comments submitted by the public, as well as comments made by EPA and State Agency personnel on the basis of their experience under the interim construction grant regulations. A number of these comments have been adopted or substantially satisfied by editorial changes in, deletions from, or additions to this subpart. An effort has been made to conform the procedures and requirements of the new grant system to the construction grants program established under section 8 of the prior Federal Water Pollution Control Act, as well as to ensure that new statutory requirements will be met.

Major changes in this subpart are the following:

(1) The three-step grant process has been clarified to reflect that a basic grant application is submitted for the initial award of grant assistance, and that subsequent related projects will be funded through amendment of this grant. In addition, in accordance with section 2 of Pub. L. 93-243, enacted December 28, 1973, the requirement that a Step 3 project had to result in an "operable" treatment works has been deleted. A project may be awarded for any "segment" of treatment works construction as that term is defined in new § 35.905-24, which provides that a segment may consist of any portion of the treatment works construction associated with a discrete contract or subcontract to be awarded for Step 1, 2, or 3 project work.

(2) Section 35.915 has been revised and expanded to explain more clearly EPA requirements under applicable statutory provisions for State priority systems and the interrelationship between this subpart and regulations which have been issued under section 106 and 303(e) of the Act. Each State will develop and submit a single project priority list which will remain in effect until a new list is approved as a part of the annual section 106 State program submission; once priority has been established for a project, the project will retain this priority until funded, unless the State otherwise provides through its priority system. Two new provisions have also been added. Section 35.915(g) requires that each State reserve not less than 5 percent of fiscal year 1975 and subsequent State allotments of contract authority in order to adequately provide for cost overruns which are being experienced under the construction grant program. Section 35.915(i) permits (but does not require) the State to establish a separate reserve for grant assistance for Step 1 and Step 2 projects whose selection for funding will be determined by the State agency subsequent to approval of the project list, since experience has demonstrated that States require more flexibility than is permitted by an annual priority determination.

(3) Facilities planning requirements are set forth in new §§ 35.917 through 35.917-9. In order to permit a transition into these new requirements, full compliance with substatutory requirements will not be required except with respect to Step 1 work which is initiated after April 30, 1974. After October 31, 1974, a "plan of study" must be approved prior to the initiation of Step 1 work. These new procedures are designed to assure better accomplishment of the objectives of the new Federal Water Pollution Control Act and collateral statutory requirements (such as the National Environmental Policy Act of 1969). These statutory requirements must be addressed by the applicant during the facilities planning process.

(4) New procedures have been established in revised § 35.927-5 to assure that the infiltration/inflow requirements derived from section 201(g) (3) and (4) of the 1972 FWPCA Amendments are met without unnecessary documentation and expense.

(5) New provisions in §§ 35.925-18 and 35.905-4 delineate the Agency's position with respect to the initiation of project construction prior to the award of grant assistance for Steps 1, 2, or 3. Section 206 of the FWPCA Amendments of 1972 clearly precludes the type of reimbursement previously authorized under section 8 of the former FWPCA with respect to projects (as defined under the program authorized by the prior statute) on which construction was initiated after June 30, 1972. Due to the institution of the three-step grant process under the new FWPCA, it has become necessary to address the issue of reimbursement with respect to "initiation of construction" (as defined in 35.905-4) for Steps 1 and 2. For this reason, and to permit better program management by EPA and State agencies, and to permit better accomplishment of statutory objectives, procedures are set forth in § 35.925-18 which will phase out the possibility of a reimbursement claim. Eligible Step 1 or Step 2 project work initiated prior to November 1, 1974, will be fully reimbursed in conjunction with the next award of grant assistance, if reimbursement is requested (see § 35.945(a)). Prior approval will be required with respect to Step 1 and Step 2 work which is initiated after October 31, 1974. Step 1 or Step 2 work initiated after June 30, 1975, must be preceded by award of grant assistance or, in the case of Step 1 work, prior approval of a plan of study accompanied by reservation of funds for the grant award.

State agencies are requested to furnish detailed comment through EPA Regional Administrators with respect to any difficulties which may be encountered in the application of § 35.925-18. This section will be revised, if necessary, to permit an orderly transition into a fully nonreimbursable program and at the same time to assure that the development of projects necessary to comply with applicable effluent and water quality related requirements will not be hindered.

(6) Section 35.930-6 has been added to clarify the extent of the Federal Government's obligation to pay 75 percent of approved project costs. The Section emphasizes the grantee's obligation to notify EPA and the State of unavoidable cost overruns and to avoid the incurrence of costs in excess of the approved grant amount, which operates as a ceiling upon Federal participation until and unless revised through funding of grant amendments from State allotments, for project changes for which timely notification has been received. The statutory provision for funding of this program solely through a system of State-by-State allotments operates to limit the possibility of funding for cost overruns incurred under these grants in a more rigid manner than cost overrun funding under Federal contracts; cost overruns under these grants must be funded from State allotments, in addition to the funding of new projects.

(7) Section 35.908 has been restated to encourage more explicitly the use of advanced technology and accelerated construction techniques. The section now provides that "* * * processes or methods which have been successfully demonstrated under less than full scale conditions may be utilized in the construction of treatment works * * *." Under the interim regulations, only processes which had been demonstrated under "comparable" conditions could be used.

(8) New § 35.938 codifies EPA procedures pertaining to the award of construction contracts by grantees during Step 3. The basic intent of these procedures is to assure free and open competition among bidders and to assure compliance with the nonrestrictive specification requirement of section 204(a) (6) of the Act. Section 35.937 which would address procurement by grantees of professional and personal services, is being separately issued as a proposed regulation, which will not be effective until an interim or final regulation is adopted.

In addition, a considerable number of technical revisions have been made throughout the subpart. Accordingly, for the convenience of users, the entire subpart is being republished.

Construction grant regulations adopted under Section 8 of the former FWPCA

(§ 35.800 et seq. of this part) remain in effect and are applicable to construction grants awarded prior to January 1, 1973, under the authority of section 8. This Subpart E establishes policies and procedures applicable only to construction grant awards from fiscal year 1973 and later contractual obligation authority allotments under Title II of the FWPCA Amendments of 1972.

Regulations have been promulgated separately as Subpart D of this part to implement the reimbursement provisions of section 206 of the 1972 FWPCA Amendments.

This subpart is promulgated as a final regulation and will replace the interim regulations previously promulgated. However, because of the numerous changes and additions which have been made throughout this subpart, public comment is again invited. In particular, comment is invited upon the new provisions of the following sections: 35.903, 35.908, 35.915, 35.917 to 35.917–9, 35.930–6, 35.938, 35.939, and 35.960. Interested parties are encouraged to submit written comments, views, or data concerning this subpart to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before April 15, 1974, will be considered with respect to the need for amendment of this subpart.

Effective date. This subpart shall become effective February 11, 1974. All EPA construction grants awarded pursuant to sections 109(b) and 201(g)(1) shall be subject to this subpart. It is necessary that this subpart take effect immediately in order to accomplish the objectives of the Act and to assure optimum achievement of the effluent and water quality objectives established pursuant to the Act.

Dated: February 4, 1974.

RUSSELL E. TRAIN,
Administrator.

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

AUTHORITY: Secs. 109(b), 201 through 205, 207, 210 through 212, and 501(a), 502, and 511 of Pub. L. 92–500 (86 Stat. 816; 33 U.S.C. 1251) as amended by Pub. L. 93–243.

§ 35.900 Purpose.

This subpart supplements the EPA general grant regulations and procedures (Part 30 of this chapter) and establishes policies and procedures for grants to assist the construction of publicly owned waste treatment works in compliance with the Federal Water Pollution Control Act.

§ 35.903 Summary of construction grant program.

(a) The construction of Federally financed waste treatment works is generally accomplished in three steps: Step 1 facilities plans and related elements; Step 2 preparation of construction drawings and specifications; and Step 3 fabrication and building of a treatment works.

(b) The Regional Administrator may award grant assistance for a Step 1, Step 2, or Step 3 project, or, under special conditions, for a project involving a combination of Steps 2 and 3. A "project" (see § 35.905–16) may consist of an entire step or any "segment" (see § 35.905–24) of construction within a step.

(c) Grants are awarded from State allocations (see § 35.910) pursuant to statute. No grant assistance may be awarded unless priority for a project has been determined in accordance with an approved State priority system pursuant to § 35.915. The State is responsible for determining the amount and timing of Federal assistance to each municipality for which treatment works funding is needed.

(d) The scope of a project will be initially defined by a prospective applicant. This initial project scope may be revised by the State when priority for the project is established. The final determination of project scope will be made by the Regional Administrator when grant assistance is awarded (see § 35.930–4).

(e) An application must first be submitted to the State agency for each proposed grant. The basic grant application must meet the requirements for the project set forth in § 35.920–3. Submissions required for grant assistance for subsequent related projects shall be provided in the form of amendments to the basic application. The State agency will forward to the appropriate EPA Regional Administrator complete project applications or amendments thereto for which priority has been determined by the State agency. The grant will consist of the grant agreement resulting from the basic application and grant amendments awarded for subsequent related projects.

(f) Generally, grant assistance for projects involving Steps 2 or 3 will not be awarded unless the Regional Administrator first determines that the facilities planning requirements of §§ 35.917 to 35.917–9 of this subpart have been met. After October 31, 1974, written approval of a "plan of study" (see § 35.920–3(a)(1)) must be obtained prior to initiation of facilities planning. After June 30, 1975, facilities planning may not be initiated prior to approval of a Step 1 grant (see §§ 35.925–18 and 35.905–4).

(g) If initiation of Step 1, 2, or 3 construction (see § 35.905–4) has occurred prior to award of grant assistance, costs incurred prior to the approved date of initiation of construction will not be paid and award will not be made except under the circumstances set forth in § 35.925–18.

(h) The Regional Administrator may not award grant assistance unless the project application requirements of § 35.920–3 have been met and he has made the determinations required by § 35.925 et seq.

(i) A grant or grant amendment awarded for a project under this subpart shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments) in accordance with § 35.930–6 of this subpart, subject to the grantee's compliance with the conditions of the grant (see § 35.935 et seq.) and other applicable requirements of this subpart.

(j) Section 35.945 authorizes prompt payment for incurred project costs in accordance with a negotiated payment schedule. The initial request for payment may cover unpaid allowable costs of work completed prior to award except as otherwise provided in § 35.925–18. All allowable costs incurred prior to initiation of project construction must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent claim for payment may be made for such costs. The estimated amount of any grant or grant amendment, including any prior costs, must be established in conjunction with determination of priority for the project. The Regional Administrator must determine that the project costs are reasonable and allowable, in accordance with § 35.940.

(k) Pursuant to section 204(b) of the Act, the grantee must comply with applicable user charge and industrial cost recovery requirements; see §§ 35.925–11, 35.925–12, 35.928, 35.935–13, and Appendix B of this subpart.

(l) Sewage collection systems for new communities, new subdivisions, or newly developed urban areas must be addressed in the planning of such areas and should be included as part of the development costs of the new construction in these areas. Such costs will not be allowed under the construction grant program, pursuant to section 211 of the Act; see § 35.925–13.

(m) The approval of a plan of study for Step 1, a facilities plan, or award of grant assistance for Step 1, Step 2, or Step 3, or any segment thereof, will not constitute a Federal commitment for approval of grant assistance for any subsequent project.

(n) Where justified, a deviation from any substatutory requirements of this subpart may be granted pursuant to § 30.1001 of this chapter.

(o) It is the policy of the Environmental Protection Agency to promote adequate public participation in the construction grant process. Opportunity for public participation is required: (1) In the development of the State water pollution control strategy and State project priority list, pursuant to §§ 35.556 and 35.915; and (2) in the development of facilities plans, pursuant to § 35.917–5.

§ 35.905 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

§ 35.905–1 The Act.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and Pub. L. 93–243.

§ 35.905–2 Combined sewer.

A sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

§ 35.905–3 Complete waste treatment system.

A complete waste treatment system consists of all the connected treatment works necessary to meet the requirements of Title III of the Act and involved in: (a) The transport of wastewaters from individual homes or buildings to a plant or facility wherein treatment of the wastewater is accomplished; (b) the treatment of the wastewaters to remove pollutants; and (c) the ultimate disposal, including recycling or reuse, of the treated wastewaters and residues resulting from the treatment process. One complete waste treatment system would, normally, include one treatment plant or facility, but in instances where two or more treatment plants are interconnected, all of the interconnected treatment works will be considered as one waste treatment system.

§ 35.905–4 Construction.

Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," as used in this subpart means with reference to a project for:

(a) The preparation of a facilities plan or completion of other Step 1 elements:

(1) Prior to November 1, 1974, the execution of an agreement for any element of Step 1 project work (including facilities planning); or, if an agreement covering Step 1 work has previously been entered into, the issuance of a notice to proceed with the Step 1 work; or a work order for the execution of any element of Step 1 work;

(2) After October 31, 1974, the date of approval of a plan of study (see § 35.925–18(a)(1));

(b) the preparation of construction drawings and specifications (Step 2):

(1) Prior to November 1, 1974, the execution of an agreement for the preparation of construction drawings and specifications; or, if an agreement covering both Step 1 and Step 2 elements has been previously entered into, the issuance of a notice to proceed; or a work order for the preparation of construction drawings and specifications;

(2) After October 31, 1974, the date of approval of a facilities plan (see § 35.925–18(a)(2));

(c) the building and erection of a treatment works segment (Step 3): the issuance of a notice to proceed under a construction contract for any segment of Step 3 project work, or, if notice to proceed is not required, execution of the construction contract.

§ 35.905–5 Excessive infiltration/inflow.

The quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions with the total costs for transportation and treatment of the infiltration/inflow, subject to the provisions in § 35.927.

§ 35.905–6 Industrial cost recovery.

Recovery by the grantee from the industrial users of a treatment works of the grant amount allocable to the treatment of wastes from such users pursuant to section 204(b) of the Act and this subpart.

§ 35.905–7 Industrial Cost Recovery Period.

That period during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works.

§ 35.905–8 Industrial user.

Any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

(a) *Division A.* Agriculture, Forestry, and Fishing.

(b) *Division B.* Mining.

(c) *Division D. Manufacturing.*

(d) *Division E.* Transportation, Communications, Electric, Gas, and Sanitary Services.

(e) *Division I. Services.* A user in the Divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

§ 35.905–9 Infiltration.

The water entering a sewer system, including sewer service connections, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

§ 35.905–10 Infiltration/inflow.

The total quantity of water from both infiltration and inflow without distinguishing the source.

§ 35.905–11 Inflow.

The water discharged into a sewer system, including service connections from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

§ 35.905–12 Interceptor sewer.

A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.

§ 35.905–13 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

§ 35.905–14 Municipality.

A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the Act. This definition excludes a special district, such as a school district, which does not have as one of its principal responsibilities the treatment, transport, or disposal of liquid wastes.

§ 35.905–15 Operable treatment works.

An operable treatment works is a treatment works that:

(a) Upon completion of construction will treat wastewater, transport wastewater to or from treatment, or transport and dispose of wastewater in a manner which will significantly improve an objectionable water quality related situation or health hazard in existence prior to construction of the treatment works, and

(b) Is a component part of a complete waste treatment system which, upon completion of construction for the complete waste treatment system (or completion of construction of other treatment works in the system in accordance with a schedule approved by the Regional Administrator) will comply with all applicable statutory and regulatory requirements.

§ 35.905–16 Project.

The scope of work for which Federal assistance is awarded by a grant or grant amendment pursuant to this subpart. For the purposes of this subpart, the scope of work is defined as Step 1, Step 2, or Step 3 of treatment works construction or segments thereof (see § 35.905–24 and § 35.930–4).

§ 35.905–17 Replacement.

Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

§ 35.905–18 Sanitary sewer.

A sewer intended to carry only sanitary or sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions.

§ 35.905–19 Sewage collection system.

For the purpose of § 35.925–13 of this subpart, each, and all, of the common lateral sewers, within a publicly-owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey wastewater from individual structures or from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition, with the exception of pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

§ 35.905–20 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 35.905–21 State agency.

The State water pollution control agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

§ 35.905–22 Storm sewer.

A sewer intended to carry only storm waters, surface run-off, street wash waters, and drainage.

§ 35.905–23 Treatment works.

Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal or residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water run-off, or industrial waste, including waste in combined storm water and sanitary sewer systems.

§ 35.905–24 Treatment Works Segment.

A treatment works segment may be any portion of an operable treatment works described in an approved facilities plan, pursuant to § 35.917, and which can be identified as a discrete contract or subcontract for Step 1, 2, or 3 work. Completion of construction of a treatment works segment may, but need not, result in an operable treatment works.

§ 35.905–25 Useful life.

Estimated period during which a treatment works will be operated.

§ 35.905–26 User charge.

A charge levied on users of a treatment works for the cost of operation and maintenance of such works, pursuant to Section 204(b) of the Act and this subpart.

§ 35.908 Advanced technology and accelerated construction techniques.

It is the policy of the Environmental Protection Agency to encourage and, where possible, to assist in the development of accelerated construction techniques and new or advanced processes, methods, and technology for the construction of waste treatment works. New or advanced processes or methods may be utilized in the construction of treatment works under this subpart. New technology or processes may be developed or demonstrated with the assistance of EPA research or demonstration grants awarded under Title I of the Act. New processes or methods which have been successfully demonstrated under less than full scale conditions may be utilized in the construction of treatment works under this subpart.

§ 35.910 Allocation of funds.

§ 35.910–1 Allotment.

Allotments shall be made among the States from funds authorized to be appropriated pursuant to section 207 in the ratio that the most recent congressionally approved estimate of the cost of constructing all needed publicly owned treatment works in each State bears to the most recent congressionally approved estimate of the cost of construction of all needed publicly owned treatment works in all of the States. Computation of a State's ratio shall be carried out to the nearest ten thousandth percent (0.0001 percent) and allotted amounts will be rounded to the nearest thousand dollars except for Fiscal Year 1975 which will be rounded to the nearest fifty dollars.

§ 35.910–2 Reallotment.

(a) Sums allotted to a State under § 35.910–1 shall be available for obligation on and after the date of such allotment and shall continue to be available to such State for a period of one year after the close of the fiscal year for which such sums are authorized. Funds remaining unobligated at the end of the allotment period will be immediately reallotted by the Administrator, on the basis of the most recent allotment ratio to those States which have used their full allotment.

(b) Reallotted sums shall be added to the last allotments made to the States and shall be in addition to any other funds otherwise allotted, and be available for obligation in the same manner and to the same extent as such last allotment.

(c) Any sums which have been obligated under this subpart which remain after final payment, or after termination of a project, shall be credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be available for obligation in the same manner and to the same extent as such last allotment.

§ 35.910–3 Fiscal Years 1973 and 1974 Allotments.

(a) For Fiscal Years ending June 30, 1973 and June 30, 1974, sums of $2 billion and $3 billion, respectively, have been allotted on the basis of Table III of House Public Works Committee Print No. 92–50.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section for Fiscal Years 1973 and 1974 are as follows:

State	Percentage	State	Percentage
Alabama	0.3612	North Carolina	.9229
Alaska	.2232	North Dakota	.0467
Arizona	.1346	Ohio	5.7737
Arkansas	.3536	Oklahoma	.4608
California	9.8176	Oregon	.8494
Colorado	.3166	Pennsylvania	5.4214
Connecticut	1.6810	Rhode Island	.4889
District of Columbia	.7114	South Carolina	.6455
Delaware	.6565	South Dakota	.0048
Florida	3.6264	Tennessee	1.1605
Georgia	.9730	Texas	2.7694
Hawaii	.3303	Utah	.1403
Idaho	.2177	Vermont	.2218
Illinois	6.2480	Virginia	2.9143
Indiana	3.3662	Washington	.8906
Iowa	1.1557	West Virginia	.4999
Kansas	.3742	Wisconsin	1.7415
Kentucky	.6599	Wyoming	.0263
Louisiana	.9428	Guam	.0872
Maine	0.9675	Puerto Rico	.8845
Maryland	4.2582	Virgin Islands	.0893
Massachusetts	3.7576	American Samoa	.0048
Michigan	7.9814	Trust Territory of Pacific Islands	.0378
Minnesota	2.0310		100.0000
Mississippi	.3935		
Missouri	1.6556		
Montana	.1662		
Nebraska	.3708		
Nevada	.2877		
New Hampshire	.8309		
New Jersey	7.7040		
New Mexico	.2108		
New York	11.0578		

(c) Based upon the percentages, the sums allotted to the States as of July 1, 1973, for Fiscal Years 1973 and 1974 are as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	$7,224,000	$10,830,000
Alaska	4,501,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,603,000
California	100,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,223,000	21,342,000
Florida	72,523,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,600,000	9,900,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,220,000
Kentucky	13,198,000	19,797,000
Louisiana	18,850,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,623,000	239,442,000
Minnesota	40,633,000	60,957,000
Mississippi	7,570,000	11,355,000
Missouri	33,112,000	49,668,000
Montana	3,321,000	4,980,000
Nebraska	7,410,000	11,121,000
Nevada	5,754,000	8,631,000
New Hampshire	16,018,000	24,027,000
New Jersey	154,080,000	731,120,000
New Mexico	4,210,000	6,324,000
New York	221,160,000	331,734,000
North Carolina	18,458,000	27,687,000
North Dakota	934,000	1,401,000
Ohio	115,471,000	173,211,000
Oklahoma	9,210,000	13,824,000
Oregon	16,988,000	25,482,000
Pennsylvania	108,423,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,820,000	2,844,000
Tennessee	23,210,000	34,815,000
Texas	55,383,000	83,082,000
Utah	2,810,000	4,224,000
Vermont	4,430,000	6,654,000
Virginia	58,280,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,998,000	14,997,000
Wisconsin	31,830,000	52,245,000
Wyoming	530,000	801,000
Guam	1,744,000	2,616,000
Puerto Rico	17,690,000	26,535,000
Virgin Islands	1,780,000	2,670,000
American Samoa	90,000	144,000
Trust Territory of Pacific Islands	750,000	1,134,000
Total	2,000,000,000	3,000,000,000

§ 35.910–4 Fiscal Year 1975 Allotments.

(a) For the Fiscal Year ending June 30, 1975, a sum of $4 billion has been allotted based 50 percent on the ratios of Table I and 50 percent of Table II of House Public Works Committee Print No. 93–28, pursuant to Pub. L. 93–243.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section, for Fiscal Year 1975 are as follows:

State	Percentage	State	Percentage
Alabama	0.8016	Delaware	0.5549
Alaska	0.3830	District of Columbia	0.9724
Arizona	0.4066	Florida	4.1630
Arkansas	0.6069	Georgia	1.9369
California	11.6340	Hawaii	1.0463
Colorado	0.7867	Idaho	0.2000
Connecticut	1.7687		

State	Percentage	State	Percentage
Illinois	6.4173	Pennsylvania	5.6652
Indiana	1.6196	Rhode Island	0.5306
Iowa	1.0012	South Carolina	1.4223
Kansas	1.0322	South Dakota	0.0907
Kentucky	1.6579	Tennessee	1.2303
Louisiana	0.7245	Texas	1.6534
Maine	0.6870	Utah	0.4217
Maryland	1.3767	Vermont	0.3001
Massachusetts	2.2945	Virginia	2.5096
Michigan	4.7978	Washington	1.6463
Minnesota	1.6341	West Virginia	0.9598
Mississippi	0.5355	Wisconsin	1.3317
Missouri	1.8960	Wyoming	0.0768
Montana	0.1421	Guam	0.0478
Nebraska	0.5314	Puerto Rico	1.0385
Nevada	0.4755	Virgin Islands	0.0796
New Hampshire	0.8920	American Samoa	0.0147
New Jersey	6.4789	Trust Territory of the Pacific Islands	0.0133
New Mexico	0.1869		
New York	12.4793		
North Carolina	1.7029		
North Dakota	0.0818		
Ohio	4.9184		
Oklahoma	1.1953		
Oregon	0.8682		

(c) Based upon the percentages set forth in paragraph (b) of this section and allotment adjustments the sums allotted to the States as of January 1, 1974, are as follows:

Alabama	$33,785,150
Alaska	15,059,100
Arizona	17,695,750
Arkansas	23,860,100
California	457,420,100
Colorado	30,930,900
Connecticut	69,542,900
Delaware	21,815,300
District of Columbia	38,233,800
Florida	164,496,400
Georgia	76,153,000
Hawaii	41,140,000
Idaho	7,898,400
Illinois	252,311,700
Indiana	63,678,100
Iowa	39,364,800
Kansas	40,192,500
Kentucky	65,183,600
Louisiana	35,551,850
Maine	26,227,000
Maryland	54,128,100
Massachusetts	90,215,900
Michigan	188,637,400
Minnesota	64,247,300
Mississippi	22,346,700
Missouri	74,546,400
Montana	7,534,600
Nebraska	20,894,000
Nevada	18,693,600
New Hampshire	35,072,950
New Jersey	234,656,200
New Mexico	10,670,500
New York	490,654,200
North Carolina	70,494,200
North Dakota	6,876,100
Ohio	193,378,700
Oklahoma	48,997,400
Oregon	34,136,700
Pennsylvania	222,744,100
Rhode Island	20,864,000
South Carolina	55,932,000
South Dakota	7,308,800
Tennessee	48,371,800
Texas	106,900,250
Utah	16,579,600
Vermont	11,800,800
Virginia	98,673,400
Washington	64,730,500
West Virginia	$37,735,700
Wisconsin	52,360,400
Wyoming	4,049,450
Guam	2,173,000
Puerto Rico	40,892,900
Virgin Islands	3,130,900
American Samoa	576,700
Trust Territory of Pacific Islands	524,300

Allotment adjustment has been made for those States that would receive an allotment that would be less than their Fiscal Year 1972 allotment. The allotment of those States which fall below their Fiscal Year 1972 allotment will be restored to their Fiscal Year 1972 allotment using funds from the total allotment. Remaining funds will be allocated to States (excluding the States with allotment adjustment) based on adjusted percentages. Minimum allotment amounts are determined on the basis of Table III of House Public Works Committee Print 93-28.

§ 35.912 Delegation to State agencies.

It is the policy of the Environmental Protection Agency to utilize staff capabilities of State agencies to the maximum extent practicable through optimum utilization of available State and Federal resources and to eliminate unnecessary duplicative reviews of documents that are required as a part of the construction grant process. Accordingly, the Regional Administrator may enter into a written agreement, where appropriate, with a State agency within his Region for certification by the State agency of the technical and/or administrative adequacy of specified documents. *Provided,* That an applicant or grantee may request review by the Regional Administrator of an adverse recommendation by a State agency.

§ 35.915 State determination of project priority list.

Construction grants will be awarded from allotments available pursuant to § 35.910 in accordance with the approved State project priority list which is derived from the approved State priority system.

(a) *State priority system.* The State priority system must be designed to achieve optimum water quality improvement consistent with the goals and requirements of the Act. It shall be submitted and revised in accordance with Subpart B of this part.

(b) *State municipal discharge inventory.* Pursuant to § 130.43 of this Chapter, the State agency shall prepare a municipal discharge inventory which sets forth for the entire State a ranking of all significant municipal discharges (including, for example, eligible municipal septic systems). Such list must be submitted as part of the annual State program for the approval of the Regional Administrator under § 35.557. This State municipal discharge inventory shall be updated annually and submitted with the State program pursuant to § 35.555 of this part.

(c) *Project priority list.* The State agency shall prepare a listing of the projects for which Federal assistance may be requested. This listing should include a sufficient number of projects to permit funding to proceed in an orderly fashion through the period between the next allotment of construction grant funds to the next approval of a revised project priority list. The Regional Administrator shall consider for approval that portion of the project priority list from which grant awards may be made from currently available allotments, pursuant to the approval procedures of § 35.555.

(1) In determining which projects to fund the State shall consider the severity of pollution problems, the population affected, the need for preservation of high quality waters, and national priorities as well as total funds available, project and treatment works sequence and additional factors identified by the State in its priority system. The list of projects to be funded should be developed in conjunction with the municipal discharge inventory. It should be consistent with the municipal discharge inventory but need not rigidly follow the ranking of discharges in the inventory. The net result should be a concentration of projects to be funded in high priority areas. The Regional Administrator may require the State agency to explain the basis for priority determination for specific projects located in low priority areas (e.g., court orders, critical dischargers on lower priority segments, etc.).

(2) The project priority list shall set forth, as a minimum, the following information for each project:

(i) Name of municipality;

(ii) State assigned EPA project number;

(iii) Brief description of type of project and anticipated scope of project (Step 1, 2, or 3 or combination thereof);

(iv) Estimated total project cost; and

(v) Estimated Federal assistance.

(3) A project which is included within the approved portion of the list shall retain its priority until a grant is awarded, unless the State otherwise provides through its priority system. Accordingly, in developing a revised list, the State must generally include thereon all projects from the approved portion of the prior list or amendments thereto for which grant assistance has not been awarded at the time the revision is prepared. The priority for all other projects will be determined in accordance with the approved State priority system.

(4) A project will be removed from the project priority list if (i) the project has been fully funded, (ii) a final and conclusive determination of project ineligibility has been made by the Regional Administrator, or (iii) the project has been removed by the State through amendment or revision of the list.

(5) In order to provide a list of projects which can be funded from available allotments in the period after January 1, 1974, until the approval of the next list, a State may add projects to the approved fiscal year 1974 list. Projects for which fiscal year 1975 contract authority will

be utilized must be identified since projects initially funded with fiscal year 1975 funds will be subject to best practicable waste treatment technology requirements (see § 35.930–4).

(d) *Submission, amendment and approval of project priority list.* The project list shall be submitted and approved annually as part of the State Program and may be amended pursuant to § 35.555 and § 35.557.

(e) *Application of additional funds.* If the State has submitted a project priority list containing more projects than could be funded under the original allotment, upon allocation of additional funds, the Regional Administrator's approval of the project priority list will be extended to the required number of projects. If there is an insufficient number of projects on the list, projects may be added to the list, pursuant to §§ 35.555 and 35.557 to account for additional funds which are available.

(f) *Public participation.* The Regional Administrator may not approve a project priority list or any significant amendment thereto unless he determines that a public hearing pursuant to § 35.556 of this Part has been held on such list prior to approval. This public hearing may be conducted in conjunction with a regular public meeting of the State agency, provided that adequate and timely Statewide notice of the meeting, including publication of the proposed project priority list is given, and attendees at the meeting are afforded adequate opportunity to express their views concerning the list. A public hearing is not required with respect to any amendment of the list (including deletion of a project) which the State agency and the Regional Administrator agree is not significant.

(g) *Reserve for grant increases.* In developing the project priority list the State must make provision for grant increases for projects awarded grant assistance under this subpart. A reasonable portion, not less than five percent, of each allotment for fiscal year 1975 and later years made pursuant to § 35.910 shall be reserved for grant amendments to increase grant amounts pursuant to §§ 35.935–11 and 35.955. A statement specifying the amount to be reserved for grant amendments shall be submitted by the State with the project priority list. The reserve period must be for not more than eighteen months after the date of such allotment. If any of the reserved amount remains, this amount may be utilized for the funding of additional projects, in accordance with the procedures set forth in paragraph (e) of this section.

(h) *Grant increases.* The Regional Administrator may approve a grant increase, upon application by the grantee, and upon written confirmation by the State for each application, that the grant increase is justified. The grant increases will be made from the amount reserved, by the State, for that purpose, from currently available allotments pursuant to paragraph (g) of this section.

(i) *Reserve for Step 1 and Step 2 Projects.* In developing the project priority list, the State may (but need not) make provision for an additional reserve for grant assistance for Step 1 and Step 2 projects whose selection for funding will be determined by the State agency subsequent to approval of the project list. A reasonable portion, but not more than ten percent, of each allotment for fiscal year 1975 and later years made pursuant to § 35.910 may be reserved for this purpose. A statement specifying the amount to be reserved for such grant assistance shall be submitted by the State with the project priority list. The reserve period may be for not more than eighteen months after the date of such allotment. If any of the reserved amount remains, this amount may be utilized for the funding of additional projects, in accordance with the procedures set forth in paragraph (e) of this section. The funding of Step 1 and Step 2 projects from this reserve should be consistent with the approved State strategy and should be developed in conjunction with, but need not rigidly follow, the ranking in the municipal discharge inventory.

§ 35.917 Facilities Planning (Step 1).

(a) These regulations set forth the facilities planning required as an element of the construction of publicly owned wastewater treatment works and supplement other provisions of this subpart.

(b) Facilities planning consists of those necessary plans and studies which are directly related to the construction of treatment works, in compliance with section 301 and 302 of the Act. Facilities planning will demonstrate the need for the proposed facilities and, by a systematic evaluation of feasible alternatives, will also demonstrate that the proposed measures represent the most cost-effective means of meeting established effluent and water quality goals, recognizing environmental and social considerations.

(c) Facilities planning, determined by the Regional Administrator to have been initiated prior to May 1, 1974, must be in accordance with applicable statutory requirements (see §§ 35.925–7 and 35.925–8), and such other requirements of this subpart as may be determined to be appropriate by the Regional Administrator.

(d) Full compliance with the facilities planning provisions of this subpart will be required prior to award of grant assistance for Step 2 or Step 3 where the Regional Administrator determines such planning was initiated (as determined pursuant to §§ 35.905–4 and 35.925–18) after April 30, 1974.

Grant assistance for Step 2 or 3 may be awarded prior to approval of a facilities plan for the entire geographic area to be served by the complete waste treatment system of which the proposed treatment works will be an integral part if the Regional Administrator determines that applicable statutory requirements have been met (see § 35.925–7 and 35.925–8); that the facilities planning relevant to the proposed Step 2 or 3 project has been substantially completed; and that the Step 2 or 3 project for which grant assistance is made will not be significantly affected by the completion of the facilities plan and will be a component part of the complete system: *Provided*, That the applicant agrees to complete the facilities plan on a schedule the State accepts (subject to approval by the Regional Administrator), which schedule shall be inserted as a special condition in the grant agreement.

(e) After October 31, 1974, written approval of a plan of study (see § 35.920–3 (a) (1) must be obtained prior to initiation of facilities planning. After June 30, 1975, facilities planning may not be initiated prior to approval of a Step 1 grant or approval of a plan of study accompanied by reservation of funds for a Step 1 grant (see §§ 35.925–18 and 35.905–4).

(f) Facilities planning guidelines published by the Administrator are for advisory information only.

(g) If the information required to be furnished as part of a facilities plan has been developed separately, it should be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or Federal programs will be utilized (not duplicated).

§ 35.917–1 Content of Facilities Plan.

Facilities planning which is initiated after April 30, 1974, must encompass the following to the extent deemed appropriate by the Regional Administrator:

(a) A description of the treatment works for which construction drawings and specifications are to be prepared. This description shall include preliminary engineering data, cost estimates for design and construction of the treatment works, and a schedule for completion of design and construction. The preliminary engineering data may include, to the extent appropriate, such information as a schematic flow diagram, unit processes, design data regarding detention times, flow rates, sizing of units, etc.

(b) A description of the selected complete waste treatment system(s) of which the proposed treatment works is a part. The description shall cover all elements of the system, from the service area and collection sewers, through treatment, to the ultimate discharge of treated wastewaters and disposal of sludge.

(c) Infiltration/inflow documentation in accordance with § 35.927.

(d) A cost-effectiveness analysis of alternatives for the treatment works and for the waste treatment system(s) of which the treatment works is a part. The selection of the system(s) and the choice of the treatment works on which construction drawings and specifications are to be based shall reflect the cost-effectiveness analysis. This analysis shall include:

(1) The relationship of the size and capacity of alternative works to the needs to be served, including reserve capacity;

(2) An evaluation of alternative flow and waste reduction measures;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the capability of each alternative to meet applicable effluent limitations. The treatment works design must be based upon not less than secondary treatment as defined by the Administrator pursuant to sections 301 (a) (1) (B) and 304(d) (1) of the Act;

(5) An identification of, and provision for, applying the best practicable waste treatment technology (BPWTT) as defined by the Administrator, based upon an evaluation of technologies included under each of the following waste treatment management techniques:

(i) Biological or physical-chemical treatment and discharge to receiving waters;

(ii) Treatment and reuse; and

(iii) Land application techniques.

All Step 2, Step 3 or combination Step 2–3 projects for publicly-owned treatment works construction from funds authorized for any fiscal year beginning after June 30, 1974, shall be based upon application of BWPTT, as a minimum. Where application of BPWTT would not meet water quality standards, the facilities plan shall provide for attaining such standards. Such provision shall consider the alternative of treating combined sewer overflows.

(6) An evaluation of the alternative means by which ultimate disposal can be effected for treated wastewater and for sludge materials resulting from the treatment process, and a determination of the means chosen.

(7) An adequate assessment of the expected environmental impact of alternatives including sites pursuant to Part 6 of this Chapter. This assessment shall be revised as necessary to include information developed during subsequent project steps.

(e) An identification of effluent discharge limitations, or where a permit has been issued, a copy of the permit for the proposed treatment works as required by the National Pollution Discharge Elimination System.

(f) Required comments or approvals of relevant State, interstate, regional, and local agencies.

(g) A brief summary of any public meeting or hearing held during the planning process including a summary of the views expressed.

(h) A brief statement demonstrating that the authorities which will be implementing the plan have the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed treatment works.

(i) A statement specifying that the requirements of Title VI of the Civil Rights Act of 1964 and of Part 7 of this chapter have been satisfied.

§ 35.917–2 State Responsibilities.

(a) *Facilities planning areas.* Facilities planning should focus upon the geographic area to be served by the waste treatment system(s) of which the proposed treatment works will be an integral part. The facilities plan should include that area deemed necessary to prepare an environmental assessment and to assure that the most cost-effective means of achieving the established water quality goals can be planned for and implemented. To assure that facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, and all facilities planning initiated after October 31, 1974, will include the appropriate geographic areas, the State shall:

(1) Delineate, as a preliminary basis for planning, the boundaries of the planning areas. In the determination of each area, appropriate attention should be given to including the entire area where cost savings, other management advantages, or environmental gains may result from interconnection of individual waste treatment systems or collective management of such systems.

(2) Include maps, which shall be updated annually, showing the identified areas and boundary determinations as part of the State submission under section 106 of the Act.

(3) Consult with local officials in making the area and boundary determinations.

(b) *Facilities planning priorities.* The State shall establish funding priorities for facilities planning in accordance with §§ 35.915 and 35.554–3(a) (1).

§ 35.917–3 Federal assistance.

(a) *General.* Facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, and all facilities planning initiated after October 31, 1974, must be developed pursuant to a plan of study (see § 35.920–3(a) (1) approved in accordance with the requirements of this subpart prior to initiation of the facilities planning. A preapplication conference may be held in accordance with § 35.920–2.

(1) An applicant may apply for a grant for a Step 1 project for the preparation of a facilities plan, or any component part, and for other Step 1 elements required to submit a complete application for a Step 2 project (see § 35.920–3(b)). Alternatively, to the extent permitted by § 35.925–18, a grantee may be reimbursed for facilities planning costs and other Step 1 elements for which reasonable costs have been incurred in accordance with this subpart, in conjunction with the award of a grant for the subsequent Step 2, Step 2–3, or Step 3 projects.

(2) State priority determination in accordance with the approved State priority system pursuant to § 35.915 is required for Step 1 projects, just as in the case of Step 2 or Step 3 projects.

(b) *Eligibility.* Only an applicant which is eligible to receive grant assistance for subsequent phases of construction (Steps 2 and 3) and which has the legal authority to subsequently construct and manage the facility may apply for grant assistance for Step 1. If the area to be covered by the facilities plan includes more than one political jurisdiction, a grant may be awarded for a Step 1 project, as appropriate, (1) to the joint authority representing such jurisdictions, if eligible; (2) to one qualified (lead agency) applicant; or (3) to two or more eligible jurisdictions.

(c) *Payment.* Where a grant has been awarded for the preparation of a facilities plan or other Step 1 elements, the payment schedule in the grant agreement will provide for payment upon completion of the Step 1 work or upon completion of specified tasks within the scope of the project.

(d) *Reports.* Where a grant has been awarded for facilities planning, the completion of which is expected to require more than one year, the grantee must submit a brief progress report to the Regional Administrator at three-month intervals. The progress report is to contain a minimum of narrative description, and is to describe progress in completing the approved schedule of specific tasks for the project.

§ 35.917–4 Planning scope and detail.

(a) Initially, the geographic scope of all facilities planning initiated after October 31, 1974, or facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, shall be based upon the area delineated by the State pursuant to § 35.917–2, subject to review by the Regional Administrator. The Regional Administrator may make the preliminary delineation of the boundaries of the planning area, if the State has not done so, or may revise boundaries selected by the locality or State agency, after appropriate consultation with State and local officials.

(b) Facilities planning shall be conducted only to the extent that the Regional Administrator determines to be necessary to insure that facilities for which grants are awarded will be cost-effective and environmentally sound and to permit reasonable evaluation of grant applications and subsequent preparation of designs, construction drawings and specifications.

§ 35.917–5 Public participation.

(a) Public participation in the facilities planning process shall be consistent with Part 105 of this chapter. One or more public hearings or meetings should be held within the area to obtain public advice at the beginning of the planning process. All governmental agencies and other parties which are known to be concerned or may have an interest in the plan shall be invited to participate.

(b) A public hearing shall be held prior to the adoption of the facilities plan by the implementing governmental units. This provision shall apply to all facilities planning initiated after April 30, 1974. This public hearing for the

facilities plan may satisfy the grantee hearing requirement of Part 6 of this chapter. The Regional Administrator may require the planning entity to hold additional public hearings, if needed, to more fully discuss the plan and alternatives or to afford concerned interests adequate opportunity to express their views.

(c) The time and place of the public hearing shall be conspicuously and adequately announced, generally at least 30 days in advance. In addition, a description of the water quality problems and the principal alternatives considered in the planning process shall be displayed at a convenient local site sufficiently prior to the hearing (approximately 15 days).

(d) Appropriate local and State agencies, State and regional clearinghouses, interested environmental groups and appropriate local public officials should receive written notice of public hearings.

(e) A request to waive the hearings on a facilities plan may be submitted to the Regional Administrator in writing prior to submission of the plan. Any such request will be acted upon within 30 days by the Regional Administrator. Each request must include a brief description of the alternatives, the area that will be serviced, the scope and dates of meetings and hearings previously held, and the reasons the grantee feels a public hearing would not serve the public interest.

§ 35.917–6 Acceptance by implementing governmental units.

A facilities plan submitted for approval shall include adopted resolutions or, where applicable, executed agreements of the implementing governmental units or management agencies providing for acceptance of the plan, or assurances that it will be carried out, and statements of legal authority necessary for plan implementation. Any departures from these requirements may be approved by the Regional Administrator prior to plan submission.

§ 35.917–7 State review and certification of facilities plan.

Each facilities plan must be submitted to the State agency for review. The State must certify that (a) the plan conforms with the requirements set forth in this subpart; (b) the plan conforms with any existing final basin plans approved under section 303(e) of the Act; (c) any concerned 208 planning agency has been afforded the opportunity to comment upon the plan; and (d) the plan conforms with any waste treatment management agreement plan approved pursuant to section 208(b) of the Act.

§ 35.917–8 Submission and approval of facilities plan.

The completed facilities plan must be submitted by the State agency and approved by the Regional Administrator. Where deficiencies in a facilities plan are discovered, the Regional Administrator shall promptly notify the State and the grantee or applicant in writing of the nature of such deficiencies and of the recommended course of action to correct such deficiencies. Approval of a plan of study or a facilities plan will not constitute an obligation of the United States for any Step 2, Step 3, or combination Steps 2 and 3 project.

§ 35.917–9 Revision or amendment of facilities plan.

A facilities plan may include more than one Step 3 project and provide the basis for several subsequent Step 2, Step 2–3, or Step 3 projects. A facilities plan which has served as the basis for the award of a grant for a Step 2, Step 2–3, or Step 3 project shall be reviewed prior to the award of any grant for a subsequent project involving Step 2 or Step 3 to determine if substantial changes have occurred. If in the judgment of the Regional Administrator substantial changes have occurred which warrant revision or amendment, the plan shall be revised or amended and submitted for review in the same manner specified in this subpart.

§ 35.920 Grant application.

Grant applications will be submitted and evaluated in accordance with Part 30, Subpart B of this chapter.

§ 35.920–1 Eligibility.

Municipalities, intermunicipal agencies, States, or interstate agencies may apply for grant assistance.

§ 35.920–2 Procedure.

Preapplication assistance, including, where appropriate, a preapplication conference, should be requested from the State agency or the appropriate EPA Regional Office for each project for which State priority has been determined. An application must be submitted to the State agency for each proposed treatment works. The basic application shall meet the requirements for the project set forth in § 35.920–3. Submissions required for subsequent related projects shall be provided in the form of amendments to the basic application. Each such submission shall be submitted through the State agency, must be complete (see § 35.920–3), and must relate to a project for which priority has been determined in accordance with § 35.915. If any information required pursuant to § 35.920–3 has been furnished with an earlier application, the applicant need only incorporate by reference and, if necessary update or revise such information utilizing the previously approved application.

§ 35.920–3 Contents of application.

(a) Step 1. Facilities plan and related elements required to apply for Step 2 grant assistance. An application for a grant for Step 1 shall include:

(1) A plan of study presenting (i) the proposed planning area; (ii) an identification of the entity or entities that will be conducting the planning; (iii) the nature and scope of the proposed Step 1 project, including a schedule for the completion of specific tasks; and (iv) an itemized description of the estimated costs for the project;

(2) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

(3) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95, promulgated at 38 FR 32874 on November 28, 1973).

(b) Step 2. Preparation of construction drawings and specifications. Prior to the award of a grant or grant amendment for a Step 2 project, the following must have been furnished:

(1) A facilities plan (including an environmental assessment in accordance with Part 6 of this chapter) in accordance with §§ 35.917 through 35.917–9.

(2) Satisfactory evidence of compliance with the user charge provisions of §§ 35.925–11 and 35.935–13;

(3) Satisfactory evidence of compliance with the industrial cost recovery provisions of §§ 35.925–12, 35.928, and 35.935–13, if applicable;

(4) A statement regarding availability of the proposed site, if relevant;

(5) Satisfactory evidence of a proposed or existing program for compliance with the Relocation and Land Acquisition Policies Act of 1970 in accordance with § 30.403(d) and Part 4 of this chapter, if applicable;

(6) Satisfactory evidence of compliance with other applicable Federal statutory and regulatory requirements (see Part 30, Subpart C of this chapter);

(7) Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(8) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95) if a grant application has not been previously submitted.

(c) *Step* 3. Building and erection of a treatment works. Prior to the award of a grant or grant amendment for a Step 3 project, each of the items specified in paragraph (b) of this section, and in addition (1) two sets of construction drawings and specifications, suitable for bidding purposes, and (2) a schedule for or evidence of compliance with §§ 35.925–10 and 35.935–12 concerning an operation and maintenance program, must have been furnished.

(d) *Step* 2/3. Design/Construct Project. Prior to the award of a grant or grant amendment for a design/construct project the items in paragraphs (b) and (c) of this section must have been furnished, except that, in lieu of construction drawings and specifications, the proposed performance specifications and other relevant design/construct criteria for the project must have been submitted.

(e) *Training facility project.* An application for grant assistance for construction of a training facility pursuant to section 109(b) of the Act shall include (1) a statement concerning the suitability of the treatment works facility for

training operation and maintenance personnel for treatment works throughout one or more States; (2) a written commitment from the State agency or agencies to carry out at such facility a program of training approved by the Regional Administrator; and (3) an engineering report, including facility design data, cost estimates for design and construction of the facility, and a schedule for completion of design and construction.

§ 35.925 Limitations on award.

Before awarding initial grant assistance for any project for a treatment works through a grant or grant amendment, the Regional Administrator shall determine that all of the applicable requirements of § 35.920–3 have been met and shall further determine:

§ 35.925–1 Facilities planning.

That the facilities planning requirements set forth in §§ 35.917 through 35.917–9 have been met. Requirements set forth in § 35.150–1 and § 35.150–2 are not applicable.

§ 35.925–2 Basin plan.

That such works are in conformity with any applicable final basin plan approved in accordance with section 303 (e) of the Act.

§ 35.925–3 Priority determination.

That such works have been determined to be entitled to priority in accordance with § 35.915, and that the award of grant assistance for the proposed project will not jeopardize the funding of any treatment works of higher priority.

§ 35.925–4 State allocation.

That the award of grant assistance for the project will not cause the total of all grant assistance awarded to applicants within a State, including grant increases, to exceed the total of all allotments and reallotments available to such State pursuant to § 35.910.

§ 35.925–5 Funding and other capabilities.

That the applicant has:

(a) Agreed to pay the non-Federal project costs, and

(b) Has the legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction.

§ 35.925–6 Permits.

That if the award is for a Step 2, Step 3, or combination Step 2 and 3 project, the applicant has provided an identification of effluent discharge limitations or, if available, a copy of a permit as required by the National Pollution Discharge Elimination System.

§ 35.925–7 Design.

That the treatment works design will be (in the case of projects involving Step 2) or has been (in the case of projects for Step 3) based upon the following:

(a) The design, size, and capacity of such works are cost effective and relate directly to the needs to be served by such works, including adequate reserve capacity;

(b) Such works will meet applicable effluent limitations and attain not less than secondary treatment as defined by the Administrator pursuant to section 301(b)(1)(B) and 304(d)(1) of the Act (See Part 133 of this chapter), subject to the limitations set forth in § 35.930–4;

(c) The infiltration/inflow requirements of § 35.927 have been met; and

(d) If the initial grant assistance for the project is to be awarded from funds authorized for any fiscal year beginning after June 30, 1974, subject to the limitations set forth in § 35.930–4; (1) alternative waste treatment management techniques have been studied and evaluated to provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of Title II of the Act, and (2) the design has, as appropriate, taken into account and allowed to the extent practicable for the application of technology, at a later date, which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

§ 35.925–8 Environmental review.

That the NEPA requirements (Part 6 of this chapter), applicable to the project step, have been met. Such compliance is a basic prerequisite for Step 2, Step 3, and combination Step 2 and 3 projects. An adequate assessment of expected environmental impacts, consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), is required as an integral part of facilities planning initiated after April 30, 1974, in accordance with § 35.917–1.

§ 35.925–9 Civil rights.

That if the award of grant assistance is for a project involving Step 2 or 3, the applicable requirements of Title VI of the Civil Rights Act of 1964 (See Part 7 of this chapter) have been met.

§ 35.925–10 Operation and maintenance program.

If the award of grant assistance is for a project involving Step 3, that satisfactory provision has been made by the applicant for assuring proper and efficient operation and maintenance of the treatment works, in accordance with § 35.935–12, and that the State will have an effective operation and maintenance monitoring program to assure that treatment works assisted under this subpart, comply with applicable permit and grant conditions.

§ 35.925–11 User charges.

That, in the case of grant assistance awarded after March 1, 1973, for a project involving Step 2 or Step 3, an approvable plan and schedule of implementation have been developed for a system of user charges to assure that each recipient of waste treatment services within the applicants service area will pay its proportionate share of the costs of operation and maintenance (including replacement as defined in § 35.905–17) of all waste treatment service provided by the applicant and the applicant must agree that such system(s) will be maintained. See Appendix B to this subpart.

§ 35.925–12 Industrial cost recovery.

(a) That, in the case of any grant assistance awarded after March 1, 1973, for a project involving Step 2 or Step 3, signed letters of intent have been received by the applicant from each significant industrial user to pay that portion of the grant amount allocable to the treatment of its wastes. Each such letter shall also include a statement of the industrial user's intended period of use of the treatment works. A significant industrial user is one that will contribute greater than 10 percent of the design flow or design pollutant loading of the treatment works. In addition, the applicant must agree to require all industrial users to pay that portion of the grant amount allocable to the treatment of wastes from such users.

(b) Projects awarded grant assistance prior to March 2, 1973 are subject to the requirements of § 35.835–5 in lieu of paragraph (a) of this section.

§ 35.925–13 Sewage Collection System.

That, if the project is for, or includes, sewage collection system work, such work (a) is for replacement or major rehabilitation of an existing sewer system pursuant to § 35.927–3(a) and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (b) is for a new sewer system in a community in existence on October 18, 1972, with sufficient existing or planned capacity to adequately treat such collected sewage. Replacement or major rehabilitation of an existing sewer system may be approved only if cost effective and must result in a sewer system design capacity equivalent only to that of the existing system plus a reasonable amount for future growth. A community, for purposes of this section, would include any area with substantial human habitation on October 18, 1972. No award may be made for a new sewer system in a community in existence on October 18, 1972 unless it is further determined by the Regional Administrator that the bulk (generally two-thirds) of the flow design capacity through the sewer system will be for waste waters originating from the community (habitation) in existence on October 18, 1972.

§ 35.925–14 Compliance with Environmental Laws.

That the treatment works will comply with all pertinent requirements of the Clean Air Act and other applicable Federal, State and local environmental laws and regulations.

§ 35.925–15 Treatment of industrial wastes.

That the allowable project costs do not include costs allocable to the treatment

for control or removal of pollutants in wastes introduced into the treatment works by industrial users unless the applicant is required to remove such pollutants introduced from non-industrial sources; and that the project is included in a waste treatment system, a principal purpose of which project and system is the treatment of domestic wastes of the entire community, area, region or district concerned. A "waste treatment system", for purposes of this section, means one or more treatment works which provide integrated but not necessarily interconnected waste disposal for the community, area, region or district. See the pretreatment standards set forth in Part 128 of this Chapter.

§ 35.925–16 Federal activities.

That the allowable project costs do not include costs allocable to the treatment of wastes from major activities of the Federal Government, which another Federal Agency has agreed to pay. Such Federal agencies may extend, over a period of years, their contributions to support capital costs incurred by municipal treatment facilities which provide service to them.

§ 35.925–17 Retained amounts for reconstruction and expansion.

That the allowable project costs have been reduced by an amount equal to the unexpended balance of the amounts retained by the applicant for future reconstruction and expansion pursuant to § 35.928–2, together with interest earned thereon.

§ 35.925–18 Limitation upon project costs incurred prior to award.

That project construction has not been initiated prior to the approved date of initiation of construction (as defined in § 35.905–4), except as otherwise provided in this section. Generally, payment is not authorized for costs incurred prior to the approved date of initiation of construction, which shall be established in the grant agreement, in accordance with paragraphs (a), (b), and (c) of this section.

(a) Steps 1 or 2:

(1) No prior approval or prior grant award is required for Step 1 or Step 2 work initiated prior to November 1, 1974; payment for all such allowable costs incurred after the approved date of initiation of construction is authorized in conjunction with the first award of grant assistance.

(2) In the case of Step 1 or Step 2 project work initiated after October 31, 1974, no payment is authorized for:

(i) Step 1 costs incurred prior to the date of approval of a plan to study (see §§ 35.917 and 35.930–3(a)(1)); and

(ii) Step 2 costs incurred prior to the date of approval of a facilities plan (see §§ 35.917 and 35.930–3(b)(1)); payment for all Step 1 or Step 2 costs incurred after such dates of approval are authorized in conjunction with the first award of grant assistance.

(3) Where Step 1 or Step 2 project work is initiated after June 30, 1975, no grant assistance for the Step 1 or Step 2 project work may be awarded unless such award precedes initiation of the project work: *Provided,* That in lieu of award of a Step 1 grant after June 30, 1975, the State agency may request the Regional Administrator to reserve funds for Step 1 grant assistance (based upon approval of the plan of study) and to defer award of grant assistance for Step 1 work, which award, however, must in any event be made within the allotment period for the reserved funds.

(b) Step 3: Except as otherwise provided in this subparagraph, no grant assistance for a Step 3 project may be awarded unless such award precedes initiation of the Step 3 construction. Advance acquisition of major equipment items requiring long lead times, or advance construction of minor portions of treatment works, in emergencies or instances where delay could result in significant cost increases, may be approved by the Regional Administrator, but only (1) if the applicant submits a written and adequately substantiated request for approval, and (2) if written approval by the Regional Administrator is obtained prior to initiation of the advance acquisition or advance construction.

(c) The approval of a plan of study, a facilities plan, or of advance acquisition of equipment or advance construction will not constitute a commitment for approval of grant assistance for a subsequent treatment works project, but will allow payment for the previously approved costs as allowable project costs upon subsequent award of grant assistance, if requested prior to grant award (see § 35.945(a)). In instances where such approval is obtained, the applicant proceeds at its own risk, since payment for such costs cannot be made unless and until grant assistance for the project is awarded.

§ 35.925–19 Section 208: Agencies and plans.

That, pursuant to section 208(d) of the Act, after a waste treatment management agency has been designated for an area, and a final plan for such area has been approved, the applicant is the designated agency and the treatment works project is in conformity with such plan.

§ 35.927 Sewer system evaluation and rehabilitation.

(a) All applicants for grant assistance awarded after July 1, 1973, must demonstrate to the satisfaction of the Regional Administrator that each sewer system discharging into the treatment works project for which grant application is made is not or will not be subject to excessive infiltration/inflow. The determination whether excessive infiltration/inflow exists, may take into account, in addition to flow and related data, other significant factors such as cost-effectiveness (including the cost of substantial treatment works construction delay, see Appendix A to this subpart), public health emergencies, the effects of plant bypassing or overloading, or relevant economic or environmental factors.

(b) The determination whether or not excessive infiltration/inflow exists will generally be accomplished through a sewer system evaluation consisting of (1) certification by the State agency, as appropriate; and, when necessary (2) an infiltration/inflow analysis; and, if appropriate, (3) a sewer system evaluation survey followed by rehabilitation of the sewer system to eliminate an excessive infiltration/inflow defined in the sewer system evaluation. Information submitted to the Regional Administrator for such determination should be the minimum necessary to enable a judgment to be made.

(c) Guidelines on sewer system evaluation published by the Administrator provide further advisory information.

§ 35.927–1 Infiltration/Inflow analysis.

(a) The infiltration/inflow analysis shall demonstrate the non-existence or possible existence of excessive infiltration/inflow in each sewer system tributary to the treatment works. The analysis should identify the presence, flow rate, and type of infiltration/inflow conditions, which exist in the sewer systems. Information to be obtained and evaluated in the analysis should include, to the extent appropriate, the following:

(1) Estimated flow data at the treatment facility, all significant overflows and bypasses, and, if necessary, flows at key points within the sewer system.

(2) Relationship of existing population and industrial contribution to flows in the sewer system.

(3) Geographical and geological conditions which may affect the present and future flow rates or correction costs for the infiltration/inflow.

(4) A discussion of age, length, type, materials of construction and known physical condition of the sewer system.

(b) For determination of the possible existence of excessive infiltration/inflow, the analysis shall include an estimate of the cost of eliminating the infiltration/inflow conditions. These costs shall be compared with estimated total costs for transportation and treatment of the infiltration/inflow. Cost-Effectiveness Analysis Guidelines (Appendix A to this subpart), which contain advisory information, should be consulted with respect to this determination.

(c) If the infiltration/inflow analysis demonstrates the existence or possible existence of excessive infiltration/inflow a detailed plan for a sewer system evaluation survey shall be included in the analysis. The plan shall outline the tasks to be performed in the survey and their estimated costs.

§ 35.927–2 Sewer system evaluation survey.

(a) The sewer system evaluation survey shall consist of a systematic examination of the sewer systems to determine the specific location, estimated flow rate, method of rehabilitation and cost of rehabilitation versus cost of transportation and treatment for each defined source of infiltration/inflow.

(b) The results of the sewer system evaluation survey shall be summarized in a report. In addition, the report shall include:

(1) A justification for each sewer section cleaned and internally inspected.

(2) A proposed rehabilitation program for the sewer systems to eliminate all defined excessive infiltration/inflow.

§ 35.927–3 Rehabilitation.

(a) The scope of each treatment works project defined within the Facilities Plan as being required for implementation of the Plan, and for which Federal assistance will be requested, shall define (1) any necessary new treatment works construction, and (2) any rehabilitation work determined by the sewer system evaluation to be necessary for the elimination of excessive infiltration/inflow. However, rehabilitation which should be a part of the applicant's normal operation and maintenance responsibilities shall not be included within the scope of a Step 3 treatment works project.

(b) Grant assistance for a Step 3 project segment consisting of rehabilitation work may be awarded concurrently with Step 2 work for the design of the new treatment works construction.

§ 35.927–4 Sewer use ordinance.

Each applicant for grant assistance for a Step 2, Step 3, or combination Steps 2 and 3 project shall demonstrate to the satisfaction of the Regional Administrator that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the treatment works project before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.

§ 35.927–5 Project procedures.

(a) *State certification.* The State agency may (but need not) certify that excessive infiltration/inflow does or does not exist. The Regional Administrator will determine that excessive infiltration/inflow does not exist on the basis of State certification, if he finds that the State had adequately established the basis for its certification through submission of only the minimum information necessary to enable a judgment to be made. Such information could include a preliminary review by the applicant or State, for example, of such parameters as per capita design flow, ratio of flow to design flow, flow records or flow estimates, bypasses or overflows, or summary analysis of hydrological, geographical, and geological conditions, but this review would not usually be equivalent to a complete infiltration/inflow analysis. State certification must be on a project-by-project basis. If the Regional Administrator determines on the basis of State certification that the treatment works is or may be subject to excessive infiltration/inflow, no Step 2 or Step 3 grant assistance may be awarded except as provided in paragraph (c) of this section.

(b) *Pre-award sewer system evaluation.* Generally, except as otherwise provided in paragraph (c) of this section, an adequate sewer system evaluation, consisting of a sewer system analysis and, if required, an evaluation survey, is an essential element of Step 1 facilities planning and is a prerequisite to the award of Step 2 or 3 grant assistance. If the Regional Administrator determines through State Certification or an infiltration/inflow analysis that excessive infiltration/inflow does not exist, Step 2 or 3 grant assistance may be awarded. If on the basis of State certification or the infiltration/inflow analysis, the Regional Administrator determines that possible excessive infiltration/inflow exists, an adequate sewer system evaluation survey and, if required, a rehabilitation program must be furnished, except as set forth in paragraph (c) of this section before grant assistance for Step 2 or 3 can be awarded. A Step 1 grant may be awarded for the completion of this segment of Step 1 work, and, upon completion of Step 1, grant assistance for a Step 2 or 3 project (for which priority has been determined pursuant to § 35.915) may be awarded.

(c) *Exception.* In the event it is determined by the Regional Administrator that the treatment works would be regarded (in the absence of an acceptable program of correction) as being subject to excessive or possible excessive infiltration/inflow, grant assistance may be awarded provided that the applicant establishes to the satisfaction of the Regional Administrator that the treatment works project for which grant application is made will not be significantly changed by any subsequent rehabilitation program or will be a component part of any rehabilitated system: *Provided*, That the applicant agrees to complete the sewer system evaluation and any resulting rehabilitation on an implementation schedule the State accepts (subject to approval by the Regional Administrator), which schedule shall be inserted as a special condition in the grant agreement. Compliance with this schedule shall be accomplished pursuant to § 35.935–16 and § 30.304 of this chapter.

(d) Municipalities may submit the infiltration/inflow analysis and when appropriate the sewer system evaluation survey, through the State agency, to the Regional Administrator for his review at any time prior to application for a treatment works grant. Based on such a review, the Regional Administrator shall provide the municipality with a written response indicating either his concurrence or nonconcurrence. The Regional Administrator must concur with the sewer system evaluation survey plan before the work is performed for the survey to be an allowable cost.

§ 35.928 Industrial cost recovery.

The system for industrial cost recovery shall be approved by the Regional Administrator and shall be implemented and maintained by the grantee in accordance with § 35.935–13 and the following requirements.

§ 35.928–1 Recovered amounts.

(a) Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total amount of the grant and any grant amendment awarded pursuant to this subpart, divided by the recovery period.

(b) The industrial cost recovery period shall be equal to 30 years or the useful life of the treatment works, whichever is less.

(c) Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than 1 year after such user begins use of the treatment works.

(d) An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included to insure a proportional distribution of the grant assistance allocable to industrial use to all industrial users of the treatment works. As a minimum, an industry's share shall be proportional to its flow, in relation to treatment works flow capacity.

(e) If there is a substantial change in the strength, volume, or delivery flow rate characteristics introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly.

(f) If there is an expansion or upgrading of the treatment works, each existing industrial user's share shall be adjusted accordingly.

(g) An industrial user's share shall include only that portion of the grant assistance allocable to its use or to capacity firmly committed for its use.

(h) All unallocated treatment works capacity must conform with the requirements of section 204(a)(5) of the Act. Cost-effectiveness guidelines are published as Appendix A to this subpart to furnish additional advisory information concerning the implementation of section 212(2)(C) of the Act.

(i) An industrial user's share shall not include an interest component.

§ 35.928–2 Retained amounts.

(a) The grantee shall retain 50 percent of the amounts recovered from industrial users. The remainder, together with any interest earned thereon, shall be returned to the U.S. Treasury on an annual basis.

(b) A minimum of 80 percent of the retained amounts, together with interest earned thereon, shall be used solely for the eligible costs (in accordance with § 35.940) of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Administrator prior to commit-

ment of the retained amounts for any expansion and reconstruction. The remainder of the retained amounts may be used as the grantee sees fit.

(c) Pending use, the grantee shall invest the retained amounts for reconstruction and expansion in: (1) Obligations of the U.S. Government; or (2) obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or (3) shall deposit such amounts in accounts fully collateralized by obligations of the U.S. Government or by obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

§ 35.930 Award of grant assistance.

Approval by the Regional Administrator of an application or amendments thereto through execution of a grant agreement (including a grant amendment), in accordance with § 30.305 of this subchapter, shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional Administrator. Information concerning the approved project furnished in accordance with § 35.920–3 shall be deemed to be incorporated in the grant agreement.

§ 35.930–1 Types of projects.

(a) The Regional Administrator may award grant assistance for the following types of projects pursuant to § 35.925:

(1) *Step 1.* A facilities plan and/or related elements required to apply for Step 2 grant assistance (see § 35.920–3(b)): *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(a);

(2) *Step 2.* Preparation of construction drawings and specifications: *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(b);

(3) *Step 3.* Building and erection of a treatment works: *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(c); or

(4) *Steps 2 and 3.* A combination of design (Step 2) and construction (Step 3) for a treatment works in the case of grants awarded after March 1, 1973:

(i) Where the Regional Administrator determines that compelling water quality enforcement considerations or public health emergencies warrant award of such grant assistance to assure expeditious construction of such treatment works, or

(ii) Where the Regional Administrator determines that award of such grant assistance will minimize administrative requirements in the case of projects not requiring a substantial amount of Federal assistance: *Provided,* That the award authority provided by this subparagraph (4) is subject to the following conditions: that (A) the Regional Administrator determines that the applicant has submitted the items pursuant to § 35.920–3(b); (B) the United States will be contractually obligated to pay only the Federal share of the approved Step 2 work and will not be contractually obligated to pay the Federal share of Step 3 project costs unless and until the plans and specifications developed during Step 2 are approved; and (C) funds fiscally obligated for Step 3 will be deobligated unless two sets of construction drawings and specifications suitable for bidding purposes are submitted to the Regional Administrator and approved prior to initiation of construction for the building and erection of the treatment works.

(5) *Step 2/3:* Design/construction of treatment works (Steps 2 and 3): *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(d): *And further provided,* That such grant assistance must be awarded pursuant to EPA guidelines for the award of design/construct projects, and that the requirements of such guidelines are met.

(b) The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallotment available to a State pursuant to § 35.910 for payment of 100 percent of any cost of construction of a treatment works (for not more than one facility in any State) required to train and upgrade waste treatment works operation and maintenance personnel, from one or more States, pursuant to section 109(b) of the Act: *Provided,* That the Federal cost of any such training facility shall not exceed $250,000.

§ 35.930–2 Grant amount.

The amount of grant assistance shall be set forth in the grant agreement. The grant amount may not exceed the amount of funds available from the State allotments and reallotments pursuant to § 35.910. Grant payments will be limited to the Federal share of allowable project costs incurred within the grant amount or any increases in such amount effected through grant amendments in accordance with § 35.955, pursuant to the negotiated payment schedule included in the grant agreement.

§ 35.930–3 Grant term.

The grant agreement shall establish the period within which the project must be completed, in accordance with § 30.305–1 of this chapter, subject to excusable delay.

§ 35.930–4 Project scope.

The grant agreement must define the scope of the project for which Federal assistance is awarded under the grant. The project scope must include a step or an identified segment thereof. With respect to any grant assistance for a treatment works project which is initially funded from funds allocated for any fiscal year beginning after June 30, 1974, provision must be made for the application of best practicable waste treatment technology over the life of the treatment works. However, a grant may be made for a segment of Step 3 treatment works construction, when that segment in and of itself does not provide for achievement of applicable effluent discharge limitations (secondary treatment, best practicable waste treatment technology, or water quality effluent limitations), provided that: (a) The segment is to be a component of an operable treatment works which will provide for achievement of the applicable effluent discharge limitations, and (b) a commitment for completion of the complete treatment works is submitted to the Regional Administrator and is incorporated as a special condition in the grant agreement.

§ 35.930–5 Federal share.

The grant shall be 75 percent of the estimated total cost of construction of the project approved by the Regional Administrator in the grant agreement, except as otherwise provided in §§35.925–15, 35.925–16, 35–925–17, and 35.930–1(b).

§ 35.930–6 Limitation on Federal share.

The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee has reason to believe that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the then approved estimated total project cost, the grantee must notify the Regional Administrator and the State agency promptly in writing to that effect, giving the revised estimate of such total cost for the performance of the project then or as soon thereafter as practicable, pursuant to 40 CFR 30.900. Delay in submission of such notice and excess cost information may prejudice approval of an increase in the grant amount. The United States shall not be obligated to pay for costs incurred in excess of the approved grant amount or any amendment thereof until the State has approved an increase in the grant amount from available allotments and the Regional Administrator has approved such increase through issuance of a written grant amendment pursuant to §§ 35.915 and 35.955. Grant payments will be made pursuant to § 35.945.

§ 35.935 Grant conditions.

In addition to the EPA General Grant Conditions (Subpart C of Part 30 and Appendix A to this subchapter), each treatment works grant shall be subject to the following conditions:

§ 35.935–1 Non-Federal construction costs.

The grantee agrees to pay, pursuant to section 204(a)(4) of the Act, the non-Federal costs of treatment works construction associated with the project and commits itself to complete the construction of the operable treatment works (see § 35.905–15) and complete waste treatment system (see § 35.905–3) of which the project is a part.

§ 35.935–2 Procurement; nonrestrictive specifications.

(a) *General.* The grantee must comply with § 35.938 of this subpart in the

construction of any Step 3 or Step 2+3 project. Performance of Step 2 and Step 3 project work may not be accomplished by force account except for (1) Step 1 or Step 2 infiltration/inflow work for which prior written approval has been obtained in accordance with §§ 35.927 to 35.927–5 and (2) segments of Step 3 work, the cost of which is estimated to be under $25,000. The Regional Administrator will cause appropriate review of grantee procurement methods to be made from time to time.

(b) *Nonrestrictive specifications.* No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal." The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the grantee must be prepared to substantiate the basis for the selection of the material.

§ 35.935–3 Bonding and insurance.

On contracts for the building and erection of treatment works (Step 3) exceeding $100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition the contractor awarded either a design/construct contract or a construction contract for Step 3 must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than $100,000 shall be subject to State and local requirements relating to bid guarantees, performance and payment bonds. Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builders risk) as is customary and appropriate.

§ 35.935–4 State and local laws.

The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this subchapter.

§ 35.935–5 Davis-Bacon and related statutes.

In the case of any project involving Step 3, the grantee must consult with the Regional Administrator prior to issuance of invitation for bids concerning compliance with Davis-Bacon and related statutes required pursuant to § 30.403 (a), (b), and (c) of this chapter.

§ 35.935–6 Equal employment opportunity.

Generally, contracts involving Step 3, of $10,000 and above, are subject to equal employment opportunity requirements under Executive Order 11246, including rules, regulations and orders issued thereunder (see Part 8 of this chapter). The grantee must consult with the Regional Administrator concerning equal employment opportunity requirements prior to issuance of invitation for bids where the cost of construction work is estimated to be more than $1,000,000, or where required by the grant agreement.

§ 35.935–7 Access.

Any contract for Step 1, Step 2 or Step 3 work must provide that representatives of the Environmental Protection Agency and the State will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. Such contract must also provide that the Regional Administrator, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

§ 35.935–8 Supervision.

In the case of any project involving Step 3, the grantee will provide and maintain competent and adequate engineering supervision and inspection of the project to insure that the construction conforms with the approved plans and specifications.

§ 35.935–9 Project completion.

The grantee agrees to expeditiously initiate and complete the project or cause it to be constructed and completed in accordance with the grant agreement and application approved by the Regional Administrator. The Regional Administrator must terminate the grant if initiation of construction for a Step 3 project has not occurred within one year after award of grant assistance for such project: *Provided,* That the Regional Administrator may defer such termination for not more than six additional months if he determines that there is good cause for the delay in initiation of project construction.

§ 35.935–10 Copies of contract documents.

In addition to the notification of project changes pursuant to § 30.900–1 of this chapter, a copy of any prime contract or modification thereof and of revisions to plans and specifications must be promptly submitted to the Regional Administrator.

§ 35.935–11 Project changes.

In addition to the notification of project changes required pursuant to § 30.900–1 of this chapter, prior approval by the Regional Administrator and the State agency is required for project changes which may (a) substantially alter the design and scope of the project, (b) alter the type of treatment to be provided, (c) substantially alter the location, size, capacity, or quality of any major item of equipment; or (d) increase the amount of Federal funds needed to complete the project: *Provided,* That prior EPA approval is not required for changes to correct minor errors, minor changes, or emergency changes. No approval of a project change pursuant to § 35.900 of this chapter shall commit or obligate the United States to any increase in the amount of the grant of payments thereunder unless a grant increase is approved pursuant to § 35.955. The preceding sentence shall not preclude submission or consideration of a request for a grant amendment pursuant to § 30.901 of this chapter.

(a) The grantee must make adequate provisions satisfactory to the Regional Administrator for assuring economic, effective, and efficient operation and maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof.

(b) As a minimum, such plan shall include provision for: (1) An operation and maintenance manual for each facility, (2) an emergency operating and response program, (3) properly trained management, operation and maintenance personnel, (4) adequate budget for operation and maintenance, (5) operational reports, and (6) provisions for laboratory testing adequate to determine influent and effluent characteristics and removal efficiencies.

(c) The Regional Administrator shall not pay (1) more than 50 percent of the Federal share of any Step 3 project unless the grantee has furnished a draft of the operation and maintenance manual for review, or adequate evidence of timely development of such a draft, or (2) more than 90 percent of the Federal share unless the grantee has furnished a satisfactory final operation and maintenance manual.

§ 35.935–13 User charges and industrial cost recovery.

(a) The grantee must obtain the approval of the Regional Administrator of the system of industrial cost recovery (see § 35.928) and of the system of user charges. The Regional Administrator shall not pay more than 50 percent of the Federal share of any Step 3 project unless the grantee has submitted adequate evidence of timely development of its system(s) of user charges and industrial cost recovery nor more than 80 percent of such Federal share unless the Regional Administrator has approved such system(s).

(b) The Regional Administrator may approve a user charge system in accordance with the following criteria:

(1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's precise area to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(c) Upon approval of a grantee's system(s) of user charges and industrial cost recovery, implementation and maintenance of such approved system(s) and implementation schedules therefor, shall become a condition of the grant and the grantee shall be subject to the provisions with respect to non-compliance with grant conditions of § 30.404 of this chapter.

(d) The grantee must maintain such records as are necessary to document such compliance.

(e) Guidelines containing illustrative examples of acceptable user charge and industrial cost recovery systems may be consulted for advisory information. The user charge guidelines are contained in Appendix B to this subpart. Cost Recovery Guidelines are published separately and may be obtained from the EPA Regional Office.

§ 35.935–14 Final inspection.

The grantee must notify the Regional Administrator through the State Agency of the completion of Step 3 project construction. The Regional Administrator shall cause final inspection to be made within 60 days of the receipt of the notice. Upon completion of the final inspection and upon determination by the Regional Administrator that the treatment works have been satisfactorily constructed in accordance with the grant agreement, the grantee may make a request for final payment pursuant to § 35.945(e).

§ 35.935–15 Utilization of small and minority businesses.

It is the policy of the Environmental Protection Agency that grantees must utilize to the maximum practical extent small and minority businesses in procurement under grants involving Steps 1, 2, or 3. In the case of grants of $10,000,000 or more grantees must institute an affirmative program for the utilization of small and minority businesses prior to award of the grant.

§ 35.935–16 Sewer use ordinance and evaluation/rehabilitation program.

The grantee must obtain the approval of the Regional Administrator of its sewer use ordinance, pursuant to § 35.927–4 of this subpart. The Regional Administrator shall not pay more than 80 percent of the Federal share of any Step 3 project unless he has approved the grantee's sewer use ordinance, and the grantee is complying with the sewer system evaluation and rehabilitation schedule incorporated in the grant agreement pursuant to § 35.927–5.

§ 35.935–17 Training facility.

If assistance has been provided for the construction of a treatment works required to train and upgrade waste treatment works operation and maintenance personnel, pursuant to § 35.930–1(b) and 35.920–3(e), the grantee must provide assurance that the treatment works will be operated as such a training facility for a period of at least ten years, upon completion of construction.

§ 35.937 Contracts for personal and professional services. [Reserved]

§ 35.938 Construction contracts of grantees.

§ 35.938–1 Applicability.

This section applies to contracts awarded by grantees for any Step 3 project or Step 2+3 project, except personal and professional service contracts.

§ 35.938–2 Performance by contract.

It is the policy of the Environmental Protection Agency to encourage free and open competition with regard to project work performed by contract. The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by § 35.935–2. The following sections define EPA policy for the implementation of the procurement standards set forth in Office of Management and Budget Circular No. A–102, Attachment O (printed at 38 FR 21345, August 7, 1973). Grantee procurement systems should as a minimum provide for the following:

§ 35.938–3 Type of contract.

Each contract shall be either a fixed-price (lump sum) contract or fixed-rate (unit price) contract, or a combination of the two, unless the Regional Administrator gives advance written approval for the grantee to use some other method of contracting. The cost-plus-a-percentage of cost method of contracting shall not be used.

§ 35.938–4 Formal advertising.

Each contract shall be awarded by means of formal advertising, unless negotiation is permitted in accordance with § 35.938–5. Formal advertising shall be in accordance with the following:

(a) *Adequate public notice.* The grantee will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation, beyond the grantee's locality (Statewide, generally) inviting bids on the project work, and stating the method by which bidding documents may be obtained and/or examined. Where the estimated prospective cost of Step 3 construction is ten million dollars or more, such notice must generally be published in trade journals of Nationwide distribution. The grantee should in addition solicit bids directly from bidders, if it maintains a bidders list.

(b) *Adequate time for preparing bids.* Adequate time, generally not less than 30 days must be allowed between the date when public notice pursuant to paragraph (a) of this section is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

(c) *Adequate bidding documents.* A reasonable number of bidding documents (invitations for bid) shall be prepared by grantee and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by grantee and shall be available for inspection and copying by any party. Such bidding documents shall include:

(1) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);

(2) The terms and conditions of the contract to be awarded;

(3) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(4) Responsibility requirements or criteria which will be employed in evaluating bidders; *Provided,* That an experience requirement or performance bond may not be utilized unless adequately justified under the particular circumstances by the grantee;

(5) The following statement:

Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its de-

partments, agencies or employees is or will be a party to this Invitation for Bids or any resulting contract.;

and

(6) A copy of § 35.938 and § 35.939.

(d) *Sealed bids.* The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

(e) *Amendments to bidding documents.* If grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time; when appropriate, the period for submission of bids shall be extended.

(f) *Bid modifications.* A firm which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.

(g) *Public opening of bids.* Grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

(h) *Award to the low responsive, responsible bidder.* (1) After bids are opened, they shall be evaluated by grantee in accordance with the methods and criteria set forth in the bidding documents.

(2) Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder.

(3) If award is intended to be made to a firm which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or nonresponsive.

(4) State or local laws, ordinances, regulations or procedures which are designed or operate to give local or in-State bidders preference over other bidders shall not be employed in evaluating bids.

§ 35.938–5 Negotiation.

Negotiation of contracts (i.e., award of contracts by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Generally, procurements may be negotiated by the grantee if:

(a) Public exigency will not permit the delay incident to advertising (e.g., an emergency procurement);

(b) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than $5,000, the Regional Administrator has given prior approval);

(c) The aggregate amount involved does not exceed $2,500, (except as provided in paragraph (b) of this section);

(d) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution;

(e) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Regional Administrator has given advance written approval;

(f) The procurement is for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for highly perishable materials, resale, or for technical or specialized supplies requiring substantial initial investment for manufacture. Any negotiated procurement under this paragraph (f) of this section, other than for perishable materials must be approved in advance by the Regional Administrator; or

(g) Negotiation of contracts is otherwise atuhorized by Federal law, rules, or regulations or approved prior to the procurement by the Regional Administrator.

§ 35.939 Compliance with procurement requirements.

(a) *Grantee responsibility.* The grantee is primarily responsible for selecting the low, responsive, and responsible bidder in accordance with applicable requirements of State, territorial, or local laws or ordinances, as well as the specific requirements of Federal law or this subchapter directly affecting the procurement (for example, the nonrestrictive specification requirement of § 35.935–2(b) or the equal employment opportunity requirement of § 35.935–6) and for the initial resolution of complaints based upon alleged violations. If complaint is made to the Regional Administrator concerning an alleged violation of Federal law or this subchapter in the procurement of construction services or materials for a project involving Step 3, the complaint will be referred to the grantee for resolution. The grantee must promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, to state in writing or at a conference the basis for their views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination. See paragraph (c) of the section for applicable time limitations.

(b) *Regional Administrator responsibility.* A party adversely affected by an adverse determination of a grantee made pursuant to paragraph (a) of this section, concerning an alleged violation of a specific requirement of Federal law or this subchapter directly affecting the procurement of construction services or material for a project involving Step 3 may request the Regional Administrator to review an adverse determination, subject to the time limitation set forth in paragraph (c) of this section. A copy of the written adverse determination and supporting justification shall be transmitted with the request for review, together with a statement of the specific reasons why the proposed grantee procurement action would violate Federal requirements. The Regional Administrator will afford both the grantee and the complaining party, as well as any other interested party who may be adversely affected, an opportunity to present the basis for their views in writing or at a conference, and he shall promptly state in writing the basis for his determination of the protest. If the grantee proposes to award the contract or to approve award of a specified sub-item under the contract to a bidder other than the low bidder, the grantee will bear the burden of proving that its determination concerning responsiveness of the low bid is in accordance with Federal law and this subchapter; or, if the basis for the grantee's determination is a finding that the low bidder is not responsible, the grantee must establish and substantiate the basis for its determination and must establish that such determination has been made in good faith. The written determination by the Regional Administrator shall be promptly furnished to the grantee and to the complainant.

(c) *Time limitations.* Complaints should be made pursuant to paragraph (a) of this section as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process: *Provided,* That a complaint authorized by paragraph (a) of this section must be mailed by certified mail (return receipt requested) or delivered no later than five working days after the bid opening. A request for review by the Regional Administrator pursuant to paragraph (b) of this section must be received by the Regional Administrator within one week after the complaining party received the grantee's adverse determination.

(d) *Deferral of Procurement Action.* Where the grantee has received a written compliant pursuant to paragraph (a) of this section, it must defer issuance of its solicitation or award or notice to proceed under the contract (as appropriate) for ten days after mailing or delivery of any written adverse determination. Where the Regional Administrator has received a written protest pursuant to paragraph (b) of this section, he must notify the grantee promptly and the grantee must defer issuance of its solicitation or award of the construction contract, as appropriate, until ten days after it receives the determination by the Regional Administrator. If a determination is made by either the grantee or the Regional Administrator which is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with such determination.

(e) *Enforcement.* Noncompliance with the provisions of this subchapter affecting procurement will result in (1) total

or partial termination of the grant pursuant to § 35.950, (2) ineligibility for grant assistance which could otherwise be awarded under this subchapter or (3) disallowance of project costs (see § 35.940–2(j)) incurred in violation of the provisions of this subchapter or applicable Federal laws, as determined by the Regional Administrator. The grantee may appeal adverse determinations by the Regional Administrator in accordance with the Disputes Article (Article 7 of Appendix A to Subchapter B of this title).

§ 35.940 Determination of allowable costs.

The grantee will be paid, upon request, in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.701 of this chapter, this subpart, and the grant agreement.

§ 35.940–1 Allowable project costs.

Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in § 940–2(g).

(b) Costs under construction contracts.

(c) Professional and consultant services.

(d) Facility planning directly related to the treatment works.

(e) Sewer system evaluation (§ 35.927).

(f) Project feasibility and engineering reports.

(g) Costs required pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4621 et seq., 4651 et seq.), and regulations issued thereunder (Part 4 of this chapter).

(h) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings.

(i) Preparation of construction drawings, specifications, estimates, and construction contract documents.

(j) Landscaping.

(k) Supervision of construction work.

(l) Removal and relocation or replacement of utilities, for which the grantee is legally obligated to pay.

(m) Materials acquired, consumed, or expended specifically for the project.

(n) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations.

(o) Development and preparation of an operation and maintenance manual.

(p) Project identification signs (§ 30.604–4 of this chapter).

§ 35.940–2 Unallowable costs.

Costs which are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

(a) Basin or areawide planning not directly related to the project;

(b) Bonus payments not legally required for completion of construction in advance of a contractual completion date;

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

(d) Fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws;

(e) Costs outside the scope of the approved project;

(f) Interest on bonds or any other form of indebtedness required to finance the project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in § 35.940–4.

(h) Site acquisition (for example, sewer rights-of-way, sewage treatment plant sites, sanitary landfills and sludge disposal areas) except as otherwise provided in § 35.940–3(a).

(i) Costs for which payment has been or will be received under another Federal assistance program.

(j) Costs of equipment or material procured in violation of § 35.938–4(h).

§ 35.940–3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the contruction of a treatment works and are allowable if reasonable and approved by the Regional Administrator in the grant agreement or a grant amendment. Such costs include, but are not limited to:

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Acquisition of an operable portion of a treatment works.

(c) Rate determination studies required pursuant to § 35.925–11.

§ 35.940–4 Indirect costs.

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to § 35.940–1. Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred.

§ 35.940–5 Disputes concerning allowable costs.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the "Disputes" article (Article 7), of the EPA General Grant Conditions (Appendix A, Subchapter B of this title).

§ 35.945 Grant payments.

The grantee shall be paid the Federal share of allowable costs incurred within the scope of an approved project, subject to the limitations of §§ 35.925–18, 35.930–5, and 35.930–6; *Provided*, That such payments must be in accordance with the payment schedule and the grant amount set forth in the grant agreement and any amendments thereto. The payment schedule will provide that payment for Step 1 and Step 2 project work will be made only on the basis of completion of the step or, if specified in the payment schedule in the grant agreement, upon completion of specific tasks within the step. All allowable costs incurred prior to initiation of construction of the project must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent payment will be made for such costs.

(a) *Initial request for payment.* Upon award of grant assistance, the grantee may request payment for the unpaid Federal share of actual or estimated allowable project costs incurred prior to grant award subject to the limitations of § 35.925–18, and payment for such costs shall be made in accordance with the negotiated payment schedule included in the grant agreement.

(b) *Interim requests for payment.* The grantee may submit requests for payments for allowable costs incurred in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, subject to the limitations set forth in § 30.602–1 of this subchapter and §§ 35.935–12, 35.935–13, and 35.935–16, the Regional Administrator shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of Federal payments to the grantee for the project is equal to the Federal share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment. Generally, payments will be made within 20 days after receipt of a request for payment.

(c) *Adjustment.* At any time or times prior to final payment under the grant, the Regional Administrator may cause any request(s) for payment to be reviewed or audited. Each payment theretofore made shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

(d) *Refunds, rebates, credits, etc.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee

has been paid under a grant, must be credited to the current State allotment or paid to the United States. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(e) *Final payment.* Upon completion of final inspection pursuant to § 35.935-14 and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of this subchapter and the grant agreement, the Regional Administrator shall cause to be disbursed to the grantees any balance of allowable project cost which has not been paid to the grantee. The final payment request must be submitted by the grantee promptly after final inspection. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the United States, in form and substance satisfactory to the Regional Counsel, of the Federal share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the Government under the grant, and a release discharging the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to such exceptions which may be specified in the release.

§ 35.950 Suspension or termination of grants.

Grants may be suspended, in accordance with § 30.902 of this subchapter and Article 4 of the General Grant Conditions (Appendix A to this subchapter), or terminated, in accordance with § 30.903 of this subchapter and Article 5 of the General Grant Conditions (Appendix A of this subchapter). The State agency shall be concurrently notified in writing of any such suspension or termination action.

§ 35.955 Grant amendments to increase grant amounts.

Grant agreements may be amended in accordance with § 30.901 of this chapter with respect to project changes which have been approved in accordance with § 30.900 and § 35.935-11 of this subchapter: *Provided,* That no grant agreement may be amended to increase the amount of a grant unless the State agency has approved the grant increase from available State allotments and reallotments in accordance with § 35.915.

§ 35.960 Disputes.

Final determinations by the Regional Administrator concerning ineligibility of projects for which priority has been determined in accordance with § 35.915 and final determinations by the Regional Administrator concerning disputes arising under a grant pursuant to this subpart shall be final and conclusive unless appealed by the applicant or grantee within 30 days from the date of receipt of such final determination in accordance with the "Disputes" article of General Grant Conditions (Article 7 of Appendix A to this subchapter).

APPENDIX A

COST EFFECTIVENESS ANALYSIS GUIDELINES

a. *Purpose.*—These guidelines provide advisory information concerning basic methodology for determining the most cost-effective waste treatment management system or the most cost-effective component part of any waste treatment management system.

b. *Authority.*—The guidelines contained herein are provided pursuant to section 212 (2)(C) of the Federal Water Pollution Control Act Amendments of 1972 (the Act).

c. *Applicability.*—These guidelines apply to the development of plans for and the selection of component parts of a waste treatment management system for which a Federal grant is awarded under 40 CFR, Part 35.

d. *Definitions.*—Definitions of terms used in these guidelines are as follows:

(1) *Waste treatment management system.*—A system used to restore the integrity of the Nation's waters. Waste treatment management system is used synonymously with complete waste treatment system as defined in 40 CFR, Part 35.905-3.

(2) *Cost-effectiveness analysis.*—An analysis performed to determine which waste treatment management system or component part thereof will result in the minimum total resources costs over time to meet the Federal, State or local requirements.

(3) *Planning period.*—The period over which a waste treatment management system is evaluated for cost-effectiveness. The planning period commences with the initial operation of the system.

(4) *Service life.*—The period of time during which a component of a waste treatment management system will be capable of performing a function.

(5) *Useful life.*—The period of time during which a component of a waste treatment management system will be required to perform a function which is necessary to the system's operation.

e. *Identification, selection and screening of alternatives.*—(1) *Identification of alternatives.*—All feasible alternative waste management systems shall be initially identified. These alternatives should include systems discharging to receiving waters, systems using land or subsurface disposal techniques, and systems employing the reuse of wastewater. In identifying alternatives, the possibility of staged development of the system shall be considered.

(2) *Screening of alternatives.*—The identified alternatives shall be systematically screened to define those capable of meeting the applicable Federal, State, and local criteria.

(3) *Selection of alternatives.*—The screened alternatives shall be initially analyzed to determine which systems have cost-effective potential and which should be fully evaluated according to the cost-effectiveness analysis procedures established in these guidelines.

(4) *Extent of effort.*—The extent of effort and the level of sophistication used in the cost-effectiveness analysis should reflect the size and importance of the project.

f. *Cost-effective analysis procedures.*—(1) *Method of Analysis.*—The resources costs shall be evaluated through the use of opportunity costs. For those resources that can be expressed in monetary terms, the interest (discount) rate established in section (f)(5) will be used. Monetary costs shall be calculated in terms of present worth values or equivalent annual values over the planning period as defined in section (f)(2). Nonmonetary factors (e.g., social and environmental) shall be accounted for descriptively in the analysis in order to determine their significance and impact.

The most cost-effective alternative shall be the waste treatment management system determined from the analysis to have the lowest present worth and/or equivalent annual value without overriding adverse nonmonetary costs and to realize at least identical minimum benefits in terms of applicable Federal, State, and local standards for effluent quality, water quality, water reuse and/or land and subsurface disposal.

(2) *Planning period.*—The planning period for the cost-effectiveness analysis shall be 20 years.

(3) *Elements of costs.*—The costs to be considered shall include the total values of the resources atributable to the waste treatment management system or to one of its component parts. To determine these values, all monies necessary for capital construction costs and operation and maintenance costs shall be identified.

Capital construction costs used in a cost-effectiveness analysis shall include all contractors' costs of construction including overhead and profit; costs of land, relocation, and right-of-way and easement acquisition; design engineering, field exploration, and engineering services during construction; administrative and legal services including costs of bond sales; startup costs such as operator training; and interest during construction. Contingency allowances consistent with the level of complexity and detail of the cost estimates shall be included.

Annual costs for operation and maintenance (including routine replacement of equipment and equipment parts) shall be included in the cost-effectiveness analysis. These costs shall be adequate to ensure effective and dependable operation during the planning period for the system. Annual costs shall be divided between fixed annual costs and costs which would be dependent on the annual quantity of wastewater collected and treated.

(4) *Prices.*—The various components of cost shall be calculated on the basis of market prices prevailing at the time of the cost-effectiveness analysis. Inflation of wages and prices shall not be considered in the analysis. The implied assumption is that all prices involved will tend to change over time by approximately the same percentage. Thus, the results of the cost effectiveness analysis will not be affected by changes in the general level of prices.

Exceptions to the foregoing can be made if there is justification for expecting significant changes in the relative prices of certain items during the planning period. If such cases are identified, the expected change in these prices should be made to reflect their future relative deviation from the general price level.

(5) *Interest (discount) rate.*—A rate of 7 percent per year will be used for the cost-effectiveness analysis until the promulgation of the Water Resources Council's "Proposed Principles and Standards for Planning Water and Related Land Resources." After promulgation of the above regulation, the rate established for water resource projects shall be used for the cost-effectiveness analysis.

(6) *Interest during construction.*—In cases where capital expenditures can be expected to be fairly uniform during the construction

period, interest during construction may be calculated as $I \times \frac{1}{2} P \times C$ where:

I=the interest (discount) rate in Section f(5).
P=the construction period in years.
C=the total capital expenditures.

In cases when expenditures will not be uniform, or when the construction period will be greater than three years, interest during construction shall be calculated on a year-by-year basis.

(7) *Service life.*—The service life of treatment works for a cost-effectiveness analysis shall be as follows:

Land	Permanent
Structures (includes plant buildings, concrete process tankage, basins, etc.; sewage collection and conveyance pipelines; lift station structures; tunnels; outfalls)	30–50 years
Process equipment (includes major process equipment such as clarifier mechanisms, vacuum filters, etc.; steel process tankage and chemical storage facilities; electrical generating facilities on standby service only).	15–30 years
Auxiliary equipment (includes instruments and control facilities; sewage pumps and electric motors; mechanical equipment such as compressors, aeration systems, centrifuges, chlorinators, etc.; electrical generating facilities on regular service).	10–15 years

Other service life periods will be acceptable when sufficient justification can be provided.

Where a system or a component is for interim service and the anticipated useful life is less than the service life, the useful life shall be substituted for the service life of the facility in the analysis.

(8) *Salvage value.*—Land for treatment works, including land used as part of the treatment process or for ultimate disposal of residues, shall be assumed to have a salvage value at the end of the planning period equal to its prevailing market value at the time of the analysis. Right-of-way easements shall be considered to have a salvage value not greater than the prevailing market value at the time of the analysis.

Structures will be assumed to have a salvage value if there is a use for such structures at the end of the planning period. In this case, salvage value shall be estimated using straightline depreciation during the service life of the treatment works.

For phased additions of process equipment and auxiliary equipment, salvage value at the end of the planning period may be estimated under the same conditions and on the same basis as described above for structures.

When the anticipated useful life of a facility is less than 20 years (for analysis of interim facilities), salvage value can be claimed for equipment where it can be clearly demonstrated that a specific market or reuse opportunity will exist.

APPENDIX B

FEDERAL GUIDELINES

USER CHARGES FOR OPERATION AND MAINTENANCE OF PUBLICLY OWNED TREATMENT WORKS

(a) *Purpose.*—To set forth advisory information concerning user charges pursuant to Section 204 of the Federal Water Pollution Control Act Amendments of 1972, PL 92–500, hereinafter referred to as the Act. Applicable requirements are set forth in Subpart E (40 CFR Part 35).

(b) *Authority.*—The Authority for establishment of the user charge guidelines is contained in section 204(b)(2) of the Act.

(c) *Background.*—Section 204(b)(1) of the Act provides that after March 1, 1973, Federal grant applicants shall be awarded grants only after the Regional Administrator has determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services will pay its proportionate share of the costs of operation and maintenance, including replacement. The intent of the Act with respect to user charges is to distribute the cost of operation and maintenance of publicly owned treatment works to the pollutant source and to promote self-sufficiency of treatment works with respect to operation and maintenance costs.

(d) *Definitions.*—(1) *Replacement.*—Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(2) *User charge.*—A charge levied on users of treatment works for the cost of operation and maintenance of such works.

(e) *Classes of users.*—At least two basic types of user charge systems are common. The first is to charge each user a share of the treatment works operation and maintenance costs based on his estimate of measured proportional contribution to the total treatment works loading. The second system establishes classes for users having similar flows and waste water characteristics; i.e., levels of biochemical oxygen demand, suspended solids, etc. Each class is then assigned its share of the waste treatment works operation and maintenance costs based on the proportional contribution of the class to the total treatment works loading. Either system is in compliance with these guidelines.

(f) *Criteria against which to determine the adequacy of user charges.*—The user charge system shall be approved by the Regional Administrator and shall be maintained by the grantee in accordance with the following requirements:

(1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's jurisdiction to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with this guideline. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(g) *Model user charge systems.*—The user charge system adopted by the applicant must result in the distribution of treatment works operation and maintenance costs to each user (or user class) in approximate proportion to his contribution to the total wastewater loading of the treatment works. The following user charge models can be used for this purpose; however, the applicant is not limited to their use. The symbols used in the models are as defined below:

C_T=Total operation and maintenance (O. & M.) costs per unit of time.
C_u=A user's charge for O. & M. per unit of time.
C_s=A surcharge for wastewaters of excessive strength.
V_c=O&M cost for transportation and treatment of a unit of wastewater volume.
V_u=Volume contribution from a user per unit of time.
V_T=Total volume contribution from all users per unit of time.
B_c=O&M cost for treatment of a unit of biochemical oxygen demand (BOD).
B_u=Total BOD contribution from a user per unit of time.
B_T=Total BOD contribution from all users per unit of time.
B=Concentration of BOD from a user above a base level.
S_c=O&M cost for treatment of a unit of suspended solids.
S_u=Total suspended solids contribution from a user per unit of time.
S=Concentration of SS from a user above a base level.
P_c=O&M cost for treatment of a unit of any pollutant.
P_u=Total contribution of any pollutant from a user per unit of time.
P_T=Total contribution of any pollutant from all users per unit of time.
P=Concentration of any pollutant from a user above a base level.

(1) *Model No. 1.*—If the treatment works is primarily flow dependent or if the BOD, suspended solids, and other pollutant concentrations discharged by all users are approximately equal, then user charges can be developed on a volume basis in accordance with the model below:

$$C_u = \frac{C_T}{V_T}(V_u)$$

(2) *Model No. 2.*—When BOD, suspended solids, or other pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, a surcharge added to a base charge, calculated by means of Model No. 1, can be levied. The surcharge can be computed by the model below:

$$C_s = [B_c(B) + S_c(S) + P_c(P)]V_u$$

(3) *Model No. 3.*—This model is commonly called the "quantity/quality formula":

$$C_u = V_cV_u + B_cB_u + S_cS_u + P_cP_u$$

(h) *Other considerations.*—(1) Quantity discounts to large volume users will not be acceptable. Savings resulting from economies of scale should be apportioned to all users or user classes.

(2) User charges may be established based on a percentage of the charge for water usage only in cases where the water charge is based on a constant cost per unit of consumption.

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