UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

GUIDELINE TRANSMITTAL SHEET

GUIDELINE NUMBER	TITLE	RELEASE NO.
NPS-34	Land and Water Conservation Fund Grants Manual	151
OFFICE OF ORIGIN (784) Recreation Grants Division		DATE Dec. 9, 1991

Explanation of material transmitted:

This release is a complete reprinting of the Land and Water Conservation Fund Grants Manual, the first since June 1982. This involved complete reformatting and layout of the existing Releases 140 to 150, including new typesetting of the text and Attachments and thorough updates of the Index and introductory materials. Typographic errors were corrected and revised versions of existing forms incorporated throughout whenever a change has occurred since the last release. In addition, the following significant changes were made to specific parts of the Manual.

Chapter 600.5. Definitions have been updated and expanded to cover items suggested by Regional staff and State cooperators.

Chapter 630.1. The 1990 revisions to SCORP planning guidelines, already reviewed and approved by program participants and issued as a policy memorandum, are published in the Manual for the first time. Other references to State planning in Chapter 630.2 and throughout the Manual have been updated to reflect these changes (e.g., references to submissions of separate "Action Programs" were deleted.)

Chapter 650.3 is revised to reflect 1987 and subsequent technical amendments to the Uniform Relocation Assistance Act.

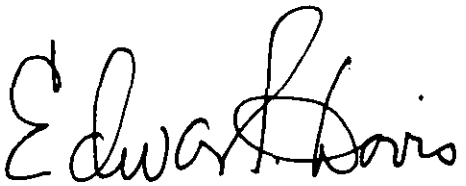
Chapter 650.3, Attachment A. Revised Federal Regulations on "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally -Assisted Programs" are incorporated into the Manual.

Chapter 660.3, Attachment B. New government-wide Certifications regarding Lobbying and Provision of a Drug-Free Work Place have been added to the Continuing Assurances section of the L&WCF Project Agreement, Parts II.G. and II.H. This incorporates changes in the Assurances form made in 1990.

Chapter 675.6. The Payments chapter has been revised to eliminate references to the now defunct Treasury Letter of Credit (LOC) System and incorporate instructions and forms used for the SMARTLINK Payment Management System which replaced Letters of Credit at the beginning of 1991. This material has been published separately but is incorporated into the Manual for the first time.

Chapter 675.6, Attachment A and B. Direct Deposit Sign-Up Form and information on SMARTLINK replace former Attachments relating to the now obsolete Letter of Credit Drawdown System.

Chapter 675.9. Non-substantive clarifications of several steps in the conversion approval process have been made in response to comments from Regional Offices and State cooperators



ASSOCIATE DIRECTOR, BUDGET & ADMINISTRATK

Instructions to current Manual holders:

PAGE CHANGES

Remove and discard all previous Releases. Replace all with Release 151.

Land and Water Conservation Fund

L&WCF Grants-in-Aid Manual

U.S. Department of the Interior • National Park Service

PREFACE

This Land and Water Conservation Fund (L&WCF) Grants Manual sets forth the administrative policies, procedures and guidelines for L&WCF grants awarded to the States by the Department of the Interior, National Park Service. It is intended to serve as a basic reference for those who are engaged in the administrative and financial management of L&WCF grants to States, and to achieve uniformity in the administration of the L&WCF program by the State Liaison Officers.

Participation in the L&WCF program constitutes a public trust. It is the responsibility of State grantees and designated subgrantees to comply with this Manual and all terms and conditions of the grant agreement, to efficiently and effectively manage funds in accordance with the approved budgets, to promptly complete grant assisted activities in a diligent and professional manner, and to monitor and report performance. This responsibility cannot be delegated nor transferred.

The policies and procedures contained in this Manual are subject to applicable Federal laws and regulations, and any changes made to these laws and regulations subsequent to their publication. In the event that these policies and procedures conflict with applicable Federal laws, regulations, and policies, the following order of precedence will prevail:

1. Federal Law
2. The Code of Federal Regulations
3. Terms and Conditions of Grant Award
4. Land and Water Conservation Fund Manual

The State bears primary responsibility for the administration and success of grant supported operations, including performance by third parties under subagreements made by the State for accomplishing nonconstruction and construction project objectives. Except as specifically excluded, the provisions of this Manual shall be applied by the State to subgrantees and contractors performing work under L&WCF grants.

This edition of the L&WCF Grants Manual revises and updates the previous edition, including amendments thereto, issued as Manual Release 140 through Manual Release 150.

The Land and Water Conservation Fund (L&WCF) Program was administered by the Bureau of Outdoor Recreation (BOR) from its beginning in 1965 to 1978 when the Heritage Conservation and Recreation Service (HCRS) was created. HCRS then administered the program until 1981 when the grants program was transferred to the National Park Service. Current

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inquiries may be addressed to the Chief, Recreation Grants Division, National Park Service (784), P.O. Box 37127, Washington, D.C. 20013-7127.

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HOW TO USE THIS MANUAL

The Manual is organized numerically by **Part, Chapter, Section** and paragraph. A typical reference, such as 650.3.2A, indicates Part 650, Chapter 3, Section 2 and paragraph A. To locate something, use the Table of Contents (see Page iv. of this section) to identify the likely Part and Chapter or refer to the Index at the back of the book for the specific topic and cross references.

Spending a few moments with the **Table of Contents** to define how specific topics relate to the Parts and Chapters of the Manual will save time later when you are searching for specific categories of information. For example, almost everything relating to State Plans and SCORP grants is in Part 630. Pre-approval grant requirements are covered in depth in Part 650, application requirements and forms are in Part 660, and post-approval administrative guidelines are in Part 675. Therefore, you do not have to memorize the entire Contents or Index to become fairly clear that information on pre-approval NEPA procedures for environmental impact assessment will be somewhere in Part 650, while most information on billings, audits and conversions (all post-approval events) will show up in Part 675.

The **Index** has been thoroughly updated for this release of the L&WCF Manual. Every effort has been made to include all possible topics, and to cross-reference them by key words to all subjects readers are likely to be searching for. If topics appear to be missing or references incorrect, we welcome suggestions from project officers at the State or Regional Office level for **possible** enhancements of future editions.

No index is perfect; the value of this one, like any other, can be enhanced by a thoughtful approach. If a topic you think should be in the Index appears to be missing, do not ASSUME that it is totally missing. It is almost certainly referred to in the Index somewhere, so think of possible synonyms for key words and/or related concepts specific to the topic you are searching for. For example, if a person were searching for Circular "A-95" coordination requirements and could not find them, there are other possibilities. A-95 (when that was the current designation) was about "Intergovernmental review", which is in the Index. Perhaps there is a vague memory about A-95 being replaced several years ago by a later Executive Order or E.O. Fortunately, there is only one "E.O." listed in the Index, so it's easy to find "E.O. 12372, INTERGOVERNMENTAL REVIEW SYSTEM" which gets to the topic desired. Again, if you believe key words or cross-references are missing from the Index, please make a note of them and pass on to the nearest Service office for possible inclusion in the next edition.

How to Obtain Copies of this Manual. This Manual and all revisions to it may be obtained from National Park Service Regional Offices (see Part 600.1, Attachment A, for Regional Office addresses).

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PROGRAM SUMMARY

1. **Purpose.** The Land and Water Conservation Fund (L&WCF) Act of 1965 (Public Law 88-578, 78 Stat 897) was enacted "...to assist in preserving, developing and assuring accessibility to all citizens of the United States of America of present and future generations ...such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation..." The L&WCF program provides matching grants to States, and through the States to local governments, for the acquisition and development of public outdoor recreation areas and facilities. Planning grants are also available to the States to help develop Statewide Comprehensive Outdoor Recreation Plans (SCORP).

2. **Delegation of Authority.** The L&WCF Act authorizes the Secretary of the Interior to provide financial assistance to States for outdoor recreation purposes. Except for the apportionment of funds among States and the approval of Contingency Reserve projects, this authority has been delegated to the Director of the National Park Service (NPS). The Regional Directors are authorized to exercise the program and administrative authority of the Director within the geographic area comprising the region for which they have responsibility. Limitations to this delegation include the Director's authority to act on all recommendations to the Secretary involving the apportionment of L&WCF monies and the allocation of Contingency Reserve Fund assistance; and to approve or disapprove formal arrangements where by the State agrees to assume certain responsibilities in the administration of the L&WCF program.

3. **Appointment of State Liaison Officer.** To be eligible for assistance under the L&WCF Act, the Governor of each State shall designate in writing an official who has authority to represent and act for the State as the State Liaison Officer in dealing with the Director of NPS for purposes of the L&WCF program. The State Liaison Officer (SLO) shall have authority and responsibility to accept and to administer funds paid for approved projects. Upon taking office, a new Governor shall officially, in writing, redesignate the present State Liaison Officer or appoint a new individual to represent and act for the State in dealing with the L&WCF program.

4. **Apportionment of Funds.** L&WCF monies are apportioned to the States by the Secretary of Interior each fiscal year in accordance with the apportionment formula contained in the L&WCF Act. This formula includes a factor for equal distribution of a portion of the fund among the States, as well as factors for distribution on the basis of population

and need. Funds are apportioned to the individual States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Government of the Northern Mariana Islands (when such islands achieve commonwealth status) which are collectively referred to as "the States" for the purposes of this program. Funds may be made available through the States to political subdivisions of the State and other appropriate public agencies, including recognized Indian tribes which otherwise qualify for L&WCF assistance.

5. State Planning Requirements. To be eligible for L&WCF assistance for acquisition or development grants, each State shall prepare a Statewide Comprehensive Outdoor Recreation Plan (SCORP), and update and refine it continually. The SCORP identifies capital investment priorities for acquiring, developing, and protecting all types of outdoor recreation resources within a State; it assures continuing opportunity for local units of government and private citizens to take part in their State's outdoor recreation and environmental planning programs; and it provides a practical tool for coordinating all State outdoor recreation and environmental conservation programs. Planning grants and technical assistance are available through the L&WCF program to help the States develop and update their SCORP planning process.

6. Acquisition and Development Grants. L&WCF assistance may be available 1) to acquire lands and waters or interests in lands and water for public outdoor recreation, and 2) to develop basic outdoor recreation facilities to serve the general public. To be eligible for assistance, projects must be in accord with the Statewide Comprehensive Outdoor Recreation Plan, be sponsored by a governmental agency, and meet other State and Federal requirements.

7. Contingency Reserve Fund. A small portion of the Fund is set aside in a Contingency Reserve Fund from which the Secretary of Interior may obligate assistance to individual projects on the basis of need.

8. Basis for Assistance. L&WCF assistance is provided on a 50/50 matching basis to individual projects which are submitted through the State Liaison Officer to the National Park Service for approval. Project costs shall be determined in accord with OMB Circular A-102 and A-87, the L&WCF Grants Manual and all claims shall be subject to verification by Federal audit.

L&WCF grants shall be made available on a 100% basis in accord with Public Law 96-205 to the Insular Areas participating in the L&WCF program (i.e.. the Virgin Islands, Guam, American Samoa, and the Government of the Northern Mariana Islands when such islands achieve commonwealth status). However, the Secretary reserves the right to require up to 50 percent matching funds for grants awarded from the Contingency Reserve to the Insular Areas and this reservation will be applied on a project by project basis.

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9. **Project Program Administration.** The State Liaison Officer is responsible for administration of the L&WCF program in his/her State. This includes implementation of an ongoing SCORP planning process; evaluation and selection of projects in accord with an Open Project Selection Process; assuring compliance of projects with the requirements of this L&WCF Grants Manual; preparation and submission of applications, amendments and billings; inspection of projects to insure proper completion, operations and maintenance; and other functions necessary for proper program administration and management.

10. **Conversion Policy.** The L&WCF Act requires the States to operate and maintain by acceptable standards the properties or facilities acquired or developed for public outdoor recreation use. Further, Section 6(f)(3) of the L&WCF Act requires that no property acquired or developed with L&WCF assistance shall be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior and the substitution in accord with the SCORP of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

11. **Where to Send Inquiries.** Generally, all correspondence should be addressed to the appropriate Regional Office of the National Park Service with responsibility for the L&WCF program (see Attachment 600.1A).

National Park Service Offices with Responsibility for L&WCF Grants:

REGION	OFFICE ADDRESS	STATES
Mid-Atlantic	Regional Director, NPS 143 S. 3rd Street Philadelphia, PA 19106 215-597-7995	CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV
Southeast	Regional Director, NPS 75 Spring Street, 10th Fl. Atlanta, GA 30303 404-331-2608	AL, FL, GA, KY, MS, NC, PR, SC, TN, VI
Mid-West	Regional Director, NPS 1709 Jackson Street Omaha, NE 68102 402-221-3201	IA, IL, IN, KS, MI, MN, MO, NE, OH, WI
Southwest	Regional Director, NPS P.O. Box 728 Santa Fe, NM 87501-0728 505-988-6815	AR, LA, NM, OK, TX
Rocky Mountain	Regional Director, NPS P.O. Box 25287 Denver, CO 80225 303-969-2500	CO, MT, ND, SD, UT, WY
Pacific Northwest	Regional Director, NPS 83 South King Street, Suite 212 Seattle, WA 98104-2887 206-553-4720	AK, ID, OR, WA
Western	Regional Director, NPS 600 Harrison St., Suite 600 San Francisco, CA 94107-1372 415-774-3972	American Samoa, AZ, CA, Guam, HI, NV, Northern Marianas Islands

Washington D.C. Offices

Recreation Grants Div. - 784
U.S. Department of the Interior
NPS
P.O. Box 37127
Washington, D.C. 20013-7127

Accounting Operations Div. - 309
U.S. Department of the Interior
NPS
P.O. Box 37127
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LEGISLATIVE BASIS

1. **Purpose.** The basic authority for the Land and Water Conservation Fund is stated in Section 1 (b) of the Land and Water Conservation Fund Act of 1965, as amended (78 Stat. 897):

> "The purposes of this act are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas."

2. **Section 6 of the Act** contains the basic requirements and conditions for the L&WCF Program of Assistance to States:

> "Section 6. GENERAL AUTHORITY; PURPOSES.--(a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from monies available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this Act, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interests in land or waters, or (3) development.
>
> (b) APPORTIONMENT AMONG STATES; NOTIFICATION.--Sums appropriated and available for States purposes for each fiscal year shall be apportioned among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:
>
> (1) Forty per centum of the first $225,000,000; thirty per centum of the next $275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and
>
> (2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this Act. The determination of

need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the Federal resources and programs in the particular States.

(3) The total allocation to an individual State under paragraphs (1) and (2) of this subsection shall not exceed 10 per centum of the total amount allocated to the several States in any one year.

(4) The Secretary shall notify each State of its apportionments; and the amounts thereof shall be available thereafter for payment to such State for planning, acquisition, or development projects as hereafter prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) of this subsection, without regard to the 10 per centum limitation to an individual State specified in this subsection.

(5) For the purposes of paragraph (1) of this subsection, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (when such islands achieve Commonwealth status) shall be treated collectively as one State, and shall receive shares of such apportionment in proportion to their populations. The above listed areas shall be treated as States for all other purposes of this title.

(c) MATCHING REQUIREMENTS.--Payments to any State shall cover not more than 50 per centum of the cost of planning, acquisition, or development projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as shall be satisfactory to the Secretary. No payment may be made to any State for or on account of any cost or obligation incurred or any service rendered prior to the date of approval of this Act.

(d) COMPREHENSIVE STATE PLAN REQUIRED; PLANNING PROJECTS.--A comprehensive statewide outdoor recreation plan shall be required prior to the consideration by the Secretary of financial assistance for acquisition or development projects. The plan shall be adequate if, in the judgment of the Secretary, it encompasses and will promote the purposes of this Act: Provided, That no plan shall be approved unless the Governor of the respective State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with

others, criteria for public participation, which criteria shall constitute the basis for the certification by the Governor. The plan shall contain -

(1) the name of the State agency that will have authority to represent and act for the State in dealing with the Secretary for purposes of this Act;

(2) an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;

(3) a program for the implementation of the plan; and

(4) other necessary information, as may be determined by the Secretary.

The plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Housing and Home Finance Agency, any statewide outdoor recreation plan prepared for purposes of this Act shall be based upon the same population, growth, and other pertinent factors as are used in formulating the Housing and Home Finance Agency financed plans.

The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when such plan is not otherwise available or for the maintenance of such plan.

(e) PROJECTS FOR LAND AND WATER ACQUISITION; DEVELOPMENT.--In addition to assistance for planning projects, the Secretary may provide financial assistance to any State for the following types of projects or combinations thereof if they are in accordance with the State comprehensive plan:

(1) ACQUISITION OF LAND AND WATERS.--For the acquisition of land, waters, or interests in land or water (other than land, waters, or interests in land or waters acquired from the United States for less than fair market value), but not including incidental costs relating to acquisition. Whenever a State provides that the owner of a single-family residence may, at his option, elect to retain a right of use and occupancy for not less than six months from the date of acquisition of such residence and such owner elects to retain such a right, such owner shall be deemed to have waived any benefits under sections 203, 204, 205, and 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 101(6) of that Act.

(2) DEVELOPMENT. -- For development of basic outdoor recreation facilities to serve the general public, including the development of Federal lands under lease to States for terms of twenty-five years or more: Provided, That no assistance shall be available under this Act to enclose or shelter facilities normally used for outdoor recreation activities, but the Secretary may permit local funding, and after the date of enactment of this provision not to exceed 10 per centum of the total amount allocated to a State in any one year to be used for sheltered facilities for swimming pools and ice skating rinks in areas where the Secretary determines that the severity of climatic conditions and the increased public use thereby made possible justifies the construction of such facilities.

(f) REQUIREMENTS FOR PROJECT APPROVAL: CONDITION. -

(1) Payments may be made to States by the Secretary only for those planning, acquisition, or development projects that are approved by him. No payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any project with respect to which such assistance has been given or promised under this Act. The Secretary may make payments from time to time in keeping with the rate of progress toward the satisfactory completion of individual projects: Provided, That the approval of all projects and all payments, or any commitments relating thereto, shall be withheld until the Secretary receives appropriate written assurance from the State that the State has the ability and intention to finance its share of the cost of the particular project, and to operate and maintain by acceptable standards, at State expense, the particular properties or facilities acquired or developed for public outdoor recreation use.

(2) Payments for all projects shall be made by the Secretary to the Governor of the State or to a State official or agency designated by the Governor or by State law having authority and responsibility to accept and to administer funds paid hereunder for approved projects. If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.

(3) No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion

only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location: *Provided,* that wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within the same State that is otherwise acceptable to the Secretary, acting through the Director of the National Park Service, shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion.

(4) No payment shall be made to any State until the State has agreed to (1) provide such reports to the Secretary, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his duties under this Act, and (2) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State under this Act.

(5) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(6) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination any books, documents, papers, and records of the recipient that are pertinent to assistance received under this Act.

(7) Each State shall evaluate its grant programs annually under guidelines set forth by the Secretary and shall transmit, so as to be received by the Secretary no later than December 31, such evaluation to the Secretary, together with a list of all projects funded during that fiscal year, including, but not limited to, a description of each project, the amount of Federal funds employed in such project, the source of other funds, and the estimated cost of completion of the project. Such evaluation and the publication of same shall be eligible for funding on a 50-50 matching basis. The results of the evaluation shall be annually reported on a fiscal year basis to the National Park Service, which agency shall forward a

summary of such reports to the Committees on Interior and Insular Affairs of the United States Congress by no later than March 1 of each year. Such report to the committees shall also include an analysis of the accomplishments of the fund for the period reported, and may also include recommendations as to future improvements for the operation of the Land and Water Conservation Fund program.

(8) With respect to property acquired or developed with assistance from the fund, discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

(g) COORDINATION WITH FEDERAL AGENCIES.--In order to assure consistency in policies and actions under this Act, with other related Federal programs and activities (including those conducted pursuant to title VII of the Housing Act of 1961 and Section 701 of the Housing Act of 1954) and to assure coordination of the planning acquisition, and development assistance to States under this section with other related Federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable and such assistance may be provided only in accordance with such regulations."

STATE APPORTIONMENT FORMULA

1. **Apportionment Percentage to States.** The Act creates a Fund consisting of certain earmarked revenues from which the Congress may annually appropriate money for public outdoor recreation purposes. As provided in the annual appropriation act, funds shall be made available for State and Federal purposes with not less than 40 percent appropriated for Federal purposes.

2. **The Amount Apportioned is Essentially a Reserve.** Apportionment of funds to the States does not confer absolute entitlement to such funds. The apportionment is evidence of a commitment by the Federal Government to withhold from other uses a specified amount for a State for a given period of time. The amounts apportioned are subject to Office of Management and Budget quarterly apportionments to the Land and Water Conservation Fund (L&WCF) monies which set legal limits on the amounts which can be obligated each fiscal quarter for all purposes under the L&WCF. To receive apportioned funds, the States must (a) prepare and maintain a comprehensive statewide outdoor recreation plan that has been found by the Service to be adequate for the purposes of the Act; (b) submit and receive approval of projects requiring the use of apportioned funds; and (c) request the Federal Government to obligate apportioned funds for use on approved projects.

3. **Basis for Apportionment.** Apportionment of the appropriation is made by the Secretary in accord with the legislative mandate state in Section 6(b) of the L&WCF Act. The amount apportioned to each State is the amount of new authority for obligation each State will have in the fiscal year unless Congress or the President decides later to defer or rescind some portion of the amount.

4. **Notice of Apportionment.** The Secretary will notify each State of its apportionment following an appropriation of funds by the Congress.

5. **Reports on Status of States Apportionment.** The Service will notify each State periodically, of the status of each fiscal year's apportionment. This financial report shall include for each fiscal year: the total amount of current apportionments (including adjustments), the total obligations, and the total expenditures. The report will also notify the State of the balance remaining available in each apportionment. The State is expected to maintain its own accounting records on the status of apportionments.

6. **Life of State Apportionments.** The funds apportioned to a State will remain available for obligation during the fiscal year in which

notification is given and for two fiscal years thereafter. Any portion of an apportionment that remains unobligated at the expiration of this 3-year period shall revert to the Secretary for reapportionment among the several States on the basis of need as determined by the Secretary.

7. **Disposition of Unexpended Balances of Obligated Funds.** Funds obligated for an approved project will remain available for expenditure by the project sponsor until the project is completed or terminated. All projects should be completed within 5 years (see 660.2.7B). When the total project expenditures are less than the obligated amount and the 3-year period for obligation availability has expired (see 600.3.6), the unexpended balance will revert to a special account which may be reapportioned to the State. This special account, containing previously apportioned but unexpended funds, does not confer entitlement to such funds by the State (see 600.3.2). The special account policy was established to allow States the opportunity to utilize monies saved from good management of the program (projects completed for less-than-anticipated funds), and in 1981 the special account was revised to include all deobligated monies with no restrictions as to whether or not deobligation occurred within or after the 3-year period for obligation availability. The Secretary, may, at his/her discretion reapportion such unexpended balances back to the respective State from which it came on the basis of need. The determination of need for each State will reflect the efficient management of their obligations and outlays, the demand for additional funding, and satisfactory compliance with all L&WCF program requirements.

   The procedure for the issuance of a Certificate of Reapportionment will include a review of each State's request for reapportionment funds available. The State's identification and justification of need, their obligation and outlay rate, and compliance with all program requirements will be considered in the review. The authority to review and approve each State request for reapportionment has been delegated to the Chief, Recreation Grants Division, Washington Office. Upon approval, Regional Directors are authorized to issue the Certificate of Reapportionment. Any funds not reapportioned back to a State within six months from the end of the fiscal year in which the reapportionment funds become available will revert to the Secretary's Contingency Reserve Fund.

   Reapportionment Process:

   (1) State requests funds from Region. Region reviews State request.
   (2) Regional recommendation and a copy of the State's request is sent to the Chief, Recreation Grants Division, WASO.

(3) WASO reviews request, assigns Certificate Number or rejects.
(4) Region receives WASO approval memo with Certificate Number and prepares Reapportionment Certificate.
(5) Original Certificate signed by Regional or Acting Regional Director and sent to WASO Finance Division.
(6) One copy of Certificate with transmittal letter sent to State. One copy of Certificate sent to WASO Recreation Grants.
(7) Finance posts Certificate, after which State may proceed with fund requests (usually during same month).

SECRETARY'S CONTINGENCY RESERVE FUND

1. **Authority.** Sec. 6(b) of the L&WCF Act requires the Secretary of the Interior (1) to apportion 60 to 80 percent of each year's appropriation among the States on the basis of need, and (2) to reapportion any unobligated amounts from expired apportionments among the States on the basis of need. The Secretary's Contingency Reserve Fund consists of sums reserved from the annual appropriations and reverted sums from expired apportionments which will be apportioned or reapportioned by the Secretary on a project-by-project determination of need. No money from the Contingency Reserve may be obligated or otherwise committed for any project without the prior approval of the Secretary.

2. **Specific Criteria.** Requests for assistance from the Contingency Reserve must meet the same basic requirements as required for assistance from the State's regular apportionment. Contingency Reserve requests will be considered on the basis of the extent to which the project meets the following criteria:

   A. The project must fall within one of three categories:

      (1) Acquisitions which necessitate urgent action (no false emergencies);

      (2) Demonstration programs initiated by the Secretary which identify new ideas in outdoor recreation or encourage State and local governments to meet identified critical needs; or

      (3) Emergency situations brought about by natural disasters which necessitate urgent action to provide lost recreational opportunities when other sources of funding such as Disaster Relief Act funds are not available.

   B. The State's regularly apportioned funds are insufficient because they have been obligated or officially committed to other high priority projects and it is imperative to seek Contingency Reserve funds to avoid the loss of a significant opportunity. However, projects submitted under the Secretary's Demonstration program will be considered without regard to the status of the State's regular apportionment.

   C. The project is easily accessible to large numbers of people and is outstanding in the quality or quantity of recreational opportunities provided.

D. The project sponsor can demonstrate that it has a planning program which has identified its open space and recreation resource needs and associated implementation program. Where appropriate, the implementation program must demonstrate the effective use of zoning measures and other positive land use controls.

E. The project fulfills a critical need identified in the SCORP and Action program and would otherwise have a high priority for funding from the State's regular apportionment.

The Secretary may from time to time expand or modify these criteria to meet the changing needs and priorities of the American public.

3. Amount of Assistance. In appropriate cases, the Secretary may limit Contingency Reserve assistance to less than the full Federal share of a project and require the project sponsor to provide the balance of the funds from other sources. (see Section 600.4.7) Amounts granted from the Contingency Reserve must be matched in the same manner as amounts granted from the regular apportionments. (see Section 600.4.7)

4. Application Procedures. Requests for assistance from the Contingency Reserve should be submitted on the same forms and in the same manner as requests for assistance from the State's regular apportionment. In addition, the proposal should also include:

A. A statement that Contingency Reserve assistance is requested and the amount of Reserve assistance requested placed in Part III, Section E of OMB Form No. 80-RO184.

B. A separate narrative statement of justification for use of Contingency Reserve funds based on the criteria set forth in Section 600.4.2.

C. An Environmental Assessment in accord with Chapter 650.2.

D. A list of commitments against the State's regular apportionment on a project-by-project basis with a copy of the instrument committing funds to each project. This documentation will serve the purpose of indicating the State's inability to assist the project from its regular apportionment.

E. A letter from the Governor addressed to the Secretary of the Interior endorsing the project.

5. Project Execution. Acquisition projects receiving assistance from the Contingency Reserve should be completed within one year from the date of approval. Development projects, however, may require two years for completion. The ending date of the project period on the project

agreement will reflect an appropriate project period. The date will be entered on the agreement at the time of approval by the Service.

6. **Approval Authority for Contingency Reserve Agreements.** The authority to approve agreements for projects involving Contingency Reserve funds is vested with the Director. Unless otherwise specified by the Director, this authority to approve Contingency Reserve Project agreements and amendments to such agreements, is delegated to the Chief, Division of Recreation Grants in Washington.

7. **Contingency Reserve Assistance to Insular Areas.** Although the eligible Insular Areas (in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) may receive up to 100 percent assistance from their regular L&WCF account, the Secretary reserves the right to require up to 50 percent matching funds for grants awarded from the Contingency Reserve. This reservation will be applied on a project by project basis.

DEFINITIONS

1. **The definitions** given below apply to terms used in this Manual.

ACCRUED EXPENDITURES: Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by the employees, contractors, subgrantees, and other payees; and (3) amounts becoming owed under projects for which no current services or performance are required.

ACCRUED INCOME: Accrued income is the earnings during a given period which is a source of funds resulting from (1) services performed by the grantee; (2) goods and other tangible property delivered to purchasers; and (3) amounts owed to the grantee for which no current services or performance are required by the grantee.

ACT: The Act of Congress, approved September 3, 1964, entitle "Land and Water Conservation Fund Act of 1965" (78 Stat. 897), as amended.

ADVANCE BY TREASURY CHECK: A payment made by a Treasury Check to a grantee: 1) upon request before cash outlays are made by the recipient, or 2) through the use of predetermined payment schedules before cash outlays are made by the grantees.

ADVISORY COUNCIL (ACHP): The Advisory Council on Historic Preservation.

AGREEMENT: A contract executed between the United States and a State setting forth mutual obligations with regard to all or part of a specific project.

AMENDMENT: An official alteration of the project agreement which, when signed by the State and the Service, modifies the agreement in a specified manner.

APPLICANT: The State.

APPORTIONMENT: The amount of funds annually reserved for a State by the Secretary of the Interior from Congressional appropriations for financially assisting projects under the provisions of the Act.

APPROPRIATION: The amount of funds which the Congress makes available yearly from the Land and Water Conservation Fund for purposes of the Act.

APPROVAL: The signing by the Director or designated official of a project agreement and/or amendment resulting in the obligation of a specified amount of Federal funds for a specific purpose.

ARCHITECTURAL CONCEPT: Sketches, layouts, renderings, and similar drawings describing a proposed facility.

ASSISTANCE: Grant funds made available by the Service to a State in support of a public outdoor recreation project.

BOR: Bureau of Outdoor Recreation - the agency of the Department of Interior which administered the L&WCF program from its beginning in 1965 to 1978 when it was transferred to HCRS.

CASH CONTRIBUTIONS: Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals.

CONSOLIDATED PROJECT GRANT: A L&WCF grant which includes several acquisition, development and/or combination projects or "elements" in one application and agreement. Consolidated project elements are identified by a capital letter at the end of the project number (e.g., 00-01234D).

CONTINGENCY FUND GRANT: A grant from the Contingency Reserve, usually awarded in national competitions based upon specific needs and selection criteria. Contingency grants are awarded outside the usual State apportionment and project selection process. Grants are made for special needs under the direct authority of the Secretary of the Interior

CONTINGENCY RESERVE: Also known as Secretary's Contingency Fund. That portion of Land and Water Conservation Fund money appropriated by the Congress for State use that is not immediately apportioned to the States, plus any funds reverted from expired apportionments, which is granted at the Secretary's discretion to meet specially-defined or emergency needs.

DATE OF COMPLETION: The date when all work under a project is completed or the date in the grant award document, or any amendment thereto, on which Federal assistance ends whichever comes first.

DIRECT EXPENDITURES OR DIRECT COSTS: Those expenditures or costs that can be associated with a specific project.

DIRECTOR: The Director of the National Park Service or any other officer or employee of the Service to whom the Director's authority is delegated.

DISALLOWED COSTS: Disallowed costs are those charges to a grant which the Service or its representative determines to be unallowable.

DISBURSEMENTS: Disbursements are grantee payments in cash, by check or by electronic funds transfer represented by valid invoices and documentation.

EXPENDITURES: Payments or outlays by cash, check or electronic funds transfer represented by valid invoice and disbursement documentation. (See disbursements.)

FEDERAL FUNDS AUTHORIZED: Funds authorized represent the total amount of the Federal funds authorized for obligations and establish the ceilings for obligation of Federal funds.

FISCAL YEAR: A period of time which begins on October 1 and ends on the following September 30.

FORCE ACCOUNT: Official bookkeeping record(s) established for the purpose of accounting for costs associated with Force Account work.

FORCE ACCOUNT WORK: The performance of work on a development project with the forces and resources of the project sponsor, including personal services, equipment, and materials, as opposed to development by contract with an outside organization or individual.

FUND: The Land and Water Conservation Fund (L&WCF) the financial resource created and maintained through authority and operation of the Act.

GENERAL PROVISIONS: The special terms of the Project Agreement (see Attachment 660.

GRANT: The act of providing a specific sum of money toward the execution of a specific project, consistent with the terms of a signed agreement. Also the amount of money provided.

GRANTEE: Grant recipient. See PARTICIPANT.

GRANT CLOSEOUT: The process by which the Service determines that all applicable administrative actions and all required work of the project have been completed.

HCRS: Heritage Conservation & Recreation Service - agency that administered L&WCF program from 1978 to 1981, before its transfer to NPS.

INDIAN TRIBE: Indian tribes, bands, nations or other organized group which exercises governmental functions and which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status.

INDIRECT COSTS: Those costs related to the operation of the State's grants program but which, because of their incurrence for common or joint objectives, are not specifically identified with individual projects (see OMB Circular A -87, formerly FMC. 74-4).

IN-KIND CONTRIBUTIONS: In-kind contributions represent the value of noncash contributions provided by (1) the grantee; (2) other public agencies and institutions; and (3) private organizations and individuals. In-kind contributions may consist of the value of services directly benefiting and specifically identifiable to the project.

INSULAR AREAS: The Virgin Islands, Guam, American Samoa, The Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas Islands. (Note that the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Marianas Islands are the only insular areas eligible for L&WCF grants.)

LETTER OF CREDIT: An instrument certified by an authorized official of a grantor agency which authorizes a grantee to draw funds needed for immediate disbursement in accord with the provisions of Treasury Circular No. 1075. As of 1991, Letters of Credit are no longer used; they have been replaced by the SMARTLINK Payment Management System (see SMARTLINK).

MAJOR CONSTRUCTION: Construction work with a total cost of $100,000 or more including any complex of structures or group of interrelated or appurtenant facilities.

MARKET VALUE: The most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

NATIONAL REGISTER: The National Register of Historic Places.

NPS: The National Park Service.

OBLIGATIONS: For grants purposes, obligations are the amounts of dollars awarded or approved in specific grant agreements which will require payment (outlays) when work is completed and billed at a later date.

OUTLAYS: Outlays represent charges made to the grant project. Outlays can be reported on a cash or accrued expenditure basis.

PARCEL: A piece of land, regardless of size, in one ownership (title).

PARTICIPANT: The State agency or other public agency receiving Fund assistance. Also referred to as the grantee, grant recipient or project sponsor.

PLANS AND SPECIFICATIONS: The detailed working drawings and technical specifications necessary to guide the construction, determine the scope of the work, and provide a firm basis for competitive bidding and contractual obligations.

POLITICAL SUBDIVISION: A city, town, township, borough, county, parish, district, or other political unit created under authority of State law.

PROGRAM INCOME: Earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copyrights. Program income can be reported on a cash or accrued income basis.

PROJECT COSTS: All necessary charges made by a grantee in accomplishing the objectives of a project during the project period.

PROJECT PERIOD: The specified period of time covering the approved portions of a project during which all work must be accomplished.

PROJECT SPONSOR: See Participant.

PROJECT TYPES:

A. Planning Project: The preparation by the State of the Statewide Comprehensive Outdoor Recreation Plan, or the subsequent updating of that plan.

B. Acquisition Project: The acquisition of real property or interest and rights thereto for a well-defined outdoor recreation area and/or purpose.

C. Development Project: The development of structures, utilities, or facilities necessary for the outdoor recreation use of an area.

D. Combination Project: Acquisition of real property and the subsequent development of outdoor recreation facilities in a single project.

PUBLIC AGENCY: Any non-private entity which serves a governmental purpose. The term includes but is not limited to State agencies, political subdivisions, Indian tribes, and public authorities and commissions that have governmental functions. For purposes of this Manual, it does not include agencies of the Federal Government.

QUALIFICATION: The determination by the Service that a project is in accord with the Statewide Comprehensive Outdoor Recreation Plan and meets other Service criteria for recreation projects. Qualification does not constitute an obligation of funds or a commitment to obligate funds, but rather a technical finding of a project's adequacy and eligibility at the time of qualification.

REAL PROPERTY: Land, immovable improvements on land, and rights appurtenant thereto.

REGIONAL OFFICE: One of the NPS Regional Offices that has been delegated authority to process and approve L&WCF grants and amendments.

REGIONAL DIRECTOR: Director of an NPS Regional Offices.

REIMBURSEMENT BY TREASURY CHECK: A payment made to a grantee with a Treasury check upon request for reimbursement from the grantee. An alternative to electronic funds drawdown through SMARTLINK.

SCORP: Statewide Comprehensive Outdoor Recreation Plan (see State Plan).

SECRETARY: The Secretary of the Interior.

SERVICE: The National Park Service (NPS)

SINGLE PROJECT GRANT : A grant made for a single project or project element, as contrasted to a Consolidated Grant; project number has no identifying letters (but may have three "X"s - e.g., 00-01345 or 00-01345XXX).

SMARTLINK: The SMARTLINK Payment Management System, a computerized, on-line drawdown program accessible directly to grantees. It replaced the former Treasury Letters of Credit drawdown system, and is a billing system to provide payment on completed work under L&WCF grants.

SPONSOR: The grant recipient or grantee. See Participant.

STAGE: A logical, identifiable portion of a project, consisting of one or more elements of acquisition, development or planning, specifically activated by a signed agreement or amendment.

STAGED PROJECT: A project that consists of two or more stages that are activated by an agreement and one or more subsequent amendments.

STATE: Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Marianas Islands. In the L&WCF program, it is sometimes used as a synonym for GRANTEE or PARTICIPANT.

STATE HISTORIC PRESERVATION OFFICER (SHPO): The person designated by the Governor to act for the State on cultural, archeological, and historic preservation matters.

STATE LIAISON OFFICER (SLO): The person designated by the Governor to act for a State in routine matters pertaining to the L&WCF program.

STATE PLAN: The comprehensive statewide outdoor recreation plan (SCORP) prepared by each State consisting of a planning agreement, an assessment and policy plan, and an action plan.

SUPPORT CEILING: The maximum amount of financial assistance that will be provided on a project as specified in the agreement.

SUPPORT FACILITIES: Those facilities that are not themselves used for recreation but are, nevertheless, required for public recreational use of an area, such as access roads, parking areas, water systems, sanitary facilities, etc.

SUSPENSION: The suspension of a grant is an action by the Service which temporarily suspends Federal assistance under the project pending corrective action by the grantee or pending a decision to terminate the grant by the Service.

TERMINATION: The termination of a project means the cancellation of Federal assistance, in whole or in part, under a project at any time prior to the date of completion.

TRACT: A piece of land, composed of one or more contiguous parcels.

UNOBLIGATED BALANCE: *The portion of the funds authorized* (apportioned) by the Federal agency which has not been obligated by the grantee as shown on the Federal agency records and is determined by deducting the cumulative obligations from the funds authorized.

UNPAID OBLIGATIONS: The dollar amount of legal obligations on approved grants which have not yet been paid out to grantees.

URBANIZED AREA: According to the Bureau of the Census, a central city, or twin cities, and surrounding closely settled territory. (A "central city" is a city of 50,000 inhabitants or more in 1980 or a special census conducted by the Bureau of the Census; "Twin cities" are cities with contiguous boundaries with a combined population of at least 50,000 inhabitants, with the smaller of the two cities having a population of at least 15,000.)

WITHDRAWAL: The unilateral retraction by the State of a previously approved project prior to reimbursement of any project costs incurred by the project sponsor.

PROJECT NUMBERING SYSTEM

1. **Applicability.** Each project, including projects proposed for the Secretary's Contingency Reserve Fund, shall be assigned a separate official Service number by the Regional Office, whether or not it is ultimately approved. Agreements, amendments, and all other documentation relating to a given proposal, including letters and memorandum, shall contain this number.

2. **System for Numbering:** A 7-digit system shall be used as follows:

   A. **First two digits:** State Identification Number

01 - Ala.	15 - Hawaii	26 - Mich.	37 - N.C.	49 - Utah
02 - Alaska	16 - Idaho	27 - Minn.	38 - N.D.	50 - Vt.
04 - Ariz.	17 - Ill.	28 - Miss.	39 - Ohio	51 - Va.
05 - Ark.	18 - Ind.	29 - Mo.	40 - Okla.	53 - Wash.
06 - Calif.	19 - Iowa	30 - Mont.	41 - Oreg.	54 - W.V.
08 - Colo.	20 - Kans.	31 - Neb.	42 - Pa.	55 - Wis.
09 - Conn.	21 - Ky.	32 - Nev.	44 - R.I.	56 - Wyo.
10 - Del.	22 - La.	33 - N.H.	45 - S.C.	60 - A.Q.
11 - D.C.	23 - Me.	34 - N.J.	46 - S.D.	66 - Guam
12 - Fla.	24 - Md.	35- -N.M.	47 - Tenn.	69 - C.M.
13 - Ga.	25 - Mass.	36 - N.Y.	48 - Tex.	72 - P.R.
78 - V.I.				

   B. **Next five digits:** The Project Number is serially assigned in chronological order of receipt. This number shall also serve, after project approval, and in conjunction with the State Identification Number, as the project agreement number.

   C. **Amendment to Agreement:** Amendment numbers shall be added immediately following the project number by using a decimal point and appropriate number (beginning with 1) in serial order.

3. **Use of Numbering System:** A project number shall be used only once and shall be the official method of identifying each project and related project documentation.

   A. Immediately upon receipt of a project proposal, the Regional Office shall assign the 7-digit basic identification number consisting of the 2-digit State number, followed by (but separated by a dash) the 5-digit project number. These numbers shall be permanently affixed to the case file, and shall serve as a permanent reference number.

Example:

	08-00004
State of Colorado	Fourth project proposal received from Colorado

B. Whenever the original project agreement is altered, the amendment number assigned to the executed amendatory document shall be serially increased.

Example:

08-00004.1

First Amendment

C. Elements within a consolidated project shall be identified on the DNF Form by the State with a capital letter. Begin with the letter "A" and proceed through the alphabet as needed, except do not use the letter "O". If there are more than 25 elements continue numbering "A1", "B1" etc.

08-00004A	First element approved within a consolidated project.
08-00004Z	Twenty-fifth element approved within a consolidated project.
08-00004A1	Twenty-sixth element approved within a consolidated project.

L&WCF PROGRAM ANNUAL REPORT

1. **Authority.** Section 6(f)(7) of the Land and Water Conservation Fund Act of 1965, as amended, requires that each State evaluate its L&WCF grant program annually under guidelines set forth by the Secretary and to transmit such evaluation to the Secretary, together with a list of all projects funded during that fiscal year, including but not limited to, a description of each project, the source of other funds, and the estimated cost of completion of the project. The results of this evaluation are to be reported annually to the Service on a fiscal year basis. The Service, in turn, shall forward a summary of these reports to Congress. The annual report to Congress shall include an analysis of L&WCF grant, planning and other accomplishments during the reporting period, and may also include recommendations as to future improvements for the operation of the L&WCF program.

2. **State Annual Report.** The following guidelines have been prepared to assist the States in preparation of the Annual Report to Congress. The amount of data compilation by the States has been kept to a minimum in an effort to ensure that the preparation of this annual evaluation will not be an administrative burden on the States.

   To further reduce paperwork burdens on States, all analytical information provided by States in Parts II or III of their annual L&WCF reports will be used to the fullest extent possible by the Service in its regular evaluations of State grants administration and planning processes (cf. Manual Parts 600.8 - Program Reviews and 630.1.6 - SCORP requirements).

   A. Part I - Project Review and Evaluation. To assist the States in the preparation of the required project listing, the Service will forward to each State Liaison Officer by November 15, a computer printout of all projects approved by the Service during the previous fiscal year. The printout will also indicate the total funds obligated to amendments during the same period and the number of amendments processed (see Attachment 600.7A).

      Projects will be listed numerically with project name and include project sponsor, project type, coded list of the activities and facilities associated with the project, acres to be acquired, acquisition costs, and the amount of L&WCF assistance obligated to the project. States will review this project listing and supply corrections where appropriate, and will insert data on total project costs and the

amount and source of other funds (Federal, State, local and donations) in the spaces provided on the printout.

B. Part II - Program Analysis. Each State shall provide in concise narrative form, an evaluation of its L&WCF program during the preceding fiscal year. The evaluation shall include:

(1) An indication of how projects approved during the year have contributed to meeting the priority needs, goals, and actions identified in the State's Comprehensive Outdoor Recreation Policy Plan and/or Action Program.

Each objective, goal or need identified as a high priority shall be stated briefly and followed by no more than one page of narrative, including statements indicating the number of projects and total Fund amount affecting each priority objective identified in the State plan and the type of recreation opportunities provided.

(2) A table showing the levels of competition under the State's Open Project Selection Process during the fiscal year, and comparing the total number of applications or preapplications and total dollar amount (L&WCF shares) applied for with the number of grants and dollar amount actually awarded or committed (though not necessarily obligated) from L&WCF monies available to the State within the fiscal year.

(3) A discussion of progress made in improving and implementing its Statewide Comprehensive Outdoor Recreation Planning (SCORP) program during the fiscal year, including:

(a) A status report on work items completed or in progress under the State's schedule for delivery of upcoming Policy Plan or Action Program submissions, including results of surveys, special studies or citizen participation efforts under the SCORP program.

(b) A report on adoption of new policies or other significant actions (other than L&WCF grant funding reported under (1), above) to implement priorities identified or recommended in the current SCORP, including legislative or financial initiatives, organizational, management or procedural improvements or other State actions that may improve outdoor recreation resources and opportunities.

(c) Analysis of any other public or private actions influenced by the SCORP program, including significant uses of the SCORP by local governments, non-profit groups, private enterprises or individual citizens.

C. **Part III - Optional.** To further strengthen the Federal-State partnership under the Land and Water Conservation Fund program and to better enable the Service to assist the States in the conservation, development, and utilization of outdoor recreation resources, each State is encouraged to provide a supplement to its annual report. This supplement may be used to highlight other recent accomplishments or concerns expected to have a significant impact on outdoor recreation resources or needs within that State. The following items are suggested for possible discussion. However, this list is not all inclusive and may be expanded at State discretion:

(1) Programs or issues related to meeting recreation needs at the local level.

(2) Programs or issues related to meeting recreation needs of the handicapped, elderly and other minorities.

(3) Status of existing or proposed non-Federal financial or technical assistance programs such as State or local bond issues, dedicated revenues or advisory services.

(4) Impacts of national park, forest or fish and wildlife resources and programs on overall State objectives for outdoor recreation and efforts by State and Federal agencies to coordinate recreation resource responsibilities.

(5) Private sector roles in providing recreation opportunities within the State.

(6) State or local policy or management initiatives, including legislative or executive actions that will effect availability of outdoor recreation opportunities (e.g., State scenic river and trail programs, land use control measures, other conservation measures affecting recreation resources).

(7) States may also include statements of concerns or recommendations about future improvements in the operation of the L&WCF program. These may relate to either administrative or legislative issues. State concerns about needs for administrative improvements or legislative actions

should be briefly stated and recommendations justified in terms of the problems to be solved.

3. **State Submissions.** Each State shall submit three copies of its annual report to the appropriate Regional Office on or before December 31. Each Regional Office will review and summarize State reports, and prepare a regional summary to be included in the Service's report to Congress. These regional summaries and two copies of each State report must be transmitted to Washington Office by January 31 of each year.

4. **Service Report.** The Service shall transmit to Congress, by March 1 of each year, a report summarizing all State annual reports for the preceding fiscal year, including compiled, State-by-State listings of project funding activity during the reporting period. This report will also include an analysis of other Fund accomplishments and summarize proposed administrative or legislative recommendations by the States for improvements in the L&WCF program. Individual State reports and listings of projects funded during the fiscal year will be retained by the Service and be available for review upon request.

5. **Matching Assistance.** L&WCF planning grant assistance may be available to the States for the preparation and publication of their annual reports and evaluations. A separate planning project or an amendment to an existing planning project may be submitted in the normal manner in order to cover prospective costs, or such costs may be recouped through the State's existing method for indirect costs reimbursement. A State may wish to publish sufficient copies of its annual report for distribution to State legislators, governmental units and concerned citizens as a means of documenting grant and SCORP accomplishments and soliciting future input.

TODAYS DATE 10/17/90
LAST UPDATE 10/09/90
AS OF SEPT 30, 1990

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
*** TABLE 18 : ANNUAL REPORT OF GRANT PROJECTS FOR FY 1990

LWCF-A-18
PAGE 1

PN REGION - - IDAHO

PROJECT / ELEM A. FUND OBLIG	TITLE B. OTHR FEDERAL	SPONSOR C.STATE	 D. LOCAL	TYPES E. LAND DONATION	FACILITY CODES F. OTHER DONATION	ACRES	FUND - ACQ$ G. TOT GRNT COST
		CITY OF PRESTON		C	B00 B01 C00 C04 C06 Q00 Q02 Q03 Q06 Q09	1.5	30,000.00
00466 - XXX PRESTON PARK ENTRYWAY							
A. 93,176.69	B.	C.	D.	E.	F.		G.
00470-XXX SCORP #8		STATE OF IDAHO		P			
A. 33,127.50	B.	C.	D.	E.	F.		G.
00471-XXX WOOD RIVER TRAILS		BLAINE COUNTY REC. DIST.		D	H00 H01 H02 H03 H05 Q00 Q02 Q08		
A. 114,568.50	B.	C.	D.	E.	F.		G.
00472-XXX FREEMAN PARK EXTENSION		CITY OF IDAHO FALLS		D	H00 H03 Q00 Q02		
A. 42,403.00	B.	C.	D.	E.	F.		

283,275.69 - - TOTAL NEW LWCF OBLIGATION
20,721.00 - - TOTAL INCREASE BY 5 AMENDMENTS
.00 - - TOTAL CONTING. AMT. FOR CONSOL. PROJS

303,996.69 - - STATE TOTAL LWCF OBLIGATION

PROGRAM REVIEW OF STATE OFFICES

1. **Purpose.** This chapter contains instructions to the Regional Offices concerning the review of the States' L&WCF programs and an outline in workbook form to be used in accomplishing those reviews. The workbook contained as Attachment A of this chapter outlines factors to be considered in the evaluation of a State's performance and in determining how the Service can assist the State in improving its grants-in-aid program.

   The review of a State's program is an on-going process which culminates in a visit to the State offices and a report of that visit.

   Regional offices are responsible for continually monitoring each State's administration of the L&WCF program. The State visit represents not only a fact-finding mission, but an opportunity to address those problems, concerns and opportunities that have been previously identified through a systematic analysis of the State's program using in-house sources, previous on-site visits, etc.

2. **Program Review Workbook.** The Attachment A workbook contains the basic agenda items which serve as a guide for the on-going review process. It is to be completed by the end of each review cycle (State visit and report of findings). The workbook represents the minimum required level of review. Regional Office staff are encouraged to supplement it with additional inquiries. All sections of the workbook are to be completed by Regional staff. Under no circumstances can States be asked to fill in workbook sections.

   It is recommended that a file containing basic information (e.g. , workbooks, previous reports) on each State's administration of the L&WCF program be maintained by the Regional Office to ensure continuity from one review cycle to the next.

3. **State Review Team** Members of the team reviewing State offices must be carefully selected by Regional Office program managers. All members should have a thorough knowledge of the program areas they review; program reviews are not intended as on-the-job training for inexperienced Service personnel although new staff members are encouraged to accompany the review team for training purposes when appropriate.

   In general the State review team shall have expertise in both grants administration and SCORP planning and the capability to work towards satisfactory solutions . If possible, the Regional grants chief

or a senior project officer should serve as team leader when the review team is selected. Program administrators and project officers from the State shall be available for consultation during the State review. In addition , project officers from other States in the Region may be invited to participate.

The Service's Regional review appraiser should accompany the review team if justified by the State's current appraisal record.

The Regional Director may assign one staff member to coordinate all program reviews in the Region to assure consistency and uniformity.

4. *State Visits*

A. Frequency. Ideally, visits to State offices are to be conducted annually. This is especially important for States with inexperienced staff, those which have been determined ineligible, those having significant problems in obligating or expending funds, and those with a continuing history of administrative or compliance problems. At a minimum, reviews in the State office must be conducted every two years. Exceptions may be made in the territories of American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Marianas which, because of their small programs, may be reviewed every five years at the discretion of the regional office. Those States with excellent L&WCF programs may be eligible for mini-reviews. See Chapter 600.8.6.

B. Purpose. The annual visit to the State office is an opportunity for the Regional Office staff to:

(1) Discuss the resolution of problems noted in the previous report.

(2) Discuss new problem areas affecting program administration.

(3) Gain insight into State systems and operations.

(4) Provide technical assistance.

(5) Review selected L&WCF project files for possible noncompliance.

(6) Review adequacy of selected L&WCF project appraisal documents.

(7) Gather information to complete agenda items contained in the State review workbook.

C. Background Information. Prior to visiting the State, the reviewers should obtain information on how the State administers its program. The following suggested actions should assist the team in its efforts.

(1) Complete as much of the workbook as possible prior to visiting the State office. Use current information already in the Region or readily available from the State. The workbook is not to be sent to the State for completion in whole or in part.

(2) Program reviews are a cooperative effort. Notify the SLO and Grants Chief by letter of the coming visit. Include the workbook agenda and ask whether the State has any special interests or questions to be addressed during the visit.

(3) Obtain an organization chart, copies of any new/proposed legislation affecting the L&WCF program, and a copy of the State guidelines provided to local sponsors for their use in preparing project applications.

(4) Review the Annual Report and the previous program review report.

(5) Review key SCORP items such as special studies, the Open Project Selection Process and the implementation program.

(6) Review obligations and expenditure rates and geographic distribution of projects within the State.

(7) Select at random from five to ten projects for review in the time available. This selection should focus on reduced documentation acquisition and development projects, those recently completed as well as active ones, and should include an active or recently completed SCORP planning project. Suggested checklists for use in the project reviews are included in Attachment A of this chapter.

(8) Select several appraisals for review. Choose among those approved by the State since the last program review. include those done for Section 6 (f)(3) purposes too.

(9) Prepare a brief on projects with problems, policy questions, new policy and/or legislation affecting the L&WCF program, and other pertinent areas not addressed in the workbook.

D. Initial Meeting. Upon arriving in the State offices, the Regional review team should meet with the State grants staff, SLO and other State officials as appropriate to develop a cooperative approach, to discuss current problems and establish goals for the program review.

E. Workbook Preparation. It should not be necessary to ask each of the workbook questions during the State visit. Basic questions can be answered from general knowledge, materials already on hand, or from items specifically requested from the State in advance. Once these basics are completed, a review team member can discuss individual program areas with State officials completing the remaining questions during or after the discussion. Strict "question and answer" sessions are discouraged in favor of letting State officials explain program issues while the review team member guides the conversation.

F. Close-out Meeting. Prior to departing, a close-out meeting shall be held with the State staff, SLO and other officials to thoroughly and frankly discuss the review results, including an analysis of the problem areas identified and recommendations for improvement.

5. Report of findings. The review team should complete the program review with a written report which is to be sent within ninety (90) days of the on-site visit.

A. Scope. As a minimum, the report shall contain a discussion of the items listed below.

(1) Status report on previous recommendations. The report shall briefly list each of the findings or recommendations from the previous program review, indicate whether it has been implemented, and the month and year of implementation. The report shall also list any actions which were to be taken by the Regional office, the implementation status and the month and year of implementation. This follow-up on previous recommendations is one of the most important aspects of the program review.

(2) Major problem areas. The deficiencies identified prior to and during the State visit shall be listed and the findings discussed.

(3) Recommendations. Each deficiency shall include an outline of the actions needed for improvement as well as a time frame for resolution.

(4) Follow-up. The report shall include actions to be taken by the Service to improve coordination with the State, to clarify policy issues or to respond to any other matters discussed during the State visit.

Regional Offices are encouraged to expand upon these minimum requirements by including positive comments covering specific areas or overall program performance in the body of the report. Alternatively, such comments may be highlighted in the transmittal letters in order to reduce the length of the report of findings.

The transmittal letters shall summarize the negative findings and recommended corrective actions discussed in more detail in the body of the report

Since the State files maintained by the Regional Office will contain the completed workbook covering the State's methods of program administration, it is unnecessary to include such information in the report of findings unless the Regional Office opts to do so.

B. Distribution. The report of findings shall be transmitted to the Governor, the SLO, the State grants staff and other involved parties. A copy of the report and the letter to the Governor shall be sent to the Washington office.

I. PROGRAM ADMINISTRATION

A. Organization, Staffing and Interrelationships. Discuss the following:

1. Planning Staff
   - size and adequacy of the staff in relationship to the workload
   - individual responsibilities
   - L&WCF experience
   - training opportunities
   - role and function in relationship to the grants staff
   - role in OPSP development and project selection
2. Grants Staff
   - size and adequacy of staff in relationship to the workload
   - individual responsibilities; note whether responsibilities are split on a regional basis
   - L&WCF experience
   - training opportunities
   - role in OPSP development and project selection
3. Appraisal review staff (if applicable)
   - in house, other State agency, contract
   - experience/qualifications
4. Finance staff (if separate from above)
   - experience in L&WCF
   - relationship to L&WCF staff
   - percentage of time spent on L&WCF
5. Field staff (if applicable)

- L&WCF experience and training
- percentage of time spent on L&WCF

B. **Funding - Does the planning and grants staff receive sufficient funding to support:**

1. the inspection program
2. publications such as SCORP, technical assistance, etc.
3. other necessary equipment - computers, etc.

C. **Other programs - list all programs administered by grants and planning staff and show percentage of time devoted to each.**

D. **Delegations of Signature Authority**

1. Are delegations of signature authority on file current and correct?
2. Is the Direct Deposit Sign-Up form (form SF-1199A) authorizing SMARTLINK drawdowns current and correct?

E. **State Legislation - Describe any proposed or pending legislation at the State level which may affect:**

1. administration of the L&WCF program
2. park and recreation departments and concerns such as the development of a State L&WCF-type grants program

II. CROSS-CUTTING MANAGEMENT ISSUES

A. **Indirect Cost Rate**

1. List the current approved indirect cost rate and the rate the State is actually charging (if different)
2. If the indirect cost rate is not current, describe the status of negotiations.
3. Is the State aware of the L&WCF 15 percent legislative limitation imposed on its use for certain years?

4. Is the work time of State SCORP planners included as part of the indirect cost rate? Is their work time also included as part of the SCORP planning grant? Is there duplicate funding?

B. **Follow-up System** - Does the State utilize a system to monitor and follow-up on project problems involving inspections, conversions, etc? If so, describe.

C. **Automatic Data Processing**

1. Do the State grants and/or planning staffs have adequate access to computerized data and make efficient use of computer hardware and software? If not fully utilized, why not?

2. Which State processes/systems need to automated?

3. Are NPS computer printouts and databases fully utilized?

4. Are State database systems sufficiently compatible with NPS? If not, explain.

5. Does the State advise NPS of needed corrections in the NPS database?

D. **Reporting Requirements**

1. Were the following reports prepared and submitted to NPS on time and was the information complete and correct?

- Annual report
- Relocation report
- Annual performance report
- Quarterly MBE reports (when required)

III. STATEWIDE COMPREHENSIVE OUTDOOR RECREATION PLANNING

A. **Assessment and Policy Plan (APP)** - the following items assume an NPS-approved Plan is in place.

1. Are goals and objectives described in the APP being implemented?

2. Describe those APP goals and objectives which are being addressed by means other than the implementation programs (s).

3. How is SCORP planning coordinated with other planning efforts such as those of the Governor's office, the State budget cycle, historic preservation, natural resource and wetlands and tourism?

4. What is the extent of commitment to the APP from the Governor's office, other State agencies, and interest groups?

5. How does the State monitor, evaluate and report progress and problems to NPS, State agencies, local agencies and interest groups?

   - On a regular or as needed basis? How often?

6. How is the APP used?

   - At the NPS Regional level, eligibility only? other uses?

   - At the State level, what uses are made of the APP by parks and recreation and by other State agencies?

   - At the local level, as a justification or resource for local activities/issues? Others?

7. How does the State obtain and document ongoing public participation in the planning process?

   - Who participates?

   - How?

   - Is there proportional participation by minority populations, the elderly and handicapped?

   - Is there proportional participation by small and rural communities?

   - Are urban areas proportionally represented?

   - Is there adequate geographic representation?

8. What is the State's schedule for the development of its next APP?

   - Is it on target?

9. What special studies or research is resulting from the SCORP planning efforts? Is it innovative and possibly useful to other States?

B. Implementation Program - the following items assume an NPS-approved program is in place.

1. Is there a one or two year Action Program? Is the time period workable or should it be changed?

2. Describe how the Action Program is being implemented?

3. How is progress monitored?

4. Are the established priorities for L&WCF funding being followed? Cite examples.

5. Will the current implementation program be revised?

   - When?

   - What will the revisions entail?

6. Is the planning for the next implementation program on schedule? If not, why?

C. Planning Grants

1. Is work progressing according to the established schedule? If not, why? What is being done to get back on schedule?

2. If portions are contracted out, was the contract executed in accord with 43 CFR Part 12.100 -12.510? List contracts and amounts.

3. Are new grants or amendments to existing ones planned? if so, why?

4. Are reimbursement requests made on a regular schedule?

5. Is NPS written approval of progress reports obtained prior to seeking reimbursement?

6. Are work products submitted to NPS as they are completed?

   - If not, how does this affect timely approval of products, eligibility, etc?

IV OPEN PROJECT SELECTION PROCESS

A. Priority Rating Systems

1. Has NPS approved the State and local rating systems now in use? When?

   - If not, when will they be submitted for approval?

2. Were the systems revised following completion of the latest SCORP APP or AP (or was a certification that changes were not necessary submitted to NPS)?

B. Project Selection

1. Does the listing of top-rated projects compare to those submitted to NPS?

2. Were projects with the highest numerical score by-passed in favor of others? If so, why?

3. Did the overall top-rated projects also rank high with respect to the SCORP-related criteria?

   - Were projects which rated high in SCORP criteria by-passed if favor of others? if so, why?

   - Does the system filter out projects which are not related to SCORP?

4. Does the State emphasize funding of acquisition over development projects? vice-versa? why? legal constraints?

5. Is there evidence of attempts to allocate funds on a "fair share" basis? If so, explain?

6. Who makes the final selection of projects?

7. Is the rating system used to rank projects under other State grant programs? If so, which ones?

8. How does the State handle amendments to approved projects with respect to the Open Project Selection Process?

- staged projects
- cost overruns
- scope increases/decreases, or changes
- time extensions

9. What are the State's L&WCF application due dates?

C. Other

1. Did the State inform all potential project sponsors about the availability of program funding within the last two years?
   - how was this accomplished? obtain samples
   - did the notification include: types of areas and facilities available for funding; a statement of the State's overall objectives for L&WCF funds; guidance on how to apply, an explanation of how the OPSP works; a listing of selection criteria?
2. How did the State obtain public participation in the preparation and revision of the OPSP?
   - was the general public as well as user/constituent groups given an opportunity to comment?
   - were the State's efforts effective?
   - were any comments included in the final version?
3. How does the State encourage projects which directly benefit special populations (Blacks, Hispanics, Native Americans and Asian Americans, the elderly and the handicapped)?
   - have these efforts been successful?
   - if not, why?
4. Does the State use an advisory board, commission, or legislative committee to assist in project selection?
   - Does this body have decisional authority or is it advisory only?
   - How is the membership selected?
   - What is their length of term?

- Does the membership reflect the ratio of minority to non-minority population of the State?

V PROJECT (PRE-APPROVAL)

A. Local Manual

1. Has the State developed its own G.I.A. manual for local applicants?

2. How and when is the manual provided to potential applicants?

3. Does it adequately reflect current Federal requirements?

B. Waivers - Does the State's review and selection procedure result in a large number of waiver of retroactivity requests?

C. Donations - Is donation of private real property encouraged? If so, how?

D. E.O. 12372 (Intergovernmental Review System)

1. Does the State comply with its intergovernmental review requirements?

   - does it have a review system which includes the L&WCF program or are other means of notification being used?

2. Does the Single Point of Contact receive grant proposals in advance of final action as provided for in the State review system?

E. Historic/Archeological Review

1. Describe the State's mechanism to ensure the identification and consideration of effect of projects listed on or eligible for the National Register of Historic Places.

2. After reviewing the sample projects, does project documentation indicate review and/or sign off by the SHPO?

F. Appraisal, Appraisal Review and Relocation

1. Appraisal Review System

   - are field checks by review appraisers made? in what cases?

   - does the State routinely require more than one appraisal?

   - are all appraisals reviewed by NPS?

   - what is the degree of State involvement in local appraisals (list of appraisers provided; selection of appraiser reviewed;

guidance provided at project approval; technical assistance as needed)?

2. Spot Check of Recent Appraisals

   - assure appraisals are less than two years old and represent a variety of resource (in-town, country, large and small parcels, unusual problems) and Section 6 (f)(3) conversion cases.

3. Appraisal history since last Program Review

   - number received for NPS review
   - number approved on initial NPS review
   - number rejected by NPS
   - number amended and approved after original rejection
   - number rejected after amending
   - major problems noted since last review

G. **Environmental Review**

1. Do the environmental assessments submitted with projects comply with the format detailed in the L&WCF Grants Manual?

2. Are environmental certifications used when projects meet the criteria for categorical exclusion?

H. **Documentation checklist (other Federal programs)** - describe controls to ensure compliance with:

1. Flood Disaster Protection Act
2. Title VII - Contract compliance
3. Endangered Species Act
4. Clean Air and Water Acts
5. Prime and Unique Farmlands protection
6. Floodplain and Wetland requirements

7. Dingell-Johnson (Wallop-Breaux)/ L&WCF coordination

8. Debarment and Suspension

9. Drug Free Workplace

10. Other laws and regulations

I. **Pre-award inspections** - Do State files contain copies of pre-award inspection forms in accordance with the State inspection agreement?

J. **Section 6 (f)(3) Boundary maps**

1. Are legible and dated boundary maps maintained for each project? Do they meet L&WCF Grants Manual requirements?

K. **Control and Tenure** - What procedures does the State follow to assure adequate site control? Do those procedures vary for acquisition and development projects?

VI. PROJECT (ACTIVE STAGE)

A. Contracts/Project Periods

1. What is the standard period for the Federal-State agreement?

   - acquisition projects

   - development projects

2. What is the standard period for the State-local agreement?

   - acquisition projects

   - development projects

3. Are the State-local project periods noted above justified in lights of the increased emphasis on the timely expenditure of funds?

4. Are the sponsors meeting their target dates during the project period?

5. Do the State-local contracts incorporate new program requirements such as Section 504, Debarment and Suspension, Drug Free Workplace, etc?

B. Finance

1. Billings/Review

   - are reimbursement requests carefully reviewed prior to billing to avoid future billing adjustments and audit exceptions?

   - Are such requests processed and promptly submitted?

   - Does the State obtain approved appraisals prior to first billing?

2. Reimbursements

   - is the State experiencing any problems in its use of the SMARTLINK payment management system.

- how long does the process take from submission of billing documentation to receipt of the reimbursement by a local jurisdiction.

- how long does it take for the State to issue a check to project sponsors after it receives the Federal reimbursement?

- are States not on SMARTLINK experiencing problems with checks or processing billing reports?

3. Obligation Rate

- Did the State obligate its entire apportionment by the end of the prior fiscal year? If not, why?

- Are any problems anticipated this year? If so, describe.

4. Expenditure Targets

- Did the State meet its annual expenditure target for the most recent fiscal year? If not, why?

- will the State meet its target for the current year? If not, why?

5. Expired Projects with Unpaid Balances

- How many expired projects have unpaid balances?

- is the State making satisfactory progress in closing them out?

C. **Plan Certifications** - How does the State ensure that construction plans and specifications meet health, accessibility and safety standards?

D. **Performance Reports and Inspections**

1. Does the State submit complete performance reports with its billings or does it use the optional annual consolidated report?

2. Does the State submit progress inspection reports in accordance with its compliance inspection agreement?

3. Does the State submit the following close-out documentation within 90 days of project completion or expiration of the project period:

- final inspection report when needed

- final billing

- revised DNF form if changes have occurred
- as built or as acquired plan if changes have occurred
- a list of facilities developed or acres acquired

E. Donations

1. Describe any difficulties experienced by the State in administering the donation of labor, materials and equipment.

VII COMPLIANCE

A. Audits

1. Are Single Audit Act (A-128) requirements being fully implemented?

   - at the State level?

   - for subrecipients?

2. Has there been a pattern of program deficiencies identified in previous audits which need to be resolved?

B. Inspections and inspection agreements

1. Does the State have a current compliance inspection agreement with NPS? Is it adequate or is revision necessary?

2. Are the agreed-to inspections being performed in a timely manner?

3. Is the State responsive to resolving problems they uncovered or those uncovered by NPS?

4. Does the State utilize personnel from other State agencies or divisions to assist in conducting inspections? Is this effective?

C. Record Retention

1. Are project files, including boundary maps, current and accessible?

2. Is record retention consistent with L&WCF Grants Manual requirements?

3. Does the State utilize microfilming and/ or computers for record maintenance?

D. Reminder letters - Does the State communicate frequently with project sponsors to outline their continuing L&WCF responsibilities? When? With what frequency?

E. Conversion monitoring/certifications

1. Describe any additional State monitoring efforts regarding post completion compliance, specifically conversions.

2. Are there any unresolved Section 6 (f)(3) conversions? If so, list them outlining the State's plans for meeting L&WCF requirements in each case.

3. Describe the State's position regarding its future compliance responsibilities including new initiatives such as compliance certificates from project sponsors, staffing, etc.

4. Describe State efforts to establish accurate Section 6 (f)(3) maps for older projects.

F. Program Income

1. Describe the disposition of program income from rental of structures, sale of timber, sale of agricultural crops or extraction of subsurface mineral resources.

2. Does the State monitor the extraction of subsurface resources in light of the impact on public recreation use and the environment?

G. Delayed Development

1. Are there L&WCF acquisition projects that remain undeveloped even though they were scheduled for development within three years and competed in the OPSP on that basis? If so, list them outlining the sponsor's plans for development.

VIII CIVIL RIGHTS

A. Review of Recipients

1. Are the proper agreements, which provide assurance to comply with Civil Rights requirements, in order? (Between both recipient and NPS and recipient and sub-recipient).

2. Has the recipient provided notification to participants and beneficiaries of its policy of non-discrimination and identified the Federal agency to which a person may file a formal complaint?

3. Do contracts and agreements between recipients and concessionaires or user groups contain assurances to comply with Civil Rights requirements?

4. Has the recipient completed a Section 504 self-evaluation and transition plan (if necessary)?

   - If a "large" recipient, has it appointed a 504 coordinator and provided notification of such to participants and beneficiaries?

   - Were the self-evaluation and transition plan completed with assistance from handicapped persons and/or advocacy groups?

   - Were both programs and structures evaluated?

5. Does the recipient have a formal complaint procedure?

6. Were there violations of handicapped accessibility standards noted during site inspections?

CHECKLIST FOR PROJECT COMPLIANCE

Project Title_____
Project No._____ Date Approved_____
NPS Review Officer _____
Review Date _____

	Documents in State files (yes/no/not applicable)
Project Application	
OMB No. 80-RO184, if applicable	_____
SF 424	_____
E.O. 12372, Intergovernmental Review comments	_____
SCORP reference showing concurrence	_____
Environmental Assessment or Certification (Assessment should show compliance with various environmental acts and Executive Orders)	_____
Control and tenure documents (titles, leases, easements, special use permits)	_____
Location maps	_____
Section 6(f)(3) project boundary map (for projects approved after 7/25/78)	_____
Site development plan	_____
Parcel maps	_____
Floor plans and their certification	_____
Cost Estimate Breakdown	_____
Acquisition Schedule	_____
Development schedule for acquisition project	_____

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Project Agreement and Amendment forms _____
--Federal - State _____
--State - Local _____

Description and Notification Form (Element sheets if a Consolidated Project) _____

Waiver of Retroactivity _____

Assurances of Compliance
--Title VI of the Civil Rights Act (DI 1350) _____
--Section 504 of theRehabilitation Act _____

Site Inspection Reports
--preaward _____
--progress _____
--final _____
--post completion _____

Competitive Use Determination (marinas, campgrounds, etc.) _____

Billings/Progress Reports (at least 1 per year) _____

Permits
--Coast Guard _____
--Corps of Engineers _____

P.L. 91-646 date of acquisition (for development projects) _____

Compliance with other Federal laws and regulations not included above: _____
--Flood Disaster Protection Act of 1973 _____
--Architectural Barriers Act of 1968 _____
--EEO Contract Compliance (E.O 11246) _____
--Disbarment and Suspension (E.O. 12549) _____
--Section 106 of the National Historic Preservation Act of 1966 _____

CHECKLIST FOR REVIEWING COMPLIANCE WITH PROVISIONS OF PUBLIC LAW 91-646

Project Title_____
Project No._____ Date Approved_____
NPS Review Officer _____
Review Date _____

		Documents in State File (yes/no/not applicable)
1.	Appraisal Documentation including review material and written State approval, or recommendation for approval, of the appraisal report (Reviewed and approved prior to initiation of negotiations see 675.2.7)	_____
2.	Evidence that owner was offered opportunity to accompany the appraiser	_____
3.	Adequate statement of just compensation provided along with written offer to purchase. (Establishes date negotiations began)	_____
4.	Owner was offered and paid no less than the approved appraisal of fair market value. If purchase price exceeded fair market value is there adequate justification?	_____
5.	Properly documented waiver of just compensation, if required	_____
6.	Were incidental costs incurred by the owner reimbursed as required by Title III?	_____
7.	Were owners and/or tenants advised of their rights to relocation benefits?	_____
8.	Were displaced persons furnished with appropriate relocation advisory service in accord with Chapter 650.3.4.B., 650.3.7..and Relocation Act Section 205?	_____
9.	Were comparable home rental and purchase surveys made in the determination of replacement housing benefits?	_____

STATE PLAN PREPARATION, PROCEDURES AND ELIGIBILITY

1. **Purpose.** This Chapter explains the objectives, eligibility requirements, and guidelines for the States and the National Park Service (NPS) in preparing and reviewing Statewide Comprehensive Outdoor Recreation Plans (SCORP). The SCORP is required by Section 6 (d) of the L&WCF Act of 1965, as amended.

   The guidelines are based on provisions of the L&WCF Act, related Federal statutes, and determinations of the NPS Director regarding planning considerations essential for effective administration of the L&WCF program.

   The Governor and/or the officially designated State Liaison Officer (SLO) are the officials authorized to act for the State, as specified under the various provisions of this Part.

2. **Requirements of the Land and Water Conservation Fund Act of 1965, as Amended.** The L&WCF Act of 1965, as amended, requires a SCORP from each State prior to consideration by the Secretary of the Interior for financial assistance for acquisition or development projects.

   The L&WCF Act explicitly requires the SCORP to include the following:

   A. The name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of the Land and Water Conservation Fund Act of 1965, as amended;

   B. an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;

   C. a program for the implementation of the plan;

   D. certification by the Governor that ample opportunity for public participation has taken place in plan development; and

   E. other necessary information, as may be determined by the Secretary. (Such information is described in this Chapter, which may be amended in the future).

   The Plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional and local plans.

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3. Goals and Objectives of the Plan. The goals of the plan and its associated planning process are to direct each State's use of its L&WCF apportionment.

The objectives of the plan and its associated planning process are to:

A. fulfill the purposes of the L&WCF Act as stated in Chapter 600.2 of this Manual;

B. provide each State the maximum opportunity and flexibility to develop and implement its plan:

C. describe the role of the L&WCF in the State's provision of outdoor recreation opportunities and the States policies for use of its L&WCF apportionment;

D. provide a basis for determining each State's L&WCF eligibility; and,

E. ensure relevant, influential and timely planning for the State's use of its L&WCF apportionment.

Each State is encouraged to conduct outdoor recreation planning beyond the minimum required to maintain L&WCF eligibility (see Chapter 630.2d). Under Section 8(a) pf P.L. 90-543, as amended, and Section 11(a) of P.L. 90-542, as amended, respectively, the Secretary is directed to encourage States to consider in their plans the needs and opportunities for establishing recreation and historic trails and wild, scenic and recreational river areas.

4. Plan Requirements. The minimum requirements of the plan are:

A. the plan must describe the process and methodology(s) chosen by the State to meet the guidelines as set forth in this Chapter;

B. the planning process must include ample opportunity for public participation, involving all segments of the State's population.

C. the plan must be comprehensive. The plan will be considered comprehensive if it:

(1) identifies outdoor recreation issues of statewide importance based upon, but not limited to, input from the public participation program. The plan must also identify those issues that the State will address through the L&WCF, and those issues which may be addressed by other means,

(2) evaluates demand, i.e., public outdoor recreation preferences, but not necessarily through quantitative statewide surveys or analyses, and

(3) evaluates the supply of outdoor recreation resources and facilities, but not necessarily through quantitative statewide inventories;

D. the plan must have an implementation program which identifies the State's strategies, priorities, and actions for the obligation of its L&WCF apportionment. The implementation program must be of sufficient detail to demonstrate that projects submitted to NPS for L&WCF funding implement the plan;

E. the plan must contain a wetlands priority component consistent with Section 303 of the Emergency Wetlands Resources Act of 1986. At a minimum, the wetlands priority component must:

(1) be consistent with the National Wetlands Priority Conservation Plan, prepared by the U.S. Fish and Wildlife Service,

(2) provide evidence of consultation with the State agency responsible for fish and wildlife resources, and

(3) contain a listing of those wetland types which should receive priority for acquisition; and

F. the plan may consist of a single document or may be comprised of multiple documents as long as the guidelines as set forth in this Chapter are met.

5. Plan Cooperation. An effective working partnership between each State and NPS is necessary. Consultation should cover such elements as scheduling, planning methodology(s), public participation, and NPS assistance needed by the State.

Each State is strongly encouraged to consult and coordinate its planning process with NPS on a regular basis, especially at the start of its planning cycle, to ensure that the planning process and its products are mutually acceptable. At its discretion, the State may enter into a formal planning agreement with NPS on an annual or multi-year basis to formalize consultation procedures, NPS technical assistance required, and other planning matters.

6. **Submission of Plan Documentation.** The minimum documentation required to be submitted by each State to NPS as evidence of conformance with this Chapter is a new or revised plan at least once every five years. The Plan must be approved by the State's Governor or designated Liaison Officer. The Plan must contain a certification by the Governor that ample opportunity for public participation has taken place in development of the plan. A total of 10 copies of the plan must be submitted to the State's NPS Regional Director. Amendments to the plan may be submitted at any time. Amendments will follow the same review and approval procedures as the original Plan.

7. **Eligibility Criteria Related to Planning.** Each State will be deemed eligible for participation in the L&WCF when its plan meets the requirements of the L&WCF Act. Evidence of an adequate planning process is provided by the maintenance of a current and complete plan, which must be published once every five years, and progress toward implementation of the plan. Failure to maintain and implement an adequate plan will be considered sufficient justification for termination of the State's eligibility for participation in the L&WCF.

   Upon a finding by NPS that the State's plan is inadequate, the State may be placed on probation, through written notification of the State's designated Liaison Officer, for a period of 90 days, within which time it must initiate action to correct the identified deficiencies. If the State fails to take corrective action(s) within this 90 day probation period, the Regional Director will suspend the State's eligibility and specify to the State those scheduled actions required to regain eligibility. The State may appeal to the NPS Director within 30 days following placement on probation or declaration of ineligibility. Appeals will be considered by the Director within 60 days prior to termination of the State's eligibility. The decision of the Director will be final.

8. **Transition.** Current NPS commitments to individual States regarding eligibility will be honored. Plans in various stages of completion may continue to be developed under previous guidelines or may opt to adopt these current guidelines. In any instance, States are encouraged to develop planning processes and make changes as necessary to conform with this Chapter as rapidly as possible. When current eligibility expires, the State will be eligible for continued participation in the L&WCF as soon as its plan meets the guidelines as set forth in this Chapter.

Summary of Legislation Requiring

Coordination Between SCORP and Other Federal Programs

- Federal Outdoor Recreation Coordination Act (P.L. 88-29) - provides for coordinating Federal activities related to outdoor recreation, and for developing a nationwide outdoor recreation plan. The Act authorizes the Secretary of the Interior to formulate and maintain a comprehensive nationwide outdoor recreation plan, taking into consideration the plans of the various Federal agencies, States, and their political subdivisions.

- Federal Water Project Recreation Act (P.L. 89-72) - provides uniform policies with respect to recreation, fish and wildlife benefits, and costs of Federal multipurpose water resource projects. The Act requires the Secretary of the Interior to report on the extent to which proposed recreation and fish and wildlife development conforms to and is in accord with the Statewide Comprehensive Outdoor Recreation Plan.

- Water Resources Planning Act (P.L. 89-80) - provides financial assistance to the States in order to increase State participation in coordinated planning of water and related land resources. The Act requires full coordination between comprehensive water resources planning and the SCORP for approval by the Water Resources Council.

- National Historic Preservation Act (P.L. 89-665) - establishes a program for the preservation of historic properties. The Act provides that no grant may be made under its provisions unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary of the Interior after considering its relationship to the Statewide Comprehensive Outdoor Recreation Plan.

- Colorado River Basin Project Act (P.L. 90-537) - authorizes the construction, operation, and maintenance of the Colorado River Basin Project. The Act requires conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in accordance with the provisions of the Federal Water Project Recreation Act, cited above. This includes conformity with the Statewide Comprehensive Outdoor Recreation Plan.

- Wild and Scenic Rivers Act (P.L. 90-542) - implements the policy of preserving selected rivers or sections thereof in their free-flowing condition. The Act requires the Secretary of the Interior to encourage the States to consider the needs and opportunities for establishing State and local wild, scenic and recreational river areas, when developing their Statewide Comprehensive Outdoor Recreation Plan.

- National Trails System Act (P.L. 90-543) - institutes a national system of recreation and scenic trails. It prescribes the methods and standards by which components may be added to the system. The Act directs the Secretary of the Interior to encourage States to consider, in their Statewide Comprehensive Outdoor Recreation Plans, need and opportunities for establishing park, forest, and other recreation trails on lands owned or administered by States, and recreation trails on lands in or near urban areas.

- Bankhead-Jones Farm Tenant Act. - authorizes the Secretary of Agriculture to furnish financial assistance in carrying out plans for works of improvement for land conservation and utilization. It requires that such public works which provide for water-based fish and wildlife or recreational development shall be consistent with Statewide Comprehensive Outdoor Recreation Plans.

- The Emergency Wetlands Resources Act of 1986 (P.L. 99-645) - requires that SCORPs contain a wetlands priority component consistent with Section 303 of the Act, including consideration of wetlands protection needs and problems consistent with the National Wetlands Priority Conservation Plan and a listing of those wetland types, if any, that should receive priority for acquisition. Evidence of coordination and consultation with the State agency primarily responsible for wetlands planning is also required.

PLANNING ASSISTANCE

1. **Purpose.** The purpose of this Chapter is to specify objectives and requirements governing use of planning grants from the Land and Water Conservation Fund. Such grants are to be used for developing and maintaining Statewide Comprehensive Outdoor Recreation Plan (SCORP) programs, as described in Chapter 630.1.

2. **Use of L&WCF Planning Grants.** Since planning grants are intended for development and maintenance of SCORPs as decision-making and management tools, planning proposals funded must be aimed at either (1) solving a problem identified in the last approved SCORP effort, or (2) developing new data and decision tools identified as essential to completion of an upcoming SCORP.

3. **Pre-Application Consultation.** All planning grants should be the result of joint consultations between the Service and the grantee on priority needs, within the context of a State's continuing and systematic outdoor recreation planning process. Prior to formal submission of any application, the grantee must provide NPS with a brief narrative proposal (not a formal preapplication), discussing objectives, scope, costs, approaches and products in relation to its overall SCORP program, for review by and discussion with the Service's Regional Office. Following Service review of such proposals, they must be discussed in a conference between State and Regional Office personnel to assure mutual understanding on objectives, timing, scope, costs, methodology and products of all proposed work elements. For projects of limited scope and complexity, a telephonic conference may be used instead of a personal meeting. However the results of the NPS-State conference, in whatever form, should be carefully documented in project records, particularly when necessary to assure future understanding by both parties about the planning approach to be used and results expected.

4. **Eligible Applicants.** Only the State Liaison Officer or agency designated by the Governor as being responsible for maintaining the SCORP program is eligible to apply for planning assistance from the Fund. Responsibility for executing a planning project or a portion thereof may be subcontracted to an appropriate non-Federal governmental agency (general purpose or special purpose government unit) or to another public or private planning organization. In all cases, however, the designated State agency is obligated to supervise and to be responsible for all work performed, and must be directly involved in production of the final products of the grant and in the development of any policies or action options expected to result from project work.

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5. **Eligible Planning Projects.** To be eligible for Fund assistance, a project must have a clearly defined end product which addresses needs, problems or issues identified in a State's currently approved SCORP documents or is otherwise essential, in the judgement of the State and the Service to production of an upcoming SCORP. It may be explicitly identified as part of a future planning program contained in the current SCORP policy plan or implementation program; or be logically implied, in the judgement of Service reviewers, by discussions of planning needs in such current SCORP documents; or, respond to a specific planning deficiency identified by the Service as part of its periodic review of a State's planning program and State SCORP submissions.

   A. Projects may include surveys, planning studies, data collection and analysis, public participation efforts, and other activities essential to production of a SCORP policy or implementation plan.

   B. Management studies related to improved financing, operation, maintenance or other use of administrative resources to sustain recreation programs, including evaluations of the overall capabilities of State and local governments fully to protect and utilize their outdoor recreation investments may be funded when clearly related to a State's overall SCORP program and to meeting the requirements of Section 6(f)3 of the L&WCF Act for continued operation and maintenance of all Fund-assisted areas and facilities.

   C. Studies of natural, ecological, or recreational resource areas, demonstration studies and topics of statewide significance or national concern are also eligible. These studies must meet the following criteria:

      (1) The study, through either its methodology or results, must be of statewide significance, and the study area must have potential or recognized natural, ecological, or recreational values that need to be carefully evaluated through the SCORP process.

      (2) The proposal must address a priority problem identified in approved SCORP documents or be essential for the development of decision-making information for an upcoming SCORP. The study must go beyond "basic research" or simple data collection to provide information likely to be used for State or local decision-making on outdoor recreation issues and programs, so that it may provide specific recommendations for inclusion in the State's published SCORP.

(3) The proposal must include a justification indicating how the project would contribute toward maintenance of the State's overall SCORP program and future State Plan submissions.

(4) The study must further the overall purposes of the SCORP process, as defined by the L&WCF Act; i.e, it must be relevant to identified needs for outdoor recreation resources and programs within the State and to the State's present or future actions to to meet such needs. The Service, in consultation with the State, will evaluate all such proposals to determine their relationship to a State's overall planning needs. This evaluation will include an assessment of whether the monetary, personnel and other resources devoted to a special study will contribute to or detract from the accomplishment of other high priority planning objectives identified in SCORP submissions or in the Service's reviews of a State's continuing planning process.

(5) The study should include a public participation program through which concerned public and private agencies or organizations and interested citizens can be kept informed of, and allowed to comment on, study objectives and results.

(6) Responsibility for the overall project, as well as its different elements, must be clearly identified if more than one agency is to be involved.

(7) When public land protection measures are proposed, the study must include an examination of the feasibility of any alternatives to fee simple acquisition of the resources to be protected.

D. Studies or other investigations which are primarily aimed at promoting tourism, or other State and local economic activities or the promotion of private recreation expenditures through recreation development are not eligible for planning grant assistance. However, studies aimed at analyzing or documenting the contributions of outdoor recreation resources to a State's economy or environment or at improving State decisions on the appropriate public and private roles in the management of various recreation resources may be eligible for funding when they meet other appropriate criteria for eligibility as outlined elsewhere in this section.

E. Detailed plans for capital projects, sketch or site plans, individual area master plans, economic feasibility studies, landscape designs, or architectural and engineering studies are not eligible for planning grant assistance.

F. Planning proposals must take into account past studies of the same or similar resources or programs to ensure that the proposed efforts do not duplicate earlier research. They must consider any relevant Federal resources, plans, or programs and be correlated, so far as practicable with other State, regional and local plans.

G. Two or more planning projects may be carried out concurrently providing they do not duplicate one another. Work items funded under an L&WCF planning grant must not overlap with work items assisted by another L&WCF grant, or financially-assisted under other Federal programs, or otherwise accomplished with Federal personnel or resources.

H. When a grant proposal involves funding of outdoor recreation work elements as part of a larger, "consolidated and simplified" State plan, as authorized by Executive Order 12372, particular assurance must be provided by the grantee that the L&WCF grant will be used for direct support of outdoor recreation planning work items and not, either directly or indirectly, of non-recreation planning items related to such areas as housing, transportation, or general economic development.

I. Planning grants may not encompass any costs for acquisition of land or interests in land or for development of new facilities. Nor may land acquisition or development costs be used as any part of a grantee's matching share of eligible planning costs.

6. **Available Funding.** Up to 50% of the total cost of an eligible planning project is available to a State, on a reimbursement basis, from its Land and Water Conservation Fund apportionment account. However, grants to the Insular Areas may be made available on a 100% basis (see Section 600.1.8). While there is no dollar limit on the amount of a State's apportionment which can be used for planning grants, the Service reserves the right to limit the size of specific projects based upon each State's planning needs and the relationship of planning costs to overall funding resources. For this reason, Regional Directors should consult with Washington program offices (as part of the Pre-Application consultation process, see 630.2.3) before approving any planning grant or amendment for which the total L&WCF obligation will exceed $100,000 or 5 percent of a State's most recent apportionment, whichever is greater.

7. **Allowable Costs.** Project costs incurred to sustain an ongoing outdoor recreation planning process are reimbursable as part of an approved planning project. These include the preparation, publishing and distribution of appropriate documents, such as core SCORP documents,

supplemental recreation policy or action plans and related studies. Costs of data collection and processing, public participation activities, special studies, etc. are also eligible for assistance (see Part 670). Contracted professional services for eligible planning activities may be allowed, if, in the Service's judgement, overall responsibility for planning policies and action recommendations is clearly retained by the State Liaison Officer or other designated State agency. All contracts awarded by a grantee must be in accord with the the procurement standards and procedures of Uniform Administrative Requirements Grants and Cooperative Agreements to State and Local Governments (43 CFR 12.1-12.52 - formerly A-102 requirements) as outlined in Section 675.3 of this Manual (see CFR excerpt at Section 675.3, Attachment A.)

8. Acknowledgement of Assistance. When assistance from the Land and Water Conservation Fund is provided for a project, the resulting document shall include the following acknowledgement:

"The preparation (updating, revision) of this plan (study, analysis, etc.) was financed in part through a planning grant from the National Park Service, Department of the Interior, under the provisions of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578, as amended)."

This statement may be expanded at the State's discretion to reflect the manner in which the non-Federal share of the total cost was financed.

9. Intergovernmental Review - E.O. 12372. A copy of the planning grant application must be submitted to a State's Single Point of Contact (SPOC or State Clearinghouse) in accordance with the intergovernmental review requirements of Executive Order 12372 (see Chapter 650.8). L&WCF planning grant applications should include assurances that the recreation planning objectives and products of the grant are in accord with comprehensive State planning goals, as determined by the Governor or State agency designated to coordinate overall planning. Comment by way of the E.O. 12372 process is usually the best way to accomplish this, although other types of assurance may be provided if appropriate.

Submissions to the SPOC should normally consist of copies of the material provided to NPS in the application package (described in 630.2.10 below), but a notice of intent including a description of project purpose, scope, cost, beneficiaries may be used if it contains sufficient detail to allow the SPOC to provide potentially interested agencies with an opportunity to comment on the proposed effort. State Single Points of Contact should arrange for review comments by interested organizations and submit all comments to the sponsor for forwarding to NPS within the prescribed review period. Refer to Chapter 650.8 for further requirements.

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10. **Project Application.** The complete, single project application process must be used for all planning grants. (see 660.1.2). The standard application form used for Federal construction assistance programs (SF 424 and OMB 80-R0184) is used when applying for Land and Water Conservation Fund planning assistance. It must be accompanied by the appropriate required attachments, including a Description and Notification Form (see Attachment 660.3D).

A. Standard Application Form. Instructions for the use of OMB 80-R0184 found in Attachment 660.3A apply to planning applications with the following exceptions:

(1) Part II, Section A. In addition to the shaded parts, items 5, 7 and 9 are not applicable to planning grants. These should be answered with the letters N/A.

(2) Part II, Section B. None of the items on this sheet are applicable to planning grants. Mark all items N/A.

(3) Part III, Section B. Items 3 through 12 are not applicable to planning grants. Planning costs should be entered in Item 13. Attach a sheet summarizing the major project elements, their estimated costs and staffing requirements, and the estimated beginning and ending periods of work on each element. The breakdown of work items should be sufficiently detailed to permit a clear understanding of the work to be performed and the basis for estimated costs. This requirement may be answered in part by reference to the detailed narrative incorporated into the Project Agreement, NPS 10-902 (see 630.2.10.B., below.)

(4) Part III, Section C. Not applicable.

(5) Part III, Sections D and E. Self-explanatory.

(6) Part IV. Applicants should respond to Item 3c in addition to those items not shaded. Item 3c and Item 5a can be answered by reference to the detailed narrative attached to the Project Agreement Form - NPS 10-902 (see 630.2.10B, below).

B. Project Agreement Form NPS 10-902. A project agreement form must be completed for all planning projects. Attachment 660.3B provides instructions for its preparation. For planning grants, the "Project Scope" section of the agreement must also reference and

incorporate a more detailed narrative attachment which covers the following items:

(1) Identification of the objectives of the grant, with reference to planning needs identified in existing SCORP documents or other justification in terms of the project's compatibility with overall SCORP program priorities.

(2) The planning products that will result and how they will contribute to maintenance of the SCORP program and preparation of future policy plans or implementation programs; and, if appropriate, the relationship of a new proposal to other planning grants received by a State.

(3) The general approach to be used, including a schedule of key events, the breadth of study coverage, and cost estimates for each work item indicating how funds will be used by object class (personnel, travel, equipment, consultant contracts, etc.)

(4) A discussion of the personnel, organizations or outside consultants that may be used to implement the project, with an explanation of any special knowledge or expertise which they will provide.

This narrative will also serve to meet the requirements of Part IV of OMB 80-RO184 [see above - Part 630.2.10A]

C. E.O. 12372 Comments. Comments received through the E.O. 12372 Single Point of Contact review, along with a statement of the consideration given to those comments, must be submitted with the project. If comments were requested but not received a statement to that effect should be included.

D. Certified Project. Project certification procedures described in Chapter 660.5 are not applicable to planning projects.

11. Regional Review. Project applications will be reviewed by the Regional Office to determine if all planning assistance requirements have been met. This evaluation will focus on the following specific criteria:

A. The project must be an integral part of the SCORP process and clearly essential to maintenance of the SCORP as a decision-making or management tool. If need for the project is not explicitly identified in current SCORP documents, there must be mutual agreement between the Service and the grantee on the priority need for the project effort as part of a State's overall recreation planning program

B.

1. Timing, scope, costs and methodology of the project must be appropriate to the planning benefits received and complementary to any other planning efforts needed to address identified deficiencies in a State's overall planning program.

2. Project work elements must be clearly identified with reasonable scheduling, staffing and cost estimates assigned to each element.

3. Grant products such as published plans, studies, new policies or procedures to be adopted, reports, evaluations or other documents must be explicitly identified.

C. Both the agency requesting the assistance and the project itself must be eligible for planning assistance from the Land and Water Conservation Fund.

D. The requirements of Executive Order 12372 relating to review and comment by the State Clearinghouse must have been completed.

E. There must be no duplication of Federal assistance for work items funded under the project.

12. Amendments. Changes which materially alter the scope, change the cost or the completion time of a project must be approved by the Service. When a State wishes to change its project it should discuss the proposed changes with Regional Office personnel prior to submitting an amendment to the project agreement. (see Attachment 660.3C) Amendments will be reviewed and processed following the same procedures used for a complete planning project. Only those changes considered to be major and substantive will be required to receive E.O.12372 clearinghouse review. Planning projects should normally cover a period of two years or less to ensure timely completion and close-out of complex work efforts and reduce audit problems. In no case should a single planning grant include elements from more than one complete SCORP cycle (Policy Plan to Policy Plan), except where costs of publication and distribution of a SCORP document from a previous cycle may be reasonably included as a public participation element in the next SCORP cycle.

13. Regional Action. The Regional Director shall act to approve or disapprove all planning projects and amendments within the limits of his authority, and shall notify the project sponsor in writing regarding his action on the project or amendment.

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14. **Financial Procedures.** Adequate financial records must be maintained to support all the costs involved in a project. A documentation "trail" adequate to withstand audit should be maintained. Generally accepted accounting and auditing principles will apply to project records, accounts and documentation. Such records must be in accord with the principles established in OMB Circulars A-102 and A-87 for prevention of fraud, waste and abuse in Federal programs. Particular attention should be paid by the grantee to good records of in-house personnel costs attributable to the planning grant. Time distribution records must be maintained for each individual for whom L&WCF grant costs are to be claimed. Careful records of time spent on SCORP elements are especially important when personnel are splitting their time between one or more SCORP projects and other planning or administrative duties. To guard against fraud, waste and abuse or possible disallowance of legitimate grant costs, it is recommended that grantees establish a separate tracking account for each planning grant and perform updates of staffing and other charges to such accounts on a regular (e.g., biweekly or monthly) basis. For the same reasons, at-least-annual billings on planning projects of more than one year's duration are recommended. No grantee billings, or electronic drawdowns can be made without Service review of a billing progress report covering expenditures and accomplishments under the grant (see Part 630.2.15, below.)

15. **Reimbursements.** Because of the special features of L&WCF planning grants as compared to capital grants for acquisition or development, it is essential to ensure adequate project tracking and cost documentation on a periodic basis throughout the life of each planning project. All reimbursement requests for planning grants must be accompanied by a billing progress report. States, whether on direct billings (Treasury check) or using the SMARTLINK automated drawdown method must obtain Service approval of their progress report ***BEFORE*** payments are requested. When requesting planning grant reimbursements, States will submit to their NPS Regional Office the Progress Report described in Part 630.2.16, below. NPS will review and approve such reports, then process direct billings or provide the grantee with a letter authorizing a SMARTLINK drawdown for the approved reimbursement amount.

16. **Progress Reports.** Reports of progress toward the completion of a planning project must be submitted with each billing for the costs incurred. Progress Reports must include:

    (a) a list of the major work items (elements) agreed to in the project scope of the grant contract;

    (b) a narrative description of the status of work for each item in the project;

(c) identification of any elements that are behind schedule and of what problems have caused delay;

(d) actual or projected completion dates for each work item;

(e) if appropriate, evaluations of the success or failure to date of the planning approaches used and of any effects of project work to date on State policies or improved management of State programs;

(f) estimated costs incurred during the billing period for each work item; and,

(g) total costs incurred and total costs previously billed for all parts of the project to date.

For planning grants with a project period of more than one year and for which no billings or drawdowns have been requested during the past year, a report of this type must be submitted to NPS by March 31 of each year, as covered in Part 675.5. **Notwithstanding the provisions of Part 675.5.C. on alternative consolidated performance reports, a separate report is required on each active planning grant for which no reimbursement has been requested within the preceding twelve months.**

In addition to reports of project progress, work accomplished as a part of a planning grant should be included in the planning evaluation required as a part of each State's Annual Report on Land and Water Conservation Fund activities (see Part 600.7).

GENERAL PROJECT CRITERIA

1. **Purpose.** The L&WCF Act authorizes the Secretary of Interior to provide financial assistance to States for the acquisition and/or development of public outdoor recreation areas and facilities found to be in accord with the Statewide Comprehensive Outdoor Recreation Plan. Such assistance shall be on a matching basis to a maximum fifty (50) percent of the total project related allowable costs. However, grants to the Insular Areas may be made available on a 100% basis (see Section 600.1.8). The States are encouraged to share the benefits derived from the L&WCF program among all State and local agencies responsible for providing public outdoor recreation opportunities.

2. **Project Sponsors.** Only States may apply directly to NPS for L&WCF assistance, however, funds may be made available through the States to political subdivisions of the State and other appropriate public agencies. Proposed projects may be sponsored by a State agency or a public agency of a subordinate unit of government. All project proposals submitted to the Service must be recommended by the State Liaison Officer or by the State agency acting for the State Liaison Officer. No grant or contract may be awarded by any grantee of subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549 (see 660.5.3E).

3. **Relation to State Plan.** Only project proposals in accordance with the Statewide Comprehensive Outdoor Recreation Plan (SCORP) may be considered. Project proposals may be submitted for approval only during the time in which the State sustains its eligibility for participation in the L&WCF program. Projects received during a period of ineligibility will be returned to the State as inactionable. This does not mean that the projects have been disapproved nor prevents them from being resubmitted by the State as soon as eligibility has been regained.

4. **Project Proposals.** The State has the initial prerogative and responsibility for determining the scope and effort involved in a project proposal. A project can be designed as follows: 1) Acquisition and/or development work at one site, 2) acquisition and/or development work, sponsored by a single State agency and/or local unit of government, at several sites, or 3) a particular type of facility, such as swimming pools or miniparks, sponsored by State agencies and/or local units of government and located at several sites.

   The Service reserves the right to require the segmenting of project proposals into smaller projects or the combining of small related projects into a larger one when, in the judgement of the Service, such proposals

do not lend themselves to effective and economical management and costing.

A project proposal, except in the most unusual circumstances, should embrace only those efforts that can be accomplished within a five-year period.

5. Types of Projects.

A. Acquisition. These include the acquisition of land and waters or partial rights to them.

B. Development. These include the development of certain outdoor recreation activity and support facilities needed by the public for recreation use of an area.

C. Combined. When it is advantageous to do so, a State may submit projects which combine acquisition and development.

6. Multiple-Purpose Projects. Multi-purpose projects which involve uses other than outdoor recreation may be eligible for assistance under the Act. The State must include a careful and complete justification and explanation with each proposal. Two general types of multiple-purpose projects are eligible for assistance:

A. Projects in which a specifically designated portion of the multiple-purpose area or facility will be used primarily for outdoor recreation and/or outdoor recreation support, such as picnicking facilities adjacent to a new public reservoir. Fund assistance is limited to the designated outdoor recreation area and/or facility and support facility.

B. Projects which will provide identifiable outdoor recreation benefits as a whole, as opposed to specific segments of it. For example, a water impoundment constructed primarily for flood control might also have important recreation benefits. In such a case, at the Service's discretion, assistance might be made available only for the portion of the cost, on a pro rata basis, of the facility which is clearly attributable to outdoor recreation above and beyond the facility's cost for its non-recreation function.

The proposal must fully disclose the nature and extent of other uses and the relationship of the proposed outdoor recreation project to the total area and development. Additionally, if the project is located in a floodplain, the project proposal must evaluate the flood hazard to the Fund-assisted facility. (see Chapters 650.6 and 650.7).

7. **Assistance from Other Agencies.** Project proposals submitted to the Service for L&WCF assistance may also be submitted to other public agencies for aid. The State or local matching share of an approved project may consist of other Federal financial assistance only where the statutory provisions of the subsequent Federal grants program explicitly allows recipients to use such assistance to match other Federal funds (see Section 670.1.5). The application to the Service should describe any such submissions, and the Service should immediately be notified if these result in assistance or the promise of assistance by another organization.

8. **Control and Tenure.** For lands included in a project proposal, the project sponsor must have title or adequate control and tenure of the project area in order to provide reasonable assurances that a conversion under Section 6(f)(3) of the L&WCF Act will not occur without Service approval. Copies of the property titles, leases, easements, or other appropriate documents must be on file at the State level and available for Federal inspection.

   A. Property that is proposed for acquisition and/or development and which is subject to reversionary interests upon discontinuation of the recreation use may be eligible to receive Fund assistance. The Service's determination in this regard will rest on the compatibility of uses proposed by the project sponsor with that stipulated in the reversionary clause and receipt of satisfactory assurances from the State that the property so assisted will be replaced in accord with specific Section 6(f)(3) provisions applicable to such future conversion should the reversionary interest be exercised.

   Such assurances are contained in the General Provisions of the Project Agreement and may also apply to termination provisions included in leases and special use permits, provided such revocation is not at the sole discretion of the lessor except in the case of Forest Service Term Special Use Permits. (see Section 640.3.4)

   B. Properties subject to outstanding interests, such as mineral rights that, if exercised, may not be compatible with the continued viable use of the area for outdoor recreation, may also be agreed to under certain specific conditions. The Service will agree to such a future conversion based upon a State's present agreement that these lands will be replaced in accord with Section 6(f)(3) provisions. This specific assurance provision is contained in the General Provisions of the Project Agreement (i.e., Attachment 660.3B).

   It should be noted the above paragraphs A and B are only concerned with those reversionary rights or outstanding interests that, should they occur or be exercised, would result in the project area not being viable for

continued public outdoor recreation use as determined by NPS at the time of project submission and where the State certifies and the Service agrees that the possibility of the reversionary interest or outstanding rights being exercised is remote. These decisions will be made on a case by case basis. When significant outstanding rights are involved, the project application will also contain an opinion of Counsel from the State and if appropriate, an opinion from local Counsel, that the State or recipient has the authority to enter into a grant contract which may require the provision of replacement land. Other rights and interests which, if exercised, will not adversely affect the recreation utility or viability of the area can be excepted from Section 6(f)(3) purview upon recommendation of the State and concurrence by the Service (see Sections 660.2.6 and 660.5.2C(2)).

9. **Leasing of Lands Acquired and/or Developed with L&WCF Assistance.**

A project sponsor may provide for the operation of a L&WCF assisted facility by leasing the facility to a private organization or individual. As the principal grantee, the State is ultimately accountable for assuring compliance with the applicable Federal requirements and therefore the delegation or transfer of certain responsibilities to subgrantees or leases does not relieve the State of its compliance burden. Accordingly, the State must irrevocably agree to provide suitable replacement property should the public use of the leased facility be restricted or the outdoor recreation resource be compromised. (see also 675.9.8 Post-Compliance Responsibilities)

All lease documents for the operation of L&WCF assisted projects by private organizations or individuals must address the following:

A. In order to protect the public interest, the project sponsor must have a clear ability to periodically review the performance of the lessee and terminate the lease if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility are not met.

B. The document should clearly indicate that the leased area is to be operated by the lessee for public outdoor recreation purposes in compliance with provisions of the Land and Water Conservation Fund Act and implementing guidelines.

C. The document should require that the area be identified as being publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising and that the lessee be identified as such as not to mislead the public into believing that the area is private. Signs should also be posted identifying the facility as being open to the public in accord with Chapter 675.4.

D. The document should require that all fees charged by the lessee to the public must be competitive with similar private facilities.

E. The document should make clear that compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, Americans with Disabilities Act) is required, and that compliance will be indicated by signs posted in visible public areas, statements in public information brochures, etc.

10. **Use of Existing Public Land for Matching Purposes.** Existing governmentally owned lands cannot be used as a part of the non-Federal matching share of a project unless such land is to be acquired by the sponsoring agency from another agency and there is a statutory requirement that the selling agency be reimbursed for the value of the property. Further, property cannot be "donated" between a State and its political subdivisions to serve as a match for grant assistance. (Also see 670.3.4K)

CRITERIA FOR ACQUISITION

1. **Types of Acquisition.** Acquisition of lands and waters for public outdoor recreation, including new areas or additions to existing parks, forests, wildlife areas, beaches, and other similar areas dedicated to outdoor recreation may be eligible for assistance. Acquisition can be by fee simple title or by whatever lesser rights will insure the desired public use. The types of acquisitions that are eligible for assistance include, but are not limited to:

   A. Areas with frontage on oceans, rivers, streams, lakes, estuaries, and reservoirs that will provide water-based public recreation opportunities, or the acquisition of water bodies themselves.

   B. Land for creating water impoundments to provide water-based public outdoor recreation opportunities.

   C. Areas that provide special recreation opportunities, such as floodplains, wetlands, and areas adjacent to scenic highways.

   D. Natural areas and preserves and outstanding scenic areas where the objective is to preserve the scenic or natural values, including areas of physical or biological importance and wildlife areas. These areas must be open to the general public for outdoor recreation use to the extent that the natural attributes of the areas will not be seriously impaired or lost.

   E. Land within urban areas for day-use picnic areas, neighborhood playgrounds, and tot lots; areas adjacent to school playgrounds and competitive nonprofessional sports facilities, as well as more generalized parklands.

2. **Activities Covered.** Areas acquired may serve a wide variety of outdoor recreation activities including, but not limited to: driving and walking for pleasure, sightseeing, swimming and other water sports, fishing, picnicking, nature study, boating, hunting and shooting, camping, horseback riding, bicycling, snowmobiling, skiing, and other outdoor sports and activities.

3. **Acquisition of Structures.** Acquisition projects may include structures and impoundments which: (a) are to be used primarily for outdoor recreation or outdoor recreation support activities or (b) are a part of the outdoor recreation area to be acquired, and are to be removed or demolished (or drained in the case of impoundments). L&WCF assistance may be used to acquire modest structures to be used as park rangers' residences provided the cost of the structure is incidental to the

total acquisition cost. Project proposals must list all improvements and their proposed use or disposition.

4. Acquisition of Lesser Interests. Proposed acquisitions of interests in lands and waters of less than fee simple title are no longer encouraged unless such lesser rights (e.g., permanent recreation use easements or similar devices) will insure the desired public access and use. No approval will be given for the acquisition of leasehold interests. This policy does not render existing lease agreements illegal, and does not have retroaction application.

5. Acquisition Involving Compatible Uses. Non-recreation uses, such as timber management, grazing, and other natural resource uses not including agriculture may be carried out within the area if they are clearly described in the project proposals, are compatible with and secondary to outdoor recreation use, and are approved by the Service. (see Section 675.1.8 for disposition of income.) Also, facilities that are not eligible for L&WCF assistance may be constructed with other than L&WCF monies on land purchased with L&WCF assistance if such facilities do not constitute a conversion under Section 6(f)(3) of the Act. (see Section 675.9.3).

6. Means of Acquisition. Acquisition of lands and waters, or interests therein may be accomplished through purchase, eminent domain, transfer, or by gift. (If the property or interest is being acquired from another public agency see Section 670.3.4K).

7. Reservations and Rights Not Acquired. Reservations and rights held by others are permissible only if it is determined that the outdoor recreation purposes and environment would not be significantly affected. The project sponsor shall list all outstanding rights or interests held by others on Part II, Section B of OMB Form 80-RO184 (see Attachment 660.3A) and on the project boundary map. (see Section 660.2.6) Further, the environmental information submitted to the Service on the project must explain how these outstanding rights are to be dealt with to assure that the outdoor recreation interests and the environment will not be affected significantly. (see Chapter 650.2 and Section 660.2.6).

8. **Acquisition for Delayed Development**

   A. General. L&WCF assistance may be available to acquired property for which the development of outdoor recreation facilities is planned at a future date. In the interim, between acquisition and development, the property should be open for those public recreation purposes which the land is capable of supporting or which can be achieved with a minimum public investment. Non-

recreation uses such as agriculture occurring on the property at the time of acquisition may continue for up to 3 years, contingent upon approval by the Service. In this case the project sponsor shall not receive payment on the project until the non-recreation use is terminated. (see Section 640.2.8C)

B. Procedures. If development will be delayed for more than two years from the date of acquisition, the project sponsor shall include the following information in the project application.

(1) Why immediate acquisition of the property is necessary.

(2) What facilities will be developed and when such development will occur.

(3) What, if any, non-recreation uses will be continued on the property and when such non-recreation uses will be terminated.

(4) The type of public recreation access that will be provided during the interim period.

C. Non-Recreation Use. In applications where the continuation of an existing non-recreation use is anticipated, the project sponsor shall, in addition to the above information, include the following condition in the project agreement to assure the L&WCF payment is not requested until the non-recreation use is terminated:

> "The State will receive no payment from the Land and Water Conservation Fund for those parcels of land supporting non-recreation uses until the project sponsor has terminated such uses."

Furthermore, the project application should also include:

(1) Assurance that any income received by the project sponsor for the non-recreation use will be used in accord with the provisions of Section 675.1.8;

(2) Assurance that the non-recreation use will be terminated within 3 years from the date of acquisition; and

(3) A written request to the Regional Director for concurrence in the continuation of the non-recreation use during the interim period.

D. Extension of the 3 Year Limit. In applications where public access for recreation purposes will be provided, the continuation of the non-recreation use beyond the 3 year limit may be extended by the Regional Director. The State should submit a written request for

such an extension to the appropriate Regional Director before the end of the 3 year period. This request should include 1) a full description of the property's open space value and public recreation use, and 2) an update of the project sponsor's plans for developing outdoor recreation facilities on the property. In granting such an exception, the Service recognizes that certain non-recreation uses are compatible with limited public recreation use of the property and the enjoyment of open space values. The Regional Director shall not grant an extension of the 3 year limit if public recreation access and open space values are not present. If an extension of the 3 year limit is granted, the project sponsor cannot be reimbursed until all non-recreation uses have ceased (see Section 640.2.8C).

E. EXCEPTIONS. This policy does not preclude the continuation or introduction of non-recreation uses such as timber management, grazing and other natural resource uses not including agriculture which are clearly described in the project application, are compatible with and secondary to the outdoor recreation uses intended for the property, and are approved by the Service. (see Section 640.2.5)

9. **Uniform Relocation and Acquisition.** All acquisitions with Fund assistance must be made in accordance with the applicable provisions of Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (see Chapter 650.3).

10. **Acquisition Which Will Not Be Assisted.**

A. Acquisition of historic sites and structures will not receive L&WCF assistance. Exceptions may be made only when it is demonstrated clearly that the acquisition is primarily for outdoor recreation purposes and that the historic aspects are a corollary to the primary recreation purposes. This exclusion need not prevent the consideration by States and the Service of projects calling for acquisition of real property interests contiguous to or near historic sites and structures which meet priority outdoor recreation needs. Compliance with the National Historic Preservation Act of 1966 is required for all acquisitions (see Chapter 650.4).

B. Acquisition of museums and sites to be used for museums or primarily for archeological excavations will not receive L&WCF assistance.

C. Acquisition of land to help meet a public school's minimum site size requirement, as established by State or local regulations will not receive L&WCF assistance.

D. Acquisition of areas and facilities designed to be used primarily for semi-professional and professional arts and athletics will not receive L&WCF assistance.

E. Acquisition of areas and facilities to be used solely for game refuges or fish production purposes will not receive L&WCF assistance. However, such areas and facilities may be eligible if they will be open to the public for general compatible recreation, or if they directly serve priority public outdoor recreation needs.

F. Acquisition of areas to be used mainly for the construction of indoor facilities will not receive L&WCF assistance. Also prohibited are areas where existing indoor recreation facilities, if left in place, will not leave sufficient area at the site for the development of outdoor recreation facilities to justify the cost of the acquisition.

G. Acquisition of railroad "hardware," trestles, stations, yards, and the like will not receive L&WCF assistance, if such are to be used for the commercial operation of railroad trains.

H. Acquisition of sites containing luxury lodges, motels, cabins, and similar elaborate facilities which are to be operated by the project sponsor or a concessionaire to serve recreationists with food and sleeping quarters will not receive L&WCF assistance.

I. Acquisition of agricultural land primarily for preservation in agricultural purposes will not receive L&WCF assistance. (see Section 640.3.8E)

J. Acquisition of Federal surplus property will not receive L&WCF assistance unless legislatively authorized in a specific situation.

CRITERIA FOR DEVELOPMENT

1. **General.** Financial assistance may be available through the L&WCF program to provide most facilities necessary for the use and enjoyment of outdoor recreation areas. The L&WCF Act specifies that development projects may consist of basic outdoor recreation facilities to serve the general public provided that the funding of such a project is in the public interest and in accord with the Statewide Comprehensive Outdoor Recreation Plan (SCORP). In addition, development projects are subject to all other conditions, policies, and regulations included in the L&WCF Act and this Manual.

2. **Project Scope.** A development project or consolidated project element may consist of one improvement or a group of related improvements designed to provide basic facilities for outdoor recreation, including facilities for access, safety, health, and protection of the area, as well as those required for the use of the area. Furthermore, a project may consist of the complete or partial development of one area, such as a State park or a city playground, or it may consist of a series of developments on a number of geographically separated areas such as picnic facilities in a number of parks, or the construction of fishing piers on a number of lakes in the State (see Section 640.1.4). In all cases, the project must be a logical unit of work to be accomplished in a specific time frame. Ineligible facilities to be funded through sources other than the L&WCF program may be included in the development concept plan of a project. The development of such ineligible facilities on lands acquired and/or developed with L&WCF assistance will be allowed only if they do not constitute a conversion under a Section 6(f)(3) of the Act. (see Section 675.9.3).

   Funding of development project proposals may cover construction, renovation, site planning, demolition, site preparation, architectural services, and similar activities essential for the proper conduct of the project.

3. **Design Criteria.** Plans for the development of land and/or facilities should be based on the needs of the public, the expected use, and the type and character of the project area. Facilities should be attractive for public use and generally be consistent with the environment. Plans and specifications for the improvements/facilities should be in accord with established engineering and architectural practices. Emphasis should be given to the health and safety of users, accessibility to the general public, and the protection of the recreation and natural values of the area. All facilities developed with assistance from the Fund must be

designed in conformance with: 1) the Architectural Barriers Act of 1968 (ABA) (P.L. 90-480) and the "Uniform Federal Accessibility Standards" as published in the Federal Register of August 7, 1984; or 2) the Department of the Interior regulations of July 7, 1982 on Section 504 of the Rehabilitation Act of 1973 (43 CFR Part 17) and the "Minimum Guidelines and Requirements for Accessible Design" as issued by the Architectural and Transportation Barriers Compliance Board (ATBCB), 36 CFR Part 1190. The "Uniform Federal Accessibility Standards" meet or exceed the requirements in the ATBCB's Minimum Guidelines.

4. **Ownership or Control of Project Lands.** Facilities may be developed on land and water owned in fee simple by the participating agency or where ownership of less-than-fee interests such as easements provides permanent control of the property commensurate with the proposed development.

   No approval will be given for the development of facilities on leased land except for property either:

   A. Leased from the Federal Government for 25 years or more (though some time on the lease may have elapsed); or,

   B. Leased from one public agency to another for 25 years or more, provided that safeguards are included to adequately ensure the perpetual use requirement contained in the L&WCF Act. Such safeguards may include joint sponsorship of the proposed project or other agreement whereby the lessor would assume compliance responsibility for the grant-assisted area in the event of default by the lessee or expiration of the lease.

   In case of a Forest Service Term Specail Use Permit, where the Forest Service reserves the right to revoke the use permit at its discretion, the grant agreement between NPS and the State will expressly recognize the possible termination of the permit by the Forest Service and the State will nonetheless obligate itself to provide substitute lands in that event (Solicitor's opinion October 28, 1980).

5. **Development Project Selection.** In selecting development projects for submission to the Service, the States should carefully review and evaluate the project applications to filter out ineligible proposals. A special effort should be made to eliminate questionable, elaborate or borderline projects which raise serious questions concerning the project's cost, use, priority, competition with the private sector, or inclusion of ineligible facility types (see Chapter 660.4). In addition, boat and fishing access facilities and related support facilities which are eligible for funding under both L&WCF and the Dingell-Johnson Act (also known as the Federal Aid in Sport Fish Restoration Act and

"Wallop-Breaux"), as amended, must meet the following provision: L&WCF funding will not be provided for facilities also eligible under Dingell-Johnson (D-J) unless the State Liaison Officer has undertaken an effort to coordinate all requests for such facilities with the State official designated to administer D-J projects. Any application for L&WCF assistance on impacted facilities must include a statement from the State Liaison Officer certifying that such coordination has taken place. The result of such effort would be that the application would be directed or redirected toward which ever program is deemed more appropriate for assisting the specific project considering cost, availability of funds, other project components and additional factors deemed pertinent. D-J funds may not be used in meeting the State matching share requirement of L&WCF.

6. **Guidelines for Eligible Recreation Facilities.** Development projects may include but are not limited to the following facility types:

   A. Sports and Playfields. L&WCF assistance may be available for fields, courts and other outdoor spaces used in competitive and individual sports. This includes fields for baseball, softball, soccer and football, tennis courts, playgrounds and tot lots, golf courses, rifle/pistol ranges, trap/skeet fields, archery ranges, rodeo arenas, running tracks, and other similar facilities. (see 640.3.6M and 640.3.8A)

   B. Picnic Facilities. L&WCF assistance may be available for tables, fireplaces, shelters, and other facilities related to family or group picnic sites.

   C. Trails. L&WCF assistance may be available for the development and marking of overlooks, turnouts and trails for nature walks, hiking, bicycling, horseback riding, exercising, motorized vehicles and other trail activities.

   D. Swimming Facilities. L&WCF assistance may be available for swimming beaches, outdoor pools, wavemaking pools, wading pools, spray pools, lifeguard towers, bathhouses and other similar facilities.

   E. Boating Facilities. L&WCF assistance may be available for most facilities related to motorboating, sailing, canoeing, kayaking, sculling and other boating activities. These facilities include, but are not limited to, docks, berths, floating berths secured by buoys or similar services, launching ramps, breakwaters, mechanical launching devices, boat lifts, boat storage, sewage pumpout facilities, fuel depots, water and sewer hookups, restrooms, showers, electricity and parking areas. Assistance will not be provided for operational

equipment such as buoys, ropes, life jackets, or boats. Marinas are also eligible for assistance and are subject to the following provisions regardless of when L&WCF assistance was provided:

(1) An equitable method of allocating berth space shall be used in all marinas. Allocation methods shall include: (a) annual or multi-year lotteries, or (b) posted waiting lists where berth space is filled in the order of receipt of applications, or (c) another method selected by the applicant that responds to local conditions and equitably allocates space among all parties on an annual or multi-year basis. In each instance, adequate public notice shall be provided announcing the availability of berth space and describing application procedures. The project sponsor shall determine the most equitable method under which leaseholders may compete for future berth space vacancies. For new marinas the project narrative shall describe the allocation system to be used.

(2) Commercial charter fishing or sightseeing boats are permissible marina lease holders due to their potential for expanding public waterfront access. However, it is not intended that these users occupy a significant number of marina berths and accordingly, project sponsors should establish reasonable limits on the number of berth spaces provided for such users.

New marinas receiving L&WCF assistance shall also be subject to the following provisions:

(3) Berth lease terms shall not be transferable to any other party.

(4) Berth space for transient boaters shall be provided.

(5) Marinas located in urban areas shall include specific design provisions for non-boater public access. To expand water-based recreation opportunities such access may be provided in the form of walkways, observation points, fishing piers and/or related facilities. Limited access to the actual marina berths may be retained.

Refer to 640.3.5 for requirement of seeking Dingell-Johnson coordination prior to applying for L&WCF assistance for certain boating facilities.

F. Fishing/Hunting Facilities. L&WCF assistance may be available for trails, fishing piers and access points, initial clearing and planting of food and cover, stream improvements, wildlife management areas, fish hatcheries and other facilities necessary for public fishing or

hunting. In developing and evaluating fish hatchery proposals, States shall give priority to hatcheries which provide urban fishing opportunities. (see 640.2.1OE). Refer to 640.3.5 for requirement of seeking Dingell-Johnson coordination prior to applying for L&WCF assistance for certain fishing facilities.

G. Winter Sports Facilities. L&WCF assistance may be available for facilities such as ski trails, jumps, lifts, slopes and snowmaking equipment used in downhill skiing, cross country skiing, tobogganing, sledding, snowmobiling, and other winter sports. Outdoor ice skating and ice hockey rinks are also eligible.

H. Camping Facilities. L&WCF assistance may be available for tables, fireplaces, restrooms, information stations, snack bars, utility outlets and other facilities needed for camping by tent, trailer or camper. Cabins or group camps of simple austere design and accessible to the general public in an equitable manner are eligible. Group camps designated for specific groups or for which specific groups will be given priority access are not eligible. Lodges, motels and luxury cabins are not eligible.

I. Exhibit Facilities. L&WCF assistance may be available for outdoor exhibit or interpretive facilities that provide opportunities for the observation or interpretation of natural resources located on the recreation site or in its immediate surrounding areas. This includes small demonstration farms, arboretums, outdoor aquariums, outdoor nature exhibits, nature interpretive centers and other similar facilities. However, exhibit areas will not be assisted if they function primarily for academic, historic, economic, entertainment or other non-recreational purposes. This restriction includes convention facilities, livestock and produce exhibits, commemorative exhibits, fairgrounds, archeological research sites, and other non-recreational facilities. The development of nature and geological interpretive facilities which go beyond interpreting the project site and its immediate surrounding area are not eligible.

J. Spectator Facilities. L&WCF assistance may be available for amphitheaters, bandstands and modest seating areas related to playfields and other eligible facilities, provided the facility is not designed primarily for professional or semiprofessional arts or athletics, nor intercollegiate or interscholastic sports. Some bleachers or other modest seating areas are encouraged to be incorporated where needed into eligible recreation facilities to serve the handicapped, elderly and other nonparticipants in the facility's major recreation activity. Seating shall not be expanded solely to

provide capacity for a limited number of special events.

K. Community Gardens. L&WCF assistance may be available for land preparation, perimeter fencing, storage bins and sheds, irrigation systems, benches, walkways, parking areas and restrooms related to a community garden. In such a project, community gardening must be clearly identified in the SCORP as a needed outdoor recreation activity and must be accessible to the general public in an equitable manner. Furthermore, L&WCF assistance is not available for fertilizer, seeds, tools, water hoses, nor gardens planned as commercial enterprises.

L. Renovated Facilities. L&WCF assistance may be available for extensive renovation or redevelopment to bring a facility up to standards of quality and attractiveness suitable for public use, if the facility or area has deteriorated to the point where its usefulness is impaired, or outmoded, or where it needs to be upgraded to meet public health and safety laws on requirements. However, such renovation is not eligible if the facility's deterioration is due to inadequate maintenance during the reasonable life of the facility.

M. Professional Facilities. Areas and facilities designed primarily for semi-professional or professional arts or athletics, such as professional type outdoor theaters, professional rodeo arenas and other similar facilities are not eligible for L&WCF assistance.

N. Handicapped Facilities. L&WCF assistance may be available for the adaptation of new or existing outdoor recreation facilities and support facilities for use by the handicapped (see Section 640.3.3). However, outdoor recreation facilities to be used exclusively by the handicapped are not eligible unless such facilities are available to the general public or are part of an outdoor recreation area which serves the general public.

O. Mobile Recreation Units. Mobile recreation units including playmobiles, skatemobiles, swimmobiles, show wagons, puppet wagons and porta-bleachers are not eligible for L&WCF assistance.

P. Zoo Facilities. Outdoor display facilities at zoological parks are eligible to receive Land and Water Conservation Fund assistance provided they portray a natural environmental setting that serves the animal's physical, social, psychological and environmental needs, and that is compatible with the activities of the recreationist. Traditional outdoor caging facilities and animal pens are not eligible although Fund assistance can contribute to the renovation of such facilities to achieve a more natural environmental setting as described above. Basic winter/adverse weather housing quarters that are separate and distinct from enclosed viewing and display

areas and which are used in direct support of outdoor displays may also receive assistance. Support facilities to serve the needs of the recreationist, such as walkways, landscaping, comfort facilities, parking, etc. are also eligible. Other enclosed or sheltered facilities such as indoor displays, and permanent housing are not eligible for Fund assistance.

7. Guidelines for Eligible Support Facilities

A. Public Use Facilities. L&WCF assistance may be available for support facilities needed by the public for outdoor recreation use of an area, such as roads, parking areas, utilities, sanitation systems, restroom buildings, simple cabins or trail hostels, warming huts, shelters, visitor information centers, kiosks, interpretive centers, bathhouses, permanent spectator seating, walkways, pavilions, snack bar stands, and equipment rental spaces. When appropriate, support facilities may be sheltered from the elements by providing a simple roof or cover. Informational materials and leaflets are not eligible.

B. Operation and Maintenance Facilities. Facilities that support the operation and maintenance of the recreation resource on which they are located are eligible, such as maintenance buildings, storage areas, administrative offices, dams, erosion control works, fences, sprinkler systems and directional signs. Regional and areawide maintenance facilities are eligible provided the project sponsor agrees to include those park and recreation areas served by the maintenance facility in the scope of the project agreement and under the conversion provisions of Section 6(f)(3) of the Act (see Chapter 675.9.3). However, an employee's residence and its furnishings are not eligible.

C. Beautification. The beautification of an outdoor recreation area is eligible provided that it is not part of a regular maintenance program and if the site's condition is not due to inadequate maintenance. This includes landscaping to provide a more attractive environment; the clearing or restoration of areas which have been damaged by natural disasters; the screening, removal, relocation or burial of overhead power lines; the dredging and restoration of publicly owned recreation lakes or boat basins and measures necessary to mitigate negative environmental impacts.

D. Indoor Facilities. L&WCF assistance will not be provided for support facilities, or portions of support facilities which contribute primarily to public indoor activities, such as meeting rooms, auditoriums, libraries, study areas, restaurants, lodges, motels,

luxury cabins, food preparation equipment, kitchens, and equipment sales areas (see Section 640.3.2).

E. Pro Rata Basis. Support facilities that exclusively serve ineligible facilities are not eligible. However, if support facilities will serve both eligible and ineligible facilities, as may be the case with roads and sewers, assistance may be provided on a pro rata basis for that portion of the support facility that will serve the eligible facilities, provided that the eligible facilities are subject to the Act's 6(f)(3) conversion provisions.

F. Roads. Roads constructed outside the boundaries of the recreation area or park are not eligible, unless:

(1) They are, in fact, access roads to a designated park and recreation area and not part of a State, county or local road system extending beyond or through the boundaries of the area.

(2) The access corridor must be owned or adequately controlled by the agency sponsoring or administering the park or recreation area.

(3) The principal objective is to serve the park and visitors. Any use or service to private parties must clearly be incidental to the primary use of the access road for recreation purposes in which case assistance may be granted on a pro rata basis. Roads designed to serve undesignated recreation areas or Federal areas are not eligible.

G. Equipment. Equipment required to make a recreation facility initially operational, and certain supplies and materials specifically required under State Health Department regulations may be eligible for assistance (see Section 670.3.4D (2)).

H. Relation to Project Proposal. Development projects in new or previously undeveloped recreation areas may not consist solely of support facilities, unless they are required for proper and safe use of an area which does not require additional outdoor recreation facilities (such as construction or restrooms at a public nature study area), or unless necessary outdoor recreation facilities are being developed concurrently with the L&WCF assisted support facilities, or unless necessary outdoor recreation facilities will be developed within a reasonable period of time. In the latter two cases, the project agreement must include a provision that the non-L&WCF assisted outdoor recreation facilities are to be completed within a certain time frame agreeable to the Service and that if they are not,

the L&WCF monies will be refunded.

I. Staged Projects. If the first stage of a multi-staged L&WCF project consists wholly of support facilities, and approval is requested only for the first stage, the project agreement must contain the provision that the first stage L&WCF monies will be refunded if the later stages, which include the recreation facilities, are not completed within two years.

J. Energy Conservation Elements. The energy conservation elements of an eligible outdoor recreation facility and its support facilities are eligible for L&WCF assistance. This includes but is not limited to solar energy systems, earth berms, window shading devices, energy lock doors, sodium vapor lights, insulation and other energy efficient design methods and materials. In addition, power systems which minimize or eliminate a facility's use of petroleum and natural gas are eligible including, but not limited to, windmills, on-site water power systems, bioconversion systems, and facilities required for the conversion of existing power systems to coal, wood, or other energy efficient fuels.

8. **Facility Location.** Development projects may be located on lands and waters owned by or leased to the project sponsor (see Section 640.3.4). In certain situations, however, the following conditions also apply:

A. Public School Grounds. Outdoor recreation areas and facilities for coordinated use by the general public and by public schools, including colleges and universities, are eligible for L&WCF assistance, provided such facilities are not part of the normal and usual program and responsibility of the educational and athletic program requirements of a school may not receive L&WCF assistance. This policy does not preclude exclusive school use of certain facilities such as athletic fields, tennis courts, swimming pools, etc. at certain times for instruction or competition provided there is adequate public use at other times. Stadiums and permanent bleachers are not eligible for L&WCF assistance. The grant application must include a schedule of the time the facility will be available to the public. Additionally, adequate signs must be installed at the site, prior to final payment on the project, indicating when the outdoor recreation facilities are available to the general public.

B. Tourist Areas. Outdoor recreation and support facilities may be located in primary or potential tourist market areas, provided their primary purpose is for public outdoor recreation as opposed to entertainment or economic development, and provided they do not create unfair competition with the private sector (see Section

660.5.3F).

C. Historic Sites. Outdoor recreation and support facilities may be located on historic sites or in conjunction with historic structures. This includes picnic areas, walkways and trails on a historic property as well as visitor centers oriented to the outdoor facilities and environment. However, the restoration or preservation of historic structures is not eligible. In all cases, the project must be in accord with the National Historic Preservation Act of 1966 (see Chapter 650.4).

D. Utility Sites. Assuming adequate control and tenure (see 640.3.4), outdoor recreation and support facilities may be located on utility company lands such as rights-of-way, reservoir lands, etc. unless the Exhibit R of the utility's license application filed with the Federal Energy Regulatory Commission indicates that the facilities are to be provided at the sole expense of the licensee.

E. Agricultural Lands. Outdoor recreation and support facilities, such as demonstration farms, wildlife management and hunting areas, may be planned in conjunction with agricultural activities, provided that the type and extent of the agricultural activity is limited to that necessary to support the outdoor recreation activity.

9. **Guidelines for Eligible Sheltered Facilities.** For L&WCF assisted swimming pools and ice skating rinks located in areas which meet the cold climatic criteria described below, shelters of permanent construction may partially or completely enclose these facilities to protect them against cold weather conditions and thereby significantly increase the recreation opportunities provided.

A. Funding Limitation. A qualified State may use up to 10 percent of its annual apportionment for eligible sheltered facilities. The amount to be charged against this allowance will be computed based upon the Fund assistance provided for the entire enclosed facility, rather than the Fund assistance provided only for the shelter.

If a State does not use the entire 10 percent of its fully obligated fiscal year apportionment for sheltered facilities, the remaining balance may be credited to subsequent apportionment allowances. For example, where only 5 percent of a fully obligated fiscal year apportionment has been used, the subsequent fiscal year apportionment allowance would be 10 percent plus the 5 percent balance carried over from the previous fiscal year. A credit may be carried for two subsequent fiscal years.

If a Fund-assisted swimming pool or ice skating rink without a

shelter is developed under a project approved after September 28, 1976, and a separate project is later submitted to shelter the pool or rink, the combined amount of Eund assistance provided for both the facility and its shelter will be credited against available allowances. If the Fund-assisted pool or rink was developed under a project approved prior to September 28, 1976, and a separate project is later submitted to shelter the facility, only the Fund assistance provided for the shelter will be credited against available allowances.

Also, Fund assistance may be used to develop a shelter for a swimming pool or ice skating rink that was not constructed with Fund assistance. In this case, only the cost of the shelter will be credited against available allowances.

B. Use of Non-Federal Funds for the Shelter. State or local project sponsors may use their own funds to shelter existing or proposed Fund-assisted swimming pools or ice skating rinks which are consistent with the criteria described below. In such cases, Fund assistance provided to develop the pool or rink will not be credited against available allowances. Proposals to shelter eligible facilities with State or local funds will be approved by the State Liaison Officer and the appropriate NPS.

Where the State or locally funded shelter is constructed concurrently with the Fund-assisted facility, the total project cost included in the grant agreement will be that cost attributable to the pool or rink facility only. L&WCF assistance will only be used to fund outdoor recreation facilities. Fund monies will not be used to cost share in indoor facilities such as recreation centers. Engineering cost estimates and contract specifications must separate the shelter costs from other project development costs. When sheltering is to occur concurrently with the construction of the funded facility, the NPS Regional Director shall review the plans and cost accounts to ensure that L&WCF monies are not used in the sheltering.

Project sponsors may, without the use of L&WCF monies, construct indoor facilities on a Fund assisted site when such facilities are compatible with the outdoor recreation use of the site. NPS approval must be obtained prior to construction in accordance with the procedures contained in Section 675.9.3.

C. Shelter Requirements. Any facility assisted from or eligible for assistance from the L&WCF and within a Section 6(f) boundary may be sheltered or enclosed at the expense of the project sponsor. New

sheltered facilities may also be constructed at the project sponsor's expense, with NPS approval regardless of prevailing climatic conditions. To be considered by NPS, a proposed shelter or enclosure in general must:

(1) receive SLO review and approval;

(2) include recreation uses which could typically occur outdoors with recreation use clearly being the overall primary function;

(3) not substantially diminish the outdoor recreation values of a site;

(4) be compatible and significantly supportive of the outdoor recreation resources present and/or planned;

(5) benefit the total park's outdoor recreation use;

(6) have been subject to specific public review - evidence of public comments and local support is required;

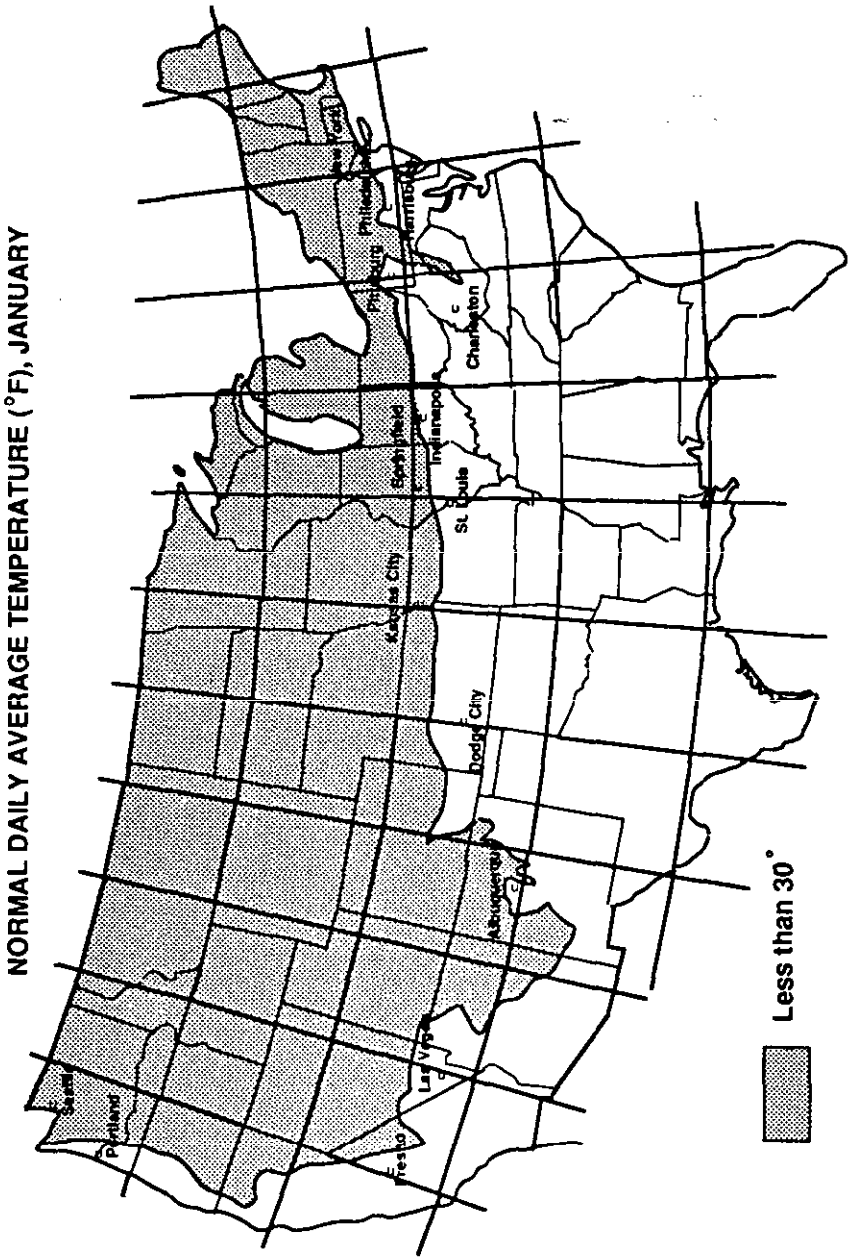
(7) be in compliance with applicable Federal requirements for approval and operation (NEPA, Section 106, Corps of Engineers, Section 504, and grant contract stipulations);

(8) be under the control and tenure of the public agency which sponsors and administers the original park areas. However, operation of such facilities may be carried out by a contractor or concessionaire provided that sufficient controls are maintained by the sponsoring agency through the management contract or concession agreement to ensure the maintenance of public recreation values and access by the general public.

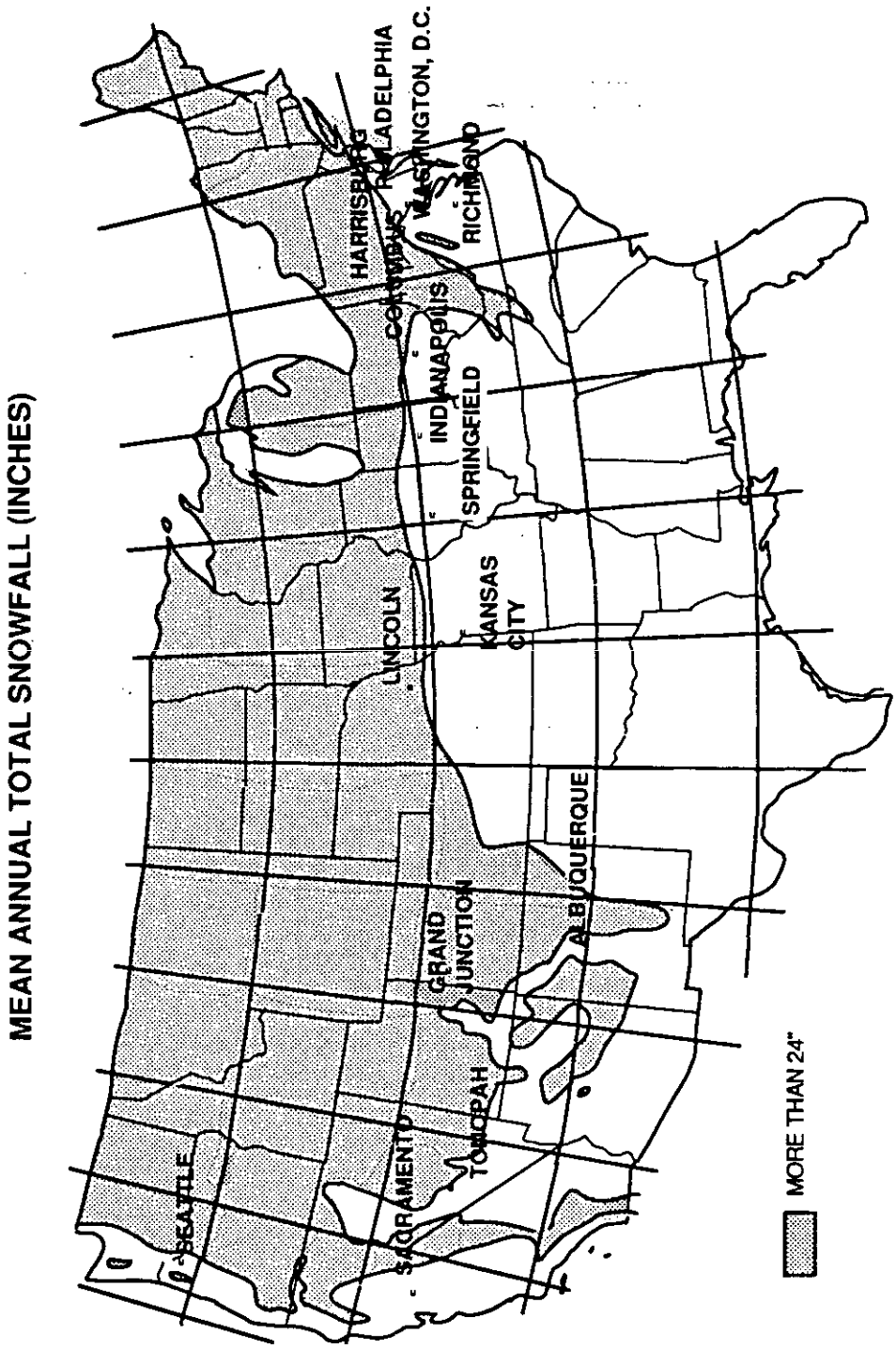
D. Cold Climatic Criteria. Sheltered ice skating rinks may be developed in communities where the mean annual total snowfall is at least 24 inches or the normal daily mean temperature for the coldest winter month is 30 degrees or less. Sheltered swimming pools may be developed in communities where the normal daily mean temperature for the month of June is 72 degrees or less. The official references for making these determinations are the average temperature and the snowfall tables found in Comparative Climatic Data for the United States published by the U.S. Department of Commerce, National Climatic Center, Federal Building, Asheville, North Carolina 28801. If climatic data is not published for the community in which the project is located, the project sponsor should contact the National Climatic Center to obtain the required

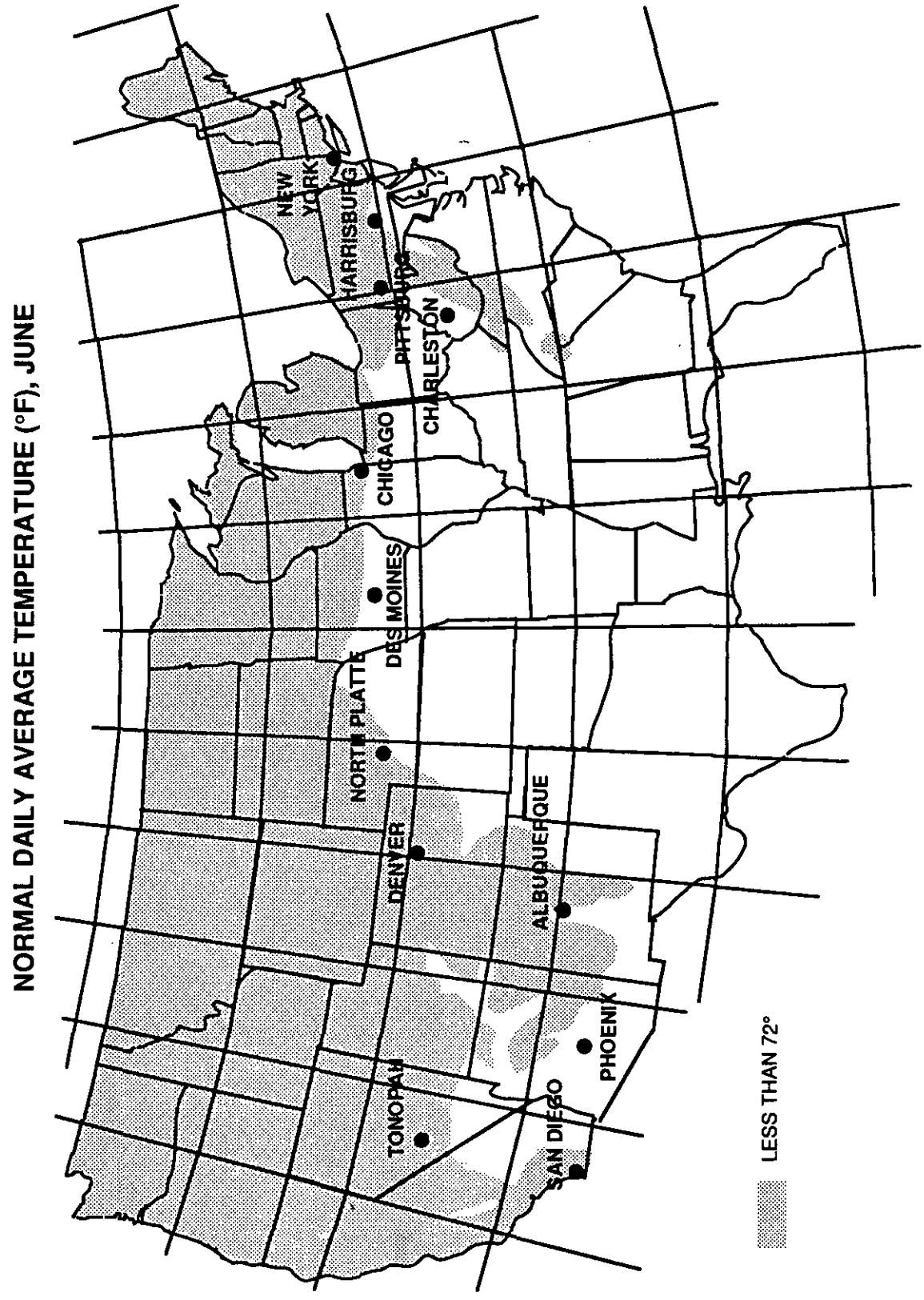
data. The National Climatic Center will be able to provide a mean annual total snowfall figure, and figures for the normal daily mean temperature, based on data collected at the closest official weather recording station. A copy of the cold climatic data used to make the determination of eligibility shall be included with all project applications. A project sponsor eligible under the climatic criteria, based on data available as of September 26, 1976, would not become ineligible in a subsequent year solely on the basis of a change in the data. The climatic maps contained in the attachments to this chapter approximate the eligible areas and are not intended to be used as a substitute for climatic data.

E. Increased Use. The project application will contain a statement indicating the increased use that will result because of sheltering.



Manual Release 151
Replaces all preceding manual releases


MEAN ANNUAL TOTAL SNOWFALL (INCHES)
HARRISBURG
PHILADELPHIA
WASHINGTON, D.C.
RICHMOND
COLUMBUS
INDIANAPOLIS
SPRINGFIELD
KANSAS CITY
LINCOLN
ALBUQUERQUE
GRAND JUNCTION
TOPEKA
SACRAMENTO
SEATTLE
MORE THAN 24"



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Replaces all preceding manual releases

GENERAL COMPLIANCE

1. All projects must comply with the applicable Federal statutes, regulatory requirements and policies including but not limited to:

   A. The National Environmental Policy Act of 1969, as amended (P.L. 91-190, 42 U.S.C. 4321 et. seq.) (see Chapter 650.2).

   B. The Clean Air Act, as amended (42 U.S.C. 7609).

   C. The Clean Water Act (33 U.S.C. Secs. 1288, 1314, 1341, 1342, 1344).

   D. Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

   E. Executive Order 11288, concerning prevention, control and abatement of water pollution (see Chapter 660.5).

   F. The Flood Disaster Protection Act of 1973 (12 U.S.C. Sec. 24, 1701-1 Supp.) (42 U.S.C. Sec. 4001 et. seq.) (see Chapter 650.6).

   G. Executive Order 11988, Floodplain Management (see Chapter 650.7).

   H. Executive Order 11296, Evaluation of Flood Hazard in Locating Federally Owned or Financed Buildings, Roads, and other Facilities and in Disposing of Federal Lands and Properties.

   I. Federal Act for Protection and Restoration of Estuarine Areas (P.L. 90-454).

   J. Wild and Scenic Rivers Act of 1968 (P.L. 90-542) (16.U.S.C.1274 et. seq.).

   K. Coastal Zone Management Act of 1972 (P.L. 92-583) (16 U.S.C. Sec. 1451, 1456) (see Chapter 660.5).

   L. The Rivers and Harbor Act of 1899 (33 U.S.C. Sec. 401 et. seq.).

   M. Executive Order 11990, Protection of Wetlands (see Chapter 650.7).

   N. The Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661, 662).

   O. The Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et. seq.) (see Chapter 660.5).

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P. The Antiquities Act of 1906 (16 U.S.C. Sec. 431); (see Chapter 650.4).

Q. The Archeological and Historic Preservation Act of 1974, as amended (P.L. 93-291, 16 U.S.C. Sec. 469 a-1)(see Chapter 650.4).

R. The National Historic Preservation Act of 1966, as amended (P.L. 88-655, 16 U.S.C. Sec. 470 et. seq.) (see Chapter 650.4).

S. Executive Order 11593, Protection and Enhancement of the Cultural Environment (see Chapter 650.4).

T. Federal-Aid Highway Act of 1973 (P.L. 93-87).

U. Architectural Barriers Act of 1968 (P.L. 90-480) (see Chapter 660.5).

V. Section 504, The Rehabilitation Act of 1973, as amended, (P.L. 93-112).

W. Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 (P.L. 94-646) (see Chapter 650.3).

X. Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. Secs. 2000d to 2000d-4) (see Chapter 650.9).

Y. Executive Order 11246, Equal Employment Opportunity (see Chapter 650.5).

Z. Office of Management and Budget Circular A-102. Provides uniform administrative requirements for grants-in-aid to State and local governments (see Chapter 675.3, Attachment A).

AA. Office of Management and Budget Circular A-87. Identifies cost principles applicable to grants and contracts with State and local governments as they relate to the application, acceptance and use of Federal funds (see Chapter 670.3).

AB. Power Plant and Industrial Fuel Use Act of 1978 (P.L. 95-620) (see 640.3.7J and 660.5.3V).

AC. Executive Order 12185, Conservation of Petroleum and Natural Gas (see 640.3.7J and 660.5.3V).

AD. Executive Order 12372, Intergovernmental Review of Federal Programs (see Chapter 650.8).

AE. Office of Management and Budget Circular A-128. Implements the Single Audit Act of 1984 (P.L. 98-502). This circular supersedes

Attachment P of OMB Circular A-102, effective July 18, 1985. (see Chapter 675.7)

AF. Executive Order 12432, Minority Business Enterprise Development. (see Chapter 650.10)

AG. Emergency Wetlands Resources Act of 1986 (P.L. 99-645).

AH. Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities (36 CFR Part 59).

AI. Nonprocurement Debarment and Suspension (43 CFR 12.100-.510)

AJ. Contract Work Hours and Safety Standards Act (40 U.S.C 327-330) and implementing regulations (29 CFR 5).

AK. Restrictions on Lobbying With Appropriated Funds (P.L. 101-121 Sec. 319) (31 U.S.C. Sec. 1352).

AL. The Drug-Free Workplace Act of 1988 (P.L. 100-690) (41 U.S.C. 701 et. seq.).

AM. Other applicable statutes, executive orders and regulations as may be promulgated from time to time.

ENVIRONMENTAL COMPLIANCE (NEPA)
GENERAL COMPLIANCE

1. **Environmental Compliance.** The national policy concerning the assessment of the environmental impact of Federal and federally funded actions is contained in the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190, as amended; 82 Stat. 852, as amended; 42 U.S.C. 4321-4347). (Attachment 650.2D).

   All NPS L&WCF Grant actions are subject to the provisions of NEPA and the Council on Environmental Quality Regulations For Implementing the Procedural Provisions of NEPA (CEQ Regulations 40 CFR 1500-1508). (Attachment 650.2C). Department of the Interior (DOI) policy and procedures for implementing NEPA and the CEQ Regulations appear in the Departmental Manual (516 DM 1-6, and 148 DM 6.1D).

   The CEQ Regulations (40 CFR 1500.4(p)) provide that certain categories of proposed actions may be excluded from the NEPA process. Categorical exclusions approved for NPS appear in 516 DM 6, Appendix 7, and 516 DM 2, Appendix 1. (see Attachment 650.2G). All other actions require the preparation of either an environmental assessment (EA) or an environmental impact statement (EIS).

2. **NPS Responsibility.** NPS is responsible for determining and advising the State whether a proposed grant action is either categorically excluded or requires an EA or EIS. NPS also is responsible for ensuring the adequacy of any required EA or EIS.

   Projects involving floodplains and wetlands must comply with 44 CFR 3642; Executive Order 11988, Floodplain Management; and Executive Order 11990, Protection of Wetlands. This compliance requires environmental information in addition to that required in this Chapter. (see Chapter 650.7).

3. **State Responsibility.** As part of a grant application package, the State must submit to NPS appropriate environmental documentation. If appropriate, agencies with Statewide jurisdiction that qualify under NEPA Section 102(2)(d) may be required to submit an EIS. (Attachment 650.2D). The scope, content and objectivity of the document shall comply with NEPA, CEQ Regulations, and Departmental Manual.

   A State that has environmental laws equivalent to or more stringent than NEPA may submit environmental documentation meeting both State and Federal requirements.

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4. Categorical Exclusions. Authorized categorical exclusions are those referred to in 516 DM 6, Appendix 7 and 516 DM 2, Appendix 1. The actions shown qualify for categorical exclusion unless NPS determines that there is cause for exception under 516 DM 2.3A(3). (Attachment 650.2G).

5. Certification. When a proposed project appears to qualify as one of the categorical exclusions referred to paragraph 4 above, and does not involve one or more of the exceptions in 516 DM 2.3(3), the State shall indicate on the Environmental Certification Form (Attachment 650.2A) the categorical exclusion into which the project falls. If NPS concurs, the certificate will be signed and maintained as part of the project documentation. NPS may also unilaterally determine that a proposed grant action qualifies as a categorical exclusion after reviewing the environmental assessment submitted by the State.

6. Special Cases. NPS may find that some actions which normally qualify for categorical exclusion merit special consideration. In such cases NPS will require submission of an EA, or if the grant qualifies under NEPA Section 102(2)(d), an EIS.

7. Environmental Assessments.

   A. An EA should cover the points listed in 650.2.7B below in sufficient detail to resolve the test of "major and significant" (see CEQ Regulations, Section 1508.18 and 1508.27) (Attachment 650.2C) and provide a basis for deciding whether to prepare an EIS on the project. Such assessments generally need be no more than two or three pages in length, except when complex projects are involved.

      If NPS decides that no EIS is required, the EA supporting that decision and a Finding of No Significant Impact (FONSI) (Attachment 650.2B) will be made part of the record.

      An EA should not be prepared if the need for an EIS is self-evident.

   B. Format and Content. Pertinent information of sufficient scope and depth must be provided in an EA to allow NPS to accurately ascertain the impact of the project and to determine whether an EIS is needed. Whenever possible, an environmental impact should be quantified. In all cases the level of activities involved should be given--number of trees to be removed, cubic yards of debris to be removed, cubic yards of fill to be required, etc. For projects with property rights outstanding, the environmental information must also explain how the State plans to assure that the environment will not be affected significantly. An EA will cover the following four points at a minimum:

(1) The Proposed Action. Include a description of the proposed action, a statement regarding the need for it, a description of what the action is designed to accomplish, location of the project, its scope, the level of impact-causing activities associated with the project, when the action is to take place, and, if applicable, its relation to other Federal, State, or local projects and proposals. Cite other Federal actions (i.e., 404 permit, etc.). Include a map.

(2) Alternatives to the proposed action. This section will include a brief description of alternatives as required by NEPA Section 102(2)(E), which states:

> Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

The environmental impacts of the proposal and the alternatives should be presented in comparative form and should define the issues, pros and cons of a reasonable range of alternatives, and provide a clear basis for choice between them by NPS and the public.

(3) Environmental impacts of proposed action. Succinctly describe those environmental elements which would be affected. Discuss anticipated impacts on the following elements and any means to mitigate adverse environmental impacts:

- land use (project site and surrounding area)
- fish and wildlife
- vegetation
- geology and soils
- mineral resources
- air and water quality
- water resources/hydrology
- historic/archeological resources
- transportation/access

- consumption of energy resources

- socio-economic effects

"Impacts" are defined as causing direct or indirect changes in the existing environment, whether beneficial or adverse, which are anticipated as a result of the proposed action or related future actions. To the extent appropriate, the document will discuss impacts of the action, including environmental damage which could be caused by users, upon the physical and biological environment as well as upon cultural, aesthetic, and socio-economic conditions. Elements of impacts which are unknown or only partially understood should be indicated. Any off-site impacts, such as increased traffic on neighborhood roads or increased noise levels in surrounding areas, should be described.

(4) A listing of agencies and persons consulted.

C. Public Notice. Public notice should be provided in accordance with 40 CFR 1506.6 (Attachment 650.2C) and, where appropriate, the public should be involved in the environmental assessment process. In many instances, the State's Intergovernmental Review System established under E.O. 12372 may be one acceptable method for meeting this requirement (see Chapter 650.8).

D. Adoption. In accordance with 40 CFR 1506.3 (Attachment 650.2C), an EA prepared for a Federal grant program not administered by NPS may be submitted if adequate to meet environmental documentation requirements of proposed L&WCF actions.

E. Points to Keep in Mind:

(1) Environmental documentation should be free of project justification and personal bias. The project should be justified elsewhere in the grant application.

(2) Do not rely on generalities. Specific facts are essential. All statements and conclusions should be supported, and quantified where possible.

(3) Use graphics to help explain the project.

(4) Be concise, clear and to the point.

(5) Adverse impacts should be addressed as fairly as beneficial impacts.

8. **Finding of No Significant Impact (FONSI).** If NPS, after reviewing the environmental assessment, determines that the proposed project will not have a significant effect on the quality of the human environment and that an EIS is therefore unnecessary, a Finding of No Significant Impact (FONSI) (Attachment 650.2B) will be signed and included in the project file.

9. **Guidelines to Determine When an Environmental Impact Statement Should Be Prepared.** NPS will require sufficient environmental data from the grantee to prepare an EIS on a proposed L&WCF project deemed to be a major Federal action having a significant impact on the physical, biological, and/or socio-economic environment of the project site and/or surrounding area. Cumulative impacts and/or subsequent actions must be considered in environmental data submitted.

   A. Factors to Consider. The occurrence of one or more of the following factors indicates that an EIS may be needed:

      (1) Marshes, or wetlands, unique animal or plant ecosystems, lakes, streams, or marine areas are affected significantly.

      (2) The proposed L&WCF project would or might result in major natural or physical changes, including interrelated social and economic changes and residential and land use changes, within the project area or its immediate environs.

      (3) An archeological or historical site on, or eligible for nomination to the National Register of Historical Places would be subjected to significant adverse affects by the proposed project. The procedures to follow for such a site are covered in Chapter 650.4.

      (4) Highly controversial issues involving the environmental effects of the project exist or are expected.

      (5) The project site contains threatened or endangered species of flora or fauna, significant mineral values, or a unique geologic formation.

      (6) Actions which foreclose other beneficial uses of mineral, agricultural, timber, water, energy, or transportation resources critical to the Nation's or a State's welfare.

   NPS may determine that a proposed project, even though not involving any of the above factors, requires preparation of an EIS.

10. Adoption of Previous Statement:

A. Other agency's final EIS. In accordance with 40 CFR 1506.3 (Attachment 650.2C), an EIS prepared for a Federal grant program not administered by NPS may be adopted by NPS if adequate to meet the requirements of a proposed L&WCF action.

When another agency's statement is adopted, only the final statement must be circulated.

B. Previous NPS final EIS. An EIS prepared for the acquisition of lands under a L&WCF grant, or other Federal actions, will satisfy NEPA Section 102(2)(C) for a L&WCF development project provided that:

(a) the development is in accord with the plans submitted with the acquisition project; and

(b) the EIS for the acquisition project adequately describes the environmental impacts of the facility to be developed and public use of the area.

11. Preparing and Processing an Environmental Impact Statement (EIS)

A. Policy. Each EIS should be prepared in accordance with:

(1) CEQ Regulations for Implementing NEPA: 40 CFR 1500-1508 (Attachment 650.2C)

(2) DOI Manual: 516 DM 4 (Attachment 650.2E)

(3) NPS 12 -- NEPA Handbook

For any EIS prepared by a State agency with statewide jurisdiction under NEPA Section 102(2)(d), the responsible NPS official shall actively furnish guidance and participate in the preparation of the EIS and shall independently evaluate the EIS prior to its approval and adoption.

B. Notice of Intent (NOI). (40 CFR 1501.7 and 1508.22; 516 DM 2.3D) (Attachments 650.2C and 650.2F)

After a decision is made to prepare an EIS, an NOI will be published by NPS in the Federal Register and made available to the affected public (see 40 CFR 1506.6.) (Attachment 650.2C).

C. Scoping Process. [40 CFR 1501.7, 516 DM 2.6] (Attachment 650.2C and 650.2F)

Scoping is an early and open process to determine the scope of significant issues to be addressed in an EIS. An invitation to affected Federal, State and local agencies and interested persons to participate in the scoping process may be included in the NOI.

D. Format and Content of EIS. The necessary in-depth environmental information and analysis should be prepared in the following format:

(1) Cover Sheet.

(2) Summary.

(3) Table of Contents.

(4) Purpose of and need for the Action.

(5) Alternatives including the Proposed Action.

(6) Affected Environment.

(7) Environmental Consequences.

(8) Consultation and Coordination in Developing the Proposal andPreparation and Review of the EIS. This section will contain the list of Agencies, Organizations and persons to whom copies of the statement are sent.

(9) Index.

(10) Appendices (if any).

Each element of the format should contain the information called for in 40 CFR 1502.11 through 1502.18 (Attachment 650.2C), and NPS 12, NEPA Handbook, plus appropriate maps/graphics of the area affected by the proposed action.

E. Processing of Draft EIS. If an EIS requires a Secretarial decision or concurrence, the proposed draft EIS shall be processed through the Department's Office of Environmental Project Review (OEPR) for clearance to print and distribute. Printing clearance for other EISs is obtained from the Chief, NPS Office of Park Planning and Environmental Quality.

F. Final EIS

(1) The final EIS shall include a "Public and Other Agency Comment and Response Section." This section is an expansion of the Consultation/Coordination Chapter described in item 650.2.11D(8). All letters from Federal and state agencies will be printed in full. A response will be made to all substantive comments and/ or the draft document revised as required.

(2) Distribution of Final EIS. At a minimum, a copy of the final EIS will be sent to each commentor and all Federal agencies that were sent the draft EIS.

(3) Comments on Final EIS. Comments are not solicited on a final EIS. However, any comments received within 30 days of distributing a Final EIS will be considered in deciding whether to approve a L&WCF grant.

G. Record of Decision No decision on the proposed action may be made until 30 days after notice of the filing of the EIS is published by the Environmental Protection Agency in the Federal Register. The record of decision shall be in accord with 40 CFR 1505.2. (Attachment 650.2C)

ENVIRONMENTAL CERTIFICATION

Based upon a review of the application, proposal narrative, and the supporting documentation contained in the application, it has been determined that the proposed action, proposed L&WCF Project_____, meets the criteria for categorical exclusion under 516 DM 6, Appendix 7, Item* .

_____ _____
Regional Director, Region Date
National Park Service

* (indicate appropriate categorical exclusion)

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NATIONAL PARK SERVICE

FINDING OF NO SIGNIFICANT IMPACT

_____ _____
Project Number and Name City, County, State

Proposed Federal Action:

Approval of L&WCF Grant for _____

Federal Environmental Finding

After careful and thorough review and consideration of the facts contained in the attached Environmental Assessment for the proposed project, I find that the proposed Federal action will not significantly affect the quality of the human environment under National Environmental Policy Act, Section 102(2)(C) and, therefore, an EIS is not required.

_____ _____
Name Date
Title

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40 CFR PARTS 1500 - 1508 COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS FOR IMPLEMENTING THE PROCEDURAL PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

PART 1500 - PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork - even excellent paperwork - but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or

minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment

and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase ``to the fullest extent possible'' in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501 - NEPA AND AGENCY PLANNING

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate con-

sideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in §1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special exper-

tise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the Federal Register except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tenta-

tive planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502-ENVIRONMENTAL IMPACT STATEMENT

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).
Affecting (§§ 1508.3, 1508.8).
The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water,region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary

approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.Agencies should employ writers of clear prose or editors to write, review,or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.
(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
(j) Index.
(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in § 1502.11 through § 1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:
(a) A list of the responsible agencies including the lead agency and any cooperating agencies.
(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
(c) The name, address, and telephone number of the person at the agency who can supply further information.
(d) A designation of the statement as a draft, final, or draft or final supplement.
(e) A one paragraph abstract of the statement.
(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).
The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:
(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
(c) Include reasonable alternatives not within the jurisdiction of the lead agency.
(d) Include the alternative of no action.
(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The

descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including there use and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged

statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft. If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research

methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the **Federal Register** on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503 - COMMENTING

Sec.
1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act,as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or

special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed. Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504 - PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.
1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.
(b) Severity.
(c) Geographical scope.
(d) Duration.
(e) Importance as precedents.
(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a

matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council

that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

PART 1505 - NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506 - OTHER REQUIREMENTS OF NEPA

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec.309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the

environment (e.g. long lead time equipment and purchase options) made by nongovernmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information

submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the **Federal Register** and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor*. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 *et seq.*)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency rec-

ommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph(a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consulta-

tion with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Actor under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the **Federal Register** of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507 - AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the **Federal Register**, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the **Federal Register** for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those pre-

sented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508-TERMINOLOGY AND INDEX

Sec.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 eventhough it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency

briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation"includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§ 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) *Alternatives, which include:* (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or de-

struction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

An Act to establish national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

Sec. 2. The Purposes of this Act are: To declare a national policy which will encourage harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing pokicy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other exxential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation May --

(1) fulfill the responsibilities of each generation as trustee of the environment for suceeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health of safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewabel resources and approach the maximum attainable recycling of depletable resources.

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* Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub.L. 94-52,July 3, 1975 and Pub. L. 94-83, August 9, 1975.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies seet forth in this Act, and (2) all agencies of the Federal Government shall--

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given apropriate consideration in decisionmaking along with economic and technical considerations;

(C) Include in every reco9mmendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the huyman environment, a detailed statement by the responsible official on--

(i) The environmental impact of the proposed action,
(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
(iii) Alternatives to the proposed action,
(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and th the public as provided by Section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(d) Any detailed statement required under subparagraph (c) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency of official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
(ii) the responsible Federal official furnishes guidance and participates in such preparation,
(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or afected Federal land management entity and, if there is any disagreement on such impacts, prepares a written

assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(i) Assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The Policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major naural, manmadem or altered environmental classes of the Nation, including but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and forseeable trends in the quality in the quality, management and utilization of such environments and the dffects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a revies of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the Senate. The President shall designate one of the members of the Council to serve as Chairman, Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council--

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

(2) to gather timely and authoritative invormation concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservatgion, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each tear to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall--

(1) Consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) Utilize to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organization, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensted at the rate provided for Level II of the Executive Schedule Pay Rates (5

U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

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CHAPTER 4 Environmental Impact Statements

4.1 **Purpose.** This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to environmental impact statements (EIS).

4.2 **Statutory Requirements** [1502.3]. NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will insure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

4.3 **Timing** [1502.5].

A. The feasibility analysis (go/no-go) stage, at which time an EIS is to be completed, is to be interpreted as the stage prior to the first point of major commitment to the proposal. For example, this would normally be at the authorization stage for proposals requiring Congressional authorization, the location or corridor stage for transportation, transmission, and communication projects, and the leasing stage for mineral resources proposals.

B. An EIS need not be commenced until an application is essentially complete; e.g., any required environmental information is submitted, any consultation required with other agencies has been conducted, and any required advance funding is paid by the applicant.

4.4 **Page Limits** [1502.7]. Where the text of an EIS for a complex proposal or group of proposals appears to require more than the normally prescribed limit of 300 pages, bureaus will insure that the length of such statements is no greater than necessary to comply with NEPA, the CEQ regulations, and this Chapter.

4.5 **Supplemental Statements** [1502.9].

A. Supplements are only required if such changes in the proposed action or alternatives, new circumstances, or resultant significant effects are not adequately analyzed in the previously prepared EIS.

B. A bureau and/or the appropriate program Assistant Secretary will consult with the Office of Environmental Project Review and the Office of the Solicitor prior to proposing to CEQ to prepare a final supplement without preparing an intervening draft.

C. If, after a decision has been made based on a final EIS, a described proposal is further defined or modified and if its changed effects are minor or still within the scope of the earlier EIS, an EA and FONSI may be prepared for subsequent decisions rather than a supplement.

4.6 Format [1502.10].

A. Proposed departures from the standard format described in the CEQ regulations and this Chapter must be approved by the Office of Environmental Project Review.

B. The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

C. The section listing the distribution of the EIS will also briefly describe the consultation and public involvement processes utilized in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document.

D. If CEQ's standard format is not used or if the EIS is combined with another planning or decisionmaking document the section which analyzes the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

4.7 Cover Sheet [1502.11]. The cover sheet will also indicate whether the EIS is intended to serve any other environmental review or consultation requirements pursuant to Section 1502.25.

4.8 Summary [1502.12]. The emphasis in the summary should be on those considerations, controversies, and issues which significantly affect the quality of the human environment.

4.9 Purpose and Need [1502.13]. This section may introduce a number of factors, including economic and technical considerations and Departmental or bureau statutory missions, which may be beyond the scope of the EIS. Care should be taken to insure an objective presentation and not a justification.

4.10 Alternatives Including the Proposed Action [1502.14].

A. As a general rule, the following guidance will apply:

(1) For internally initiated proposals; i.e., for those cases where the Department conducts or controls the planning process, both the draft and final EIS shall identify the bureau's proposed action.

(2) For externally initiated proposals; i.e., for those cases where the Department is reacting to an application or similar request, the draft and final EIS shall identify the applicant's proposed action and the bureau's preferred alternative unless another law prohibits such an expression.

(3) Proposed departures from this guidance must be approved by the Office of Environmental Project Review and the Office of the Solicitor.

B. Mitigation measures are not necessarily independent of the proposed action and its alternatives and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives in and of themselves where the environmental consequences are distinct and significant enough to warrant separate evaluation.

4.11 Appendix [1502.18]. If an EIS is intended to serve other environmental review or consultation requirements pursuant to Section 1502.25, any more detailed information needed to comply with these requirements may be included as an appendix.

4.12 Incorporation by Reference [1502.21]. Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

4.13 Incomplete or Unavailable Information [1502.22]. The references to overall costs in this section are not limited to market costs, but include other costs to society such as social costs due to delay.

4.14 Methodology and Scientific Accuracy [1502.24]. Conclusions about environmental effects will be preceded by an analysis that supports that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public.

4.15 Environmental Review and Consultation Requirements [1502.25].

A. A list of related environmental review and consultation requirements is attached as Appendix 1 to this Chapter.

B. If the EIS is intended to serve as the vehicle to fully or partially comply with any of these requirements, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports will be referenced or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

4.16 Inviting Comments [1503.1].

A. Comments from State agencies will be requested through the State Clearinghouse established by the Governor pursuant to OMB Circular A-95, unless the Governor has designated an alternative review process, and may be requested from local agencies through Areawide Clearinghouses to the extent that they include the affected local jurisdiction.

B. When the proposed action may affect the environment of an Indian reservation, comments will be requested from the Indian tribe through the tribal governing body, unless the tribal governing body has designated an alternate review process.

4.17 Response to Comments [1503.4].

A. Preparation of a final EIS need not be delayed in those cases where a Federal agency, from which comments are required to be obtained [1503.1(a)(1)], does not comment within the prescribed comment period. Informal attempts will be made to determine the status of any such comments and every reasonable attempt should be made to include the comments and a response in the final EIS.

B. When other commentors are late, their comments should be included in the final EIS to the extent practicable.

C. For those EIS requiring the approval of the Assistant Secretary--Policy, Budget and Administration pursuant to 516 DM 6.3, bureaus will consult with the Office of Environmental Project Review when they propose to prepare an abbreviated final EIS [1503.4(c)].

4.18 Elimination of Duplication with State and Local Procedures [1506.2]. Bureaus will incorporate in their appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in Section 102(2)(D) of NEPA. Eligible programs are listed in Appendix 2 to this Chapter.

4.19 Combining Documents [1506.4]. See 516 DM 46D.

4.20 Departmental Responsibility [1506.6]. Following the responsible official's preparation or independent evaluation of and assumption of responsibility for an environmental document, an applicant may print it provided the applicant is bearing the cost of the document pursuant to other laws.

4.21 Public Involvement [1506.6]. See 516 DM 1.6 and 301 DM 2.

4.22 Further Guidance [1506.7]. The Office of Environmental Project Review may provide further guidance concerning NEPA pursuant to its organizational responsibilities (110 DM 22) and through supplemental directives (015 DM 6).

4.23 Proposals for Legislation [1506.8]. The Legislative Counsel, in consultation with the Office of Environmental Project Review, shall:

A. Identify in the annual submittal to OMB of the Department's proposed legislative program any requirements for and the status of any environmental documents.

B. When required, insure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

4.24 Time Periods [1506.10].

A. The minimum review period for a draft EIS will be sixty (60) days from the date of transmittal to the Environmental Protection Agency.

B. For those EIS requiring the approval of the Assistant Secretary--Policy, Budget and Administration pursuant to 516 DM 6.3, the Office of Environmental Project Review will be responsible for consulting with the Environmental Protection Agency and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by those agencies.

LIST OF OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS

1.1 Cultural Resources

Archeological Resources Protection Act of 1979
16 U.S.C. § 470aa et seq.

Archeological and Historic Preservation Act of 1974
16 U.S.C. § 469a-1

National Historic Preservation Act of 1966 (Sec. 106)
16 U.S.C. § 47Of

Antiquities Act of 1906
16 U.S.C. § 431

Executive Order 11593 (Protection and Enactment of the Cultural Environment)

American Indian Religious Freedom Act
92 Stat. 469

1.2 Water and Related Land Resources

Marine Protection, Research and Sanctuaries Act of 1972
(Sec. 102, 103, 301) 16 U.S.C. § 1431 et seq.

Safe Drinking Water Act of 1974
42 U.S.C. § 300f

Flood Disaster Protection Act of 1973
12 U.S.C. § 24, 1701-1 Supp 42 U.S.C. § 4001 et seq.

Coastal Zone Management Act of 1972
16 U.S.C. § 1451, 1456

Estuary Protection Act
16 U.S.C. § 1221

Executive Order 11988 (Floodplain Management)

Executive Order 11990 (Wetlands Protection)
Federal Water Project Recreation Act (Ss 6(a))
16 U.S.C. § 4601-17

Clean Water Act (§ 208, 303, 401, 402, 404, 405, 511)

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33 U.S.C. §§ 1288, 1314, 1341, 1342, 1344

Rivers and Harbors Act of 1899 (§§ 9 and 10)
33 U.S.C. § 401 et seq.

Wild and Scenic Rivers Act of 1968 (Sec. 7)
16 U.S.C. § 1274 et seq.

Federal Power Act
16 U.S.C. § 797

Water Resources Planning Act of 1966
42 U.S.C. § 1962 et seq.

Water Resources Council's Principles and Standards

1.3 Wildlife

Endangered Species Act (Sec. 7)
16 U.S.C. § 1531 et seq.

Fish and Wildlife Coordination Act
16 U.S.C. § 661, 662

Fish and Wildlife Conservation at Small Watershed Projects
16 U.S.C. § 1001, 1005(4), 1008

1.4 Public Lands, Open Space, Recreation

Federal Land Policy and Management Act
43 U.S.C. § 1701, 1761-1771

Mineral Leasing Act Amendments of 1973
30 U.S.C. § 185

Forest and Rangeland Renewable Resources Act
16 U.S.C. § 1601 et seq.

Land and Water Conservation Fund Act of 1966 (Sec. 6(f))
16 U.S.C. § 4601-8(f)

Open Space Lands
42 U.S.C. § 1500a(d)

Urban Park and Recreation Recovery Act
16 U.S.C. § 2501 et seq.

National Trails System Act
16 U.S.C. § 1241

1.5 Marine Resources

Deepwater Port Act
33 U.S.C. § 1501, 1503 - 1505

Ocean Dumping
33 U.S.C. § 1401, 1412, 1413, 1414

Marine Protection, Research and Sanctuaries act
16 U.S.C. § 1431-1434

1.6 Transportation

Department of Transportation Act of 1966
(Sec. 4(f)49 U.S.C. § 1653(f)

Federal Aid Highway Act of 1958
23 U.S.C. § 128, 138

Urban Mass Transportation Act of 1964
49 U.S.C. § 1602, 1610

Airport and Airway Development Act of 1970
49 U.S.C. § 1716

Federal Aviation Act
49 U.S.C. § 3334

1.7 Air Quality

Clean Air Act
42 U.S.C. § 7401 et seq.

1.8 Miscellaneous

Intergovernmental Coordination Act of 1968
42 U.S.C. § 4201, 4231, 4233
(A-95 review process, including urban impact analysis)

Demonstration Cities and Metropolitan Development Act of 1966
42 U.S.C. § 3334

Surface Mining Control and Reclamation Act of 1977

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30 U..S.C. § 1201 et seq.

Resources Conservation and Recovery Act of 1976
42 U.S.C. § 3251 et seq.

Noise Control Act of 1972, as amended
42 U.S.C. § 4901 et seq.

PROGRAMS OF GRANTS TO STATES IN WHICH STATE AGENCIES HAVING STATEWIDE JURISDICTION MAY PREPARE EISs

2.1 Fish and Wildlife Service

A. Anadromous Fish Conservation [#15.600]

B. Fish Restoration (Dingell-Johnson) [#15.605]

C. Wildlife Restoration (Pittman-Robertson) [#15.611]

D. Endangered Species Conservation [#16.612]

2.2 National Park Service

A. Outdoor Recreation--Acquisition, Development andPlanning [#15.916] (L&WCF)

B. Historic Preservation Fund Grants-in-Aid [#15.904]

C. Urban Park and Recreation Recovery Program Grants [#15.919]

Note: Citations in brackets refer to the Catalog of Federal Domestic Assistance, Office of Management and Budget, 1986

Excerpts from Department of Interior Manual - 516 DM 2

516 DM 2.3D

D. Notice of Intent (NOI) [CEQ Regulation 1508.22]. A NOI will be prepared as soon as practicable after a decision to prepare an environmental impact statement and shall be published in the Federal Register, with a copy to the Office of Environmental Project Review, and made available to the affected public in accordance with Section 1506.6. Publication of a NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare new environmental impact statement and the time preparation is actually initiated. The Office of Environmental Project Review will periodically publish a consolidated list of these notices in the Federal Register.

516 DM 2.6

2.6 Scoping [CEQ Regulation 1501.7].

A. The invitation requirement in the CEQ Regulations Section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. If a scoping meeting is held, consensus is desirable, however, the lead agency is ultimately responsible for the scope of an EIS.

Categorical Exclusions

516 DM 2 Appendix 1

DEPARTMENTAL CATEGORICAL EXCLUSIONS (3/18/82 #2244)

The following actions are categorical exclusions pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these categorical exclusions if the exceptions listed in 516 DM 2.3A(3) apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, and audits.

1.4 Law enforcement and legal transactions, including such things as arrests; investigations; patents; claims; legal opinions; and judicial proceedings including their initiation, processing and/or settlement.

1.5 Regulatory and enforcement actions, including inspections, assessments, administrative hearings, and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licenses, etc.) have previously been covered by the NEPA process or are exempt from it.

1.6 Non-destructive data collection, inventory (including mapping), study, research and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement.

1.8 Management, formulation, and allocation of the Department's budget at all levels. (This does not exempt the preparation of environmental documents for proposals included in the budget when otherwise required.)

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516 DM 6 Appendix 7

NATIONAL PARK SERVICE CATEGORICAL EXCLUSIONS.

7.4 In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2:

A. Actions Related to General Administration

(1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.

2) Land and boundary surveys.

(3) Minor boundary changes.

(4) Reissuance/renewal of permits, rights-of-way or easements not involving environmental impacts.

(5) Conversion of existing permits to rights-of-way, when such conversions do not continue or initiate unsatisfactory environmental conditions.

(6) Issuances, extensions, renewals, reissuances or minor modifications of concession or permits not entailing new construction.

(7) Commercial use licenses involving no construction.

(8) Leasing of historic properties in accordance with 36 CFR 18 and NPS-38.

(9) Preparation and issuance of publications.

(10) Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

(11) At the direction of the NPS responsible official, actions where NPS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau.

B. Plans, Studies and Reports

(1) Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.

(2) Cultural resources maintenance guides, collection management plans and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

(4) Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying and information gathering.

(5) Statements for management, outlines of planning requirements and task directives for plans and studies.

(6) Technical assistance to other Federal, State and local agencies or the general public.

(7) Routine reports required by law or regulation.

(8) Authorization, funding or approval for the preparation of Statewide Comprehensive Outdoor Recreation Plans.

(9) Adoption of approval of surveys, studies, reports, plans and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.

(10) Preparation of internal reports, plans, studies and other documents containing recommendations for action which

NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.

(11) Land protection plans which propose no significant change to existing land or visitor use.

(12 Documents which interpret existing mineral management regulations and policies, and do not recommend action.

C. Actions Related to Development

(1) Land acquisition within established park boundaries.

(2) Land exchanges which will not lead to significant changes in the use of land.

(3) Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds and trails.

(4) Routine maintenance and repairs to cultural resource sites, structures, utilities and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

(5) Installation of signs, displays, kiosks, etc.

(6) Installation of navigation aids.

(7) Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing system (e.g., routes and schedule changes).

(8) Replacement in kind of minor structures and facilities with little or no change in location, capacity or appearance.

(9) Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

(10) Sanitary facilities operation.

(11) Installation of wells, comfort stations and pit toilets in areas of existing use and in developed areas.

(12) Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

(13) Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not change existing pole line configurations.

(14) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

(15) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

(16) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing overhead utility right-of-way.

(17) Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

(18) Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities to the handicapped.

(19) Landscaping and landscape maintenance in previously disturbed or developed areas.

(20) Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

D. Actions Related to Visitor Use

(1) Carrying capacity analyses.

(2) Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental education programs.

(4) Minor changes in programs and regulations pertaining to visitor activities.

(5) Issuance of permits for demonstrations, gatherings, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigatable environmental disturbance.

(6) Designation of trailside camping zones with no or minimal improvements.

E. Actions Related to Resource Management and Protection

(1) Archeological surveys and permits, involving only surface collection or small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and research natural areas.

(4) Stabilization by planting native plant species in disturbed areas.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Restoration of noncontroversial native species into suitable habitats within their historic range, and elimination of exotic species.

(7) Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources or become a nuisance in areas surrounding a park, when such removal is included in an approved resource management plan.

(8) Removal of non-historic materials and structures in order to restore natural conditions.

(9) Development of standards for, and identification, nomination, certification and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.

F. Actions Related to Grant Programs

(1) Proposed actions essentially the same as those listed in paragraphs A-E above.

(2) Grants for acquisition of areas which will continue in the same or lower density use with no additional disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural resources of the area; or the integrity of the existing setting.

(4) Grants for construction of facilities on lands acquired under a previous NPS or other Federal grant provided that the development is in accord with plans submitted with the acquisition grant.

(5) Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:

(a) conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants; e.g., extend use beyond daylight hours;

(b) introduce motorized recreation vehicles;

(c) introduce active recreation pursuits into a passive recreation area

(d) increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or

(e) add or alter access to the park from the surrounding area.

(6) Grants for the restoration, rehabilitation, stabilization, preservation and reconstruction (or the authorization thereof) of properties listed on or eligible for listing on the National Register of Historic Places, at their same location and provided that such actions:

(a) will not alter the integrity of the property or its setting;

(b) will not increase public use of the area to the extent of compromising the nature and character of the property; and

(c) will not cause a nuisance to adjacent property owners or occupants.

516 DM 2.3A(3)

EXCEPTIONS TO CATEGORICAL EXCLUSIONS

(3) The following exceptions apply to individual actions within categorical exclusions. Environmental assessments must be prepared for actions which may:

(a) Have significant adverse effects on public health or safety.

(b) Adversely affect such unique geographic characteristics as historic or cultural resources, park, recreation, or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.

(c) Have highly controversial environmental effects.

(d) Have highly uncertain environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(f) Be related to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Adversely affect properties listed or eligible for listing in the National Register of Historic Places.

(h) Affect a species listed or proposed to be listed on the List of Endangered or Threatened Species.

(i) Threaten to violate a Federal, State, or local or tribal law or requirements imposed for the protection of the environment or which require compliance with Executive Order 11988 (Floodplain Management),

Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.

RELOCATION AND ACQUISITION POLICY (P.L. 91-646)

1. **Purpose and Policy.** This chapter provides for the application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, hereafter in this chapter referred to as the Act, to undertakings by State agencies with financial assistance from the Land and Water Conservation Fund program. The Act provides for the uniform and equitable treatment of persons displaced from their homes, businesses or farms and establishes uniform and equitable land acquisition policies for Federal and federally assisted programs.

   In implementation of the Act, it is the policy of the NPS to deal consistently and fairly with all persons whose property is taken for public projects and all persons who are displaced from their homes, businesses or farms.

   The procedures prescribed in this chapter are based on the Act, Federal Management Regulations, Subchapter A, Subpart 101-6.1 and the Department of the Interior final regulations (see Attachment 650.3A).

2. **Scope.** The provisions of the Act and the regulations in this chapter apply to the acquisition of all real property for, and the relocation of all persons displaced by projects which receive L&WCF assistance for all or a part of the cost thereof. The Act and these regulations apply regardless of whether Land and Water Conservation funds actually contribute to the cost of the real property acquired for the assisted projects.

3. **Acquisitions Involving No Federal Assistance.** When the purchase of lands or displacement of any person by a State or local government without Federal financial assistance occurs on or after January 2, 1971, eligibility for Land and Water Conservation Fund assistance for the development of the land acquired or upon which the displacement occurred, will be dependent on the following criteria.

   A. If the acquisition or displacement occurred within the two (2) years preceding the time the State submits the application for Federal financial assistance to the Service, the State must provide the assurances required by Sections 210 and 305 of P.L. 91-646 (see Section 650.3.4), unless the State can provide to the Service documented evidence that at the time of the acquisition and last displacement, planning activity to obtain Fund assistance had not been initiated.

   B. When the acquisition or displacement occurred more than two (2) years, but less than five (5) years before the State submits an application for Fund assistance, the State must provide assurances required by Sections 210 and 305 of P.L. 91-646 (see Section 650.3.4),

unless written certification is provided as part of the project application by the head of the State or local government agency sponsoring the project. The Certification will indicate, under penalty for willful misstatement (18 U.S.C. 1001), that at the time of the acquisition and last known displacement, such agency had not yet initiated planning activity to obtain the particular Federal assistance being applied for.

A sample certification is as follows:

I, _____, _____,
(NAME) (TITLE - AGENCY)
hereby certify, under penalty for willful misstatement (18 U.S.C. 1001)* that at the time of the acquisition and last known displacement on the project lands for which this Federal financial assistance is being sought, no planning had been initiated by this agency to obtain this financial assistance.

_____
(SIGNATURE)

_____
(DATE)

* "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

C. If the acquisition and last displacement occurred more than five (5) years before the State applies for Fund assistance the State need not provide the assurances required by Sections 210 and 305 of P.L. 91-646, unless the Service has evidence to indicate that at the time of the acquisition and last known displacement, the State or local government had initiated planning activity to obtain the particular Federal assistance being applied for. In such case, Sections 210 and 305 assurances will be required.

D. For the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, "project" under this section would mean that recreation area or portion thereof, that is needed

to support or qualify the particular project for which the assistance is being requested. Although "project" for the purposes of Relocation Assistance is not necessarily the same term as used in Section 6(f) of the Land and Water Conservation Fund Act, there must be a reasonable basis for any reduction in the Section 6(f) area for Relocation Assistance purposes.

4. Assurances. The Service will not approve any project which will result in the acquisition of real property and/or the displacement of any person unless the State is able to provide the assurances required by Sections 210 and 305 of the Act and the regulations in this Chapter 650.3. These assurances specify that:

A. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided under Sections 202, 203, and 204 of the Act (see Part 24, Attachment 650.3A).

B. Relocation assistance programs offering the services described in Section 205 of the Act shall be provided to displaced persons (see Subpart C 24.205, Attachment 650.3.A.).

C. A survey and analysis of available replacement housing has been made in accordance with Department of the Interior Regulations, and that within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with Section 205(c)(3) of the Act (see Subpart C, Attachment 650.3A).

D. In acquiring real property, the State agency will be guided, to the greatest extent practical under State law, by the land acquisition policies set forth in Sections 301 and 302 of the Act (Sections 24.103(a) and 24.104 of Attachment 650.3A).

E. Property owners will be paid or reimbursed for necessary expenses as specified in Sections 303 and 304 of the Act (Sections 24.106 and 24.107 of Attachment 650.3A).

F. The affected persons will be adequately informed of the benefits available under Title II of the Act and the policies and procedures relating to the payment of such benefits (Section 24.203 of Attachment 650.3A).

Terms for compliance with these assurances are contained in the general provisions of the project agreement.

5. Responsibility of the State.

A. The State has the responsibility for implementing the provisions of the Act and the regulations contained in this chapter. The official who has authority to represent and act for the State as the State's Liaison Officer for the Land and Water Conservation Fund program must keep participating State agencies advised on, and assure compliance with, all relocation and acquisition matters as they relate to the Act and these regulations.

B. Project applications will contain an estimate of the number of individuals, families, businesses, and farms being displaced (see Part II, Section A, item 9 and Part III, Section B, item 9 of Attachment 660.3A).

C. The following documentation will be needed for each project which involves acquisition unless waived by the Service.

1. Appraisal documentation including review material and written approval of the appraisal report;

2. A copy of the written offer to purchase including a statement of just compensation (See Section 24.102 Attachment 650.3A);

3. Relocation Plan, advisory services program and appeals procedure where displacement occurred;

4. A statement of difference in value if the purchase price is greater than the approved appraisal of fair market value (see 675.2.7 and Section 24.102(i) of Attachment 650.3A);

5. Documentation showing that the owner or his designated representative has been given an opportunity to accompany the appraiser during his inspection of the property;

6. Evidence that occupants of property acquired were furnished at the time of initiation of negotiations adequate information explaining their eligibility to payments under Title II of the Act (Section 24.203 of Attachment 650.3A);

7. Copies of waivers where applicable (see Section 24.7 of Attachment 650.3A);

8. Appropriate claims forms and supporting documentation; and

9. Evidence of purchase price and of title.

6. Service Action on Relocation and Acquisition Documents. Except for statements of difference in value and waivers to benefits, the Service

will not generally require the documentation under 650.3.5.C. to be submitted at the time of billing unless otherwise requested. Waivers of documentation requirements will be requested by the State in accordance with 675.2.5. All required documentation should be kept on file in the office of the State Liaison Officer for purposes of audit and State inspections.

7. Relocation Assistance Advisory Services. As outlined in Section 124.205 of Attachment 650.3A, the agency shall carry out a relocation assistance advisory program, which includes in part, determining the relocation needs of each person to be displaced and providing an explanation of payments and other assistance for which the person may be eligible. All services required by Section 24.205 must be provided by the State or local sponsor.

8. Appeals. Situations may occur when an applicant for payments under the Act will be aggrieved by a displacing agency's determination as to the applicant's eligibility for payment or the amount of payment. Each State shall establish procedures that provide for adequate review by the involved State agency of the concerns of the person aggrieved. The procedures should assure that a person aggrieved may have his application reviewed by the head of the State agency. The procedures should also provide for an appeals process that can be followed should decisions remain disputed following review by the head of the State agency. Each State Liaison Officer shall furnish to NPS a description of the review and appeal procedures established by the State.

   The State should provide for possible resolution of an appeal by the displacing agency with a final appeal to the State. The procedures shall insure that:

   A. Each appellant applicant has the opportunity to present the basis of disagreement with the displacing agency's determination of eligibility for payment or the amount of payment.

   B. Each appeal will be decided promptly.

   C. Each appeal decision will include a statement of the reasons upon which it is based and a copy of such decision will be furnished the appellant.

   D. Each appellant applicant has a final appeal to the State.

   E. All eligible relocatees shall be furnished a written notice of their right to appeal. Such notification may be provided by brochure if the right to appeal is adequately described therein.

9. Appraisals.

A. Reference is made in Section 24.103(a) of 650.3 Attachment A to the current Uniform Appraisal Standards for Federal Land Acquisition. Copies of these standards are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Policies respecting methods of acquisition and appraisal as set forth in Section 675.2.1 conform with these standards and are to be followed. The abbreviated appraisal as set forth in Section 675.2.6B, will be acceptable for use for projects which involve acquisition with a value estimated between $5,000 and $25,000. Where a parcel has a value of less than $5,000 the Service will accept a written finding of value as set forth in Section 675.2.6.C.

B. Except for projects involving donations, the State will have responsibility for reviewing and approving project-related appraisals prior to initiation of negotiations (see Section 675.2.6). NPS reviews will be limited to spot checking and post audit program reviews. NPS reviews shall include an evaluation of the adequacy of the appraisal in terms of thoroughness, reasonableness, impartiality and conformance to the Uniform Appraisal Standards for Federal Land Acquisition to the extent appropriate. Where the review results in substantive concerns as to the adequacy of the approved appraisal, the State Liaison Officer will be responsible for providing NPS with supplemental appraisal documentation or a new appraisal in accordance with the review findings. The value established by the revised or new appraisal will be used as the basis for determining just compensation and for matching assistance.

10. Acquisition at less than Just Compensation. Only in unusual circumstances will real property be acquired at less than established just compensation as determined, at the minimum, by an approved appraisal.

Nothing in these regulations is to be construed to prevent or deter a property owner from making a full or partial donation of property. In the case of donations, full compliance is not practicable with regard to making a prompt offer to acquire the property for the full amount so established as just compensation.

In those circumstances involving a partial donation, documentation must include evidence that the owner has been provided with a statement of just compensation. A written statement by the owner that he is making a partial donation is also required. A written offer to purchase and a statement of just compensation are not necessary when acquisition is by full donation-the legal act of donation itself precludes the necessity for these actions. This documentation relates only to

acquisition. Relocation benefits as provided by these regulations must still be complied with in full under all circumstances.

To determine the amount eligible for matching, an approved appraisal is necessary for all donations partial or full, as required by Section 675.2.5E.

11. Relocation Report. Section 24.9 of Attachment 650.3A requires each Bureau and Office within the Department having responsibilities for federally assisted programs that come within the purview of P.L. 91-646 to prepare and submit a report on its activities not more frequently than every three years unless the Federal funding agency shows good cause. In order to accumulate the required statistical data, copies of Uniform Relocation Assistance and Real Property Acquisition Statistical Report Form will be submitted in accordance with Appendix B to Part 24 of Attachment 650.3A.

12. State Agency. For purposes of this part and its appendices, State agency shall include any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

13. Final Property Management Regulations of the Department of Interior. The purpose of this section is to prescribe policies and procedures to be applied by State agencies which receive assistance from the Land and Water Conservation Fund. The final property management regulations of the Department of the Interior, issued as an appendix to this chapter, have been prepared to cover both Federal and federally assisted programs. In addition, all other requirements and procedures of the Departmental regulations should be read as applicable to State agencies and agency heads where federally assisted programs are involved to the same extent as they apply to Federal agencies and agency heads in strictly Federal programs. This recognition of authority and responsibility of the State Liaison Officer to make determinations under the Act with respect to programs and projects assisted by the Land and Water Conservation Fund does not negate the authority and responsibility of the Director, National Park Service in administering the Fund program and therefore for providing policy and guidance to insure the proper implementation of P.L. 91-646.

Department of the Interior final property management regulations are made a part of this chapter as Attachment 650.3A.

Application by displaced persons for reimbursement of moving and related expenses under the Act may be accomplished by using Department of Interior Forms DI-380 a-e. (see Attachment 650.3B.). State approved forms which accomplish the same purpose may be used in lieu

of these forms if prior approval is obtained from NPS through the Regional Office.

The payment for any increased interest costs including points, incurred by the displaced person, shall be determined in accordance with section 24.401(d) of Attachment 650.3A. An example of computing a payment for increased interest costs is provided in Appendix A to Part 24 of Attachment 650.3A.

PART 24-UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A-General

Subpart B-Real Property Acquisition

Subpart C-General Relocation Requirements

Subpart D-Payments for Moving and Related Expenses

Subpart E-Replacement Housing Payments

Subpart F-Mobile Homes

Subpart G-Certification

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition

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Policies Act of 1970 Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48(cc).

Subpart A-General

§24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires real property or displaces a person.

(1) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(4) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such authority. Any Agency or person solely acquiring property pursuant to the provisions of §24.101(a) (1), (2), (3), or (4) need not provide the assurances required by §24.4(a)(1) or (2).

(2) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(3) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(4) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public: or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it

performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is ``equal to or better than'' the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also §24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in §24.401(c), all increased mortgage interest costs as described at §24.401(d) and all incidental expenses as described at §24.401(e), plus any additional amount required to be paid under §24.404, Replacement housing of last resort.

(ii) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at §24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under § 24.404, Replacement housing of last resort.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe, and sanitary dwelling.* The term "decent, safe,and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weather tight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or thorough a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person* - (1)*General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at §24.401(a) and §24.402(a)):

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under §24.205(c), and moving expenses under §§24.301, 24.302 or 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also §24.403(d)), unless the Agency determines that the person was displaced as a direct result of the program or project; or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see Also Appendix A of this part); or

(v) An owner-occupant who moves as a result of an acquisition as described at §24.101(a) (1) and (2) , or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.); or

(vi) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(vii) A person who, after receiving a notice of relocation eligibility (described at §24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(viii) An owner-occupant who voluntarily conveys his or her property, as described at §24.101(a) (1) and (2), after being informed

in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see paragraph (y) of this section), or a person who has been evicted for cause, under applicable law, as provided for in §24.206.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(m) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(n) *Nonprofit organization.* The term "nonprofit organization" means an organization that is incorporate under the applicable laws of a State as a non-profit organization, and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(o) *Notice of intent to acquire or notice of eligibility for relocation assistance.* Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from

property acquired prior to the commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

(p) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (p) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(q) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(r) *Program or project.* The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

(s) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(t) *Small business.* A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

(u) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(v) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(w) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(x) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.* ; Pub. L. 91-646), and amendments thereto.

(y) *Unlawful occupancy.* A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

(z) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(aa) *Utility facility.* The term "utility facility" means any electric, gas, water, steampower, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(bb) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is

necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

§24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, 24.3.)

§24.4 Assurances, monitoring and corrective action.

(a) *Assurances* -(1) Before a Federal agency may approve any grant to, or contract, or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see §24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at §24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are

subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:
(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).
(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.
(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).
(f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).
(h) Executive Order 11063 - Equal Opportunity and Housing, as amended by Executive Order 12259.
(i) Executive Order 11246 - Equal Employment Opportunity.
(j) Executive Order 11625 - Minority Business Enterprise.
(k) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.
(l) Executive Order 12250 - Leadership and Coordination of Non-Discrimination Laws.
(m) Executive Order 12259 - Leadership and Coordination of Fair Housing in Federal Programs.
(n) Executive Order 12630 - Governmental Actions and Interference with Constitutionally Protected Property Rights.

§24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.
(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.
(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.
(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under §24.106 or §24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to fine an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B - Real Property Acquisition

§24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions that meet all of the following conditions:

(i) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.

(ii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

(iii) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The Agency will inform the owner of what it believes to be the fair market value of the property.

(2) Acquisitions for programs or projects undertaken by an Agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property.

(3) The acquisition of real property from a Federal agency, State, or State agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

(4) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and to the acquisition of permanent easements. (See Appendix A of this part, §24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See 24.4(a).)

§24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also §24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also §24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with §24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other

coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See §24.2(w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method

of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(s)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal,the reviewing appraiser may develop appraisal documentation in accordance with §24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a

tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at §24.2(s).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment,assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in §24.102(c)(2).

Subpart C - General Relocation Requirements

§24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at §24.2(g).

§24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's

relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in §24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice* -(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See §24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency

as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services* -(1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the

person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in §24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see §24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards.(See §24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available,and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see §24.6, Subpart A.)

§24.206 Eviction for cause.

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the Agency determines that:

(a) The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

(b) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(c) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

§24.207 General requirements-claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by

such documentation as maybe reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing* -(1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by §24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D-Payments for Moving and Related Expenses

§24.301 Payment for actual reasonable moving and related expenses-residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at §24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated

household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f)The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under 24.305, as the Agency determines to be reasonable and necessary.

§24.302 Fixed payment for moving expenses-residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under §24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

§24.303 Payment for actual reasonable moving and related expenses-nonresidential moves.

(a) Eligible costs. Any business or farm operation which qualifies as a displaced person (defined at §24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at §24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for

payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under §24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in §24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff.At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§24.304 Reestablishment expenses-nonresidential moves.

In addition to the payments available under §24.303 of this subpart, a small

business, as defined in §24.2(t), farm or nonprofit organization may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed $1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Estimated increased costs of operation during the first 2 years at the replacement site, not to exceed $5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv)Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a) (3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site.In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the $10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

§24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under §24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d)Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in §24.304(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in §§24.303(a)(3)and 24.304(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§24.306 Fixed payment for moving expenses-nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see §24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at §24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (See Appendix A of this part).

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes

during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term ``extraordinary expenses'' means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, of this part, §24.307.)

Subpart E-Replacement Housing Payments

§24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or

(ii) The date the displacing agency's obligation under §4.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also §24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential* -(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with §24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see §24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at §24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, §24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs(d) (1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the

event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination the payment will be prorated and reduced accordingly. (See Appendix A of this part.) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage (s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or §24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with §24.402(b).

§24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment-* (1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also §24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.); or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by §24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment* -(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under §24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner,so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under §24.401(a) is not eligible for this payment. (See also Appendix A of this part, §24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at §24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling,to the extent justified by local market data (see also §24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement

dwelling for purposes of computing the payment.

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under §24.402(b) is eligible to receive a payment under §§24.401 or 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period.Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under §§24.401 or 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in §§24.401 or 24.402, as appropriate, the Agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
(i) The availability of comparable replacement housing in the program or project area; and
(ii) The resources available to provide comparable replacement housing; and
(iii) The individual circumstances of the displaced person; or
(2) By a determination that:
(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and,therefore, last resort housing assistance is necessary for the area as a whole; and
(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)
(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.
(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.
(1) The methods of providing replacement housing of last resort include, but are not limited to:
(i) A replacement housing payment in excess of the limits set forth in §§24.401 or 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.
(ii) Rehabilitation of and/or additions to an existing replacement dwelling.
(iii) The construction of a new replacement dwelling.
(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
(v) The relocation and, if necessary, rehabilitation of a dwelling.
(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.
(vii) The removal of barriers to the handicapped.
(viii) The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.
(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (see Appendix A, of this part, §24.404), including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with §24.2(d)(2).
(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

Subpart F-Mobile Homes

§24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§24.502 Moving and related expenses-mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with §24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under §24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at §24.503(a)(3), the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following rules apply to payments for actual moving expenses under §24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling,moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under §24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at §24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at §24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under §24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days

immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at §24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at §24.503(a)(3).

§24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However,the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also §24.403(b).)

(b) *Cost of comparable replacement dwelling* -(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the ``initiation of negotiations'' is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however,be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G-Certification

§24.601 Purpose.

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by §24.4 of this part.

§24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency-* (1) The State agency's application shall be submitted to the governor, or his or her designee,for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide to the lead agency its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in paragraphs (e)(1)(ii), (iii) and (iv) of this section, unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom;

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the State, as well as the views of interested Federal and State agencies and consider all comments received as a result; and

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and

the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State agency's certification pursuant to this subpart should withhold its approval of any of its Federal financial assistance to any project, program, or activity, in progress or to be undertaken by such State agency, if it is found by the Federal agency that the State agency has failed to comply with the applicable State law and regulations implementing those provisions of the Uniform Act for which the State agency would otherwise have provided the assurances required by sections 210 and 305 of the Uniform Act. The Federal agency may withhold Federal financial assistance if the certifying State agency fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. The Federal agency shall notify the lead agency at least 15 days prior to any decision to withhold funds under this subpart. The lead agency may consult with the Federal agency upon receiving such notification.The lead agency will also inform other Federal agencies which have accepted certification under this subpart from the same State agency of the pending action.

(c) A Federal agency may, after consultation with the lead agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the lead agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The lead agency will also inform other Federal agencies which have accepted a certification under this subpart from the same State agency, and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24 - Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A-General

Section 24.2 Definitions

Section 24.2(d)(2) Definition of comparable replacement dwelling. The requirement in 24.2(d)(2) that a comparable replacement dwelling be "unctionally equivalent"to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is ``adequate to accommodate'' the displaced person) may be found to be ``functionally equivalent'' to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a

person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under §24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced. Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered ``displaced persons'' under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced,but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe, and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with 24.10.

Section 24.2(k) Initiation of negotiations. This section of the part; provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No Duplication of Payments

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9 Recordkeeping and Reports

Section 24.9(c) Reports. This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B-Real Property Acquisition

Section 24.101 Applicability of Acquisition Requirements

Section 24.101(b) Less-than-full-fee interest in real property. This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102 Basic Acquisition Policies

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value *** to a short-term occupier." Generally, the Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103 Criteria for Appraisals

Section 24.103(a) Standards of appraisal. In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest. The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, §24.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with §24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes

a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses Incidental to Transfer of Title to the Agency

Generally, the Agency is able to pay such incidental costs directly and, where feasible,is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C-General Relocation Requirements

Section 24.204 Availability of Comparable Replacement Dwelling Before Displacement

Section 24.204 (a) General. This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, §24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation Assistance Advisory Services

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.207 General Requirements-Claims for Relocation Payments

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in §24.303(c).

Subpart D-Payment for Moving and Related Expenses

Section 24.306 Fixed Payment for Moving Expenses-Nonresidential Moves

Section 24.306(d) Nonprofit organizations. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 24.307 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching

such agreement, the practices in the Federal Highway Administration regulation, 23 CFR 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E-Replacement Housing Payments

Section 24.401 Replacement Housing Payment for 180-Day Homeowner-Occupants

Section 24.401(a)(2). The provision for extending eligibility for a replacement housing payment beyond the one year period for good cause means that an extension may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction of a replacement dwelling or other like circumstances should cause delays in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c) Price differential. The provision in §24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in §24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

Sample Computation

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee). However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10%-$42,010.

	$50,000.00
	-42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 ∏ by $42,010.18 = .8331; $9,250.13 X .83 =$7,706.57).

The Agency is obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the old mortgage and for at least the same term in order to receive the full amount of this

payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

Section 24.402 Replacement Housing Payment for 90-Day Occupants

The downpayment assistance provisions in §24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or discriminatory fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects. It is recommended that displacing agencies coordinate with each other to reach a consensus on a uniform procedure for the State and/or the local jurisdiction.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.403 Additional Rules Governing Replacement Housing Payments

Section 24.403(a)(1). The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

Section 24.404 Replacement Housing of Last Resort

Section 24.404(b) Basic rights of persons to be displaced. This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under §24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at §24.2(p). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. The use of cost effective means of providing comparable replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the

occupants and no other large comparable dwellings are available in the area.

Subpart F-Mobile Homes

Section 24.503 Replacement Housing Payment for 180-Day Mobile Homeowner-Occupants

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under §24.401 and a replacement housing payment for a site computed under §24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under §24.401 to assist in the purchase of a replacement site or, under §24.402, to assist in renting a replacement site.

Appendix B to Part 24 - Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.
2. *Report period.* Activities shall be reported on a Federal fiscal year basis, i.e., October 1 through September 30.
3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.
4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.
5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.
6. *Statutory references.* The references in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation payments and expenses

Columns (A) and (B). Report in Column (A) the number of displacements during the report year. Report in Column (B) the total amount represented by the displacements reported in Column (A).
Line 7A is a new line item for reporting the business reestablishment expense payment.
Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column(B).
Lines 12 A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column(B) the total financial assistance under section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a displacement in Column (A), but in Column (B) report *only* the amount of financial assistance allocable to section 206(a). For example, if a tenant-

household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 10, Column (B), and $1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C. Real property acquisition subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

Form Approved
OMB No:
Exp. Date:

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

Attachment-Appendix B

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

The burden for this report is estimated to average hours per response, including reviewing instructions, searching data sources, gathering/ maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 ant to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR			
ITEM	TOTAL (A)	OWNERS (B)	TENANTS (C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR			
ITEM		NO. OF DISPLACEMENTS	AMOUNT (B)
4. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC. 202(A)		
5. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC 202(A)		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B)		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	IN LIEU PAYMENTS-SEC. 202(C)		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATRIBUTABLE TO REESTABLISHMENT EXPENSES			
8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A)			
9. NO. OF CLAIMS AND AMOUNT OF LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS			
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)			
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)			
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)	TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205		[redacted]	
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B), EXCLUDING LINES 7A AND 9)		[redacted]	
15. RELOCATION GREVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM			[redacted]

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR		
ITEM	NO. OF PARCELS (A)	COMPENSATION (B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARACELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		[redacted]

CULTURAL, ARCHEOLOGICAL AND HISTORIC PRESERVATION

1. General. The purpose of this Chapter is to provide guidance on the implementation of the National Historic Preservation Act of 1966, as amended, (P.L. 89-655); the National Environmental Policy Act of 1969, as amended, (P.L. 91-190) as it pertains to cultural resources; Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), as amended.

   The National Park Service (NPS), under Section 1 of Executive Order 11593, has responsibility, in consultation with the Advisory Council on Historic Preservation, to institute procedures to assure that L&WCF assisted projects are carried out in a manner consistent with national goals relative to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural or archeological significance. Section 106 of the National Historic Preservation Act of 1966, as amended, (P.L. 89-655) requires the Service to determine whether L&WCF assisted projects affect properties listed in or eligible for listing in the National Register of Historic Places, and, prior to project approval, where there is an effect, to allow the Advisory Council a reasonable opportunity to comment on the proposed undertaking. The Service is also required by Section 2(c) of the Executive Order, to assure that if a property listed in or eligible for listing in the National Register is to be affected as a result of a Fund-assisted project, steps are taken to ensure documentation of the property. It shall be NPS policy to implement the above cited statutory requirements and Executive Order in such a manner as best serves the public interest and is consistent with the provisions of the Land and Water Conservation Fund Act of 1965, as amended.

2. Definitions.

   A. National Register. The National Register of Historic Places.

   B. Properties Eligible for Listing on the National Register. Any property determined by the Keeper of the National Register as being eligible for listing on the National Register and/or any property which is not so determined but which may meet the criteria for listing in the National Register.

   C. SHPO. The State Historic Preservation Officer.

   D. NEPA Process. The process for the consideration of environmental impacts during project planning. This may include the preparation of an environmental assessment or Environmental Impact Statement, pursuant to the National Environmental Policy Act of 1969, as amended.

E. Advisory Council. The Advisory Council on Historic Preservation (ACHP).

F. Undertaking. Under 36 CFR 800.2(c)(2), all L&WCF assisted projects are Federal undertakings. However, for the purposes of this chapter, planning projects shall not be included in this definition.

G. Cultural Resources. Any district, site, building, structure, or object significant in American history, architecture, archeology, engineering or culture at the national, State or local level.

H. Area of Impact. The geographical area within which primary effects generated or caused by the undertaking or generated by activities or facilities directly supporting the undertaking, could reasonably be expected to occur and thus cause an adverse alteration in the historical, architectural, archeological, or cultural integrity possessed by a National Register or eligible property. The boundaries of such area should be determined in consultation with the State Historic Preservation Officer as early as possible in the planning of the undertaking.

I. Mitigation. Any action which reduces or eliminates adverse impacts resulting from a project. Mitigation may include project redesign or relocation, data recovery and documentation, etc.

J. Data or Resource Recovery. As used here, this means the systematic removal of the scientific, prehistoric, historic, and/or archeological information that provide an historic property with its research or data value. Data recovery may include a limited preliminary survey of the historic property or properties to be affected for purposes of research planning, the development of specific plans for research activities, or may include extensive excavation, relocation, preparation of notes and records, and other forms of physical removal of data and the material that contains data, protection of such data and material, analysis of such data and material, preparation of reports on such data and material, and dissemination of reports and other products of the research. Examples of data recovery include archeological research producing monographs, descriptive, and theoretical articles, study collections of artifacts and other materials; architectural or engineering studies resulting in measured drawings, photogrammetry, or photography; historic or anthropological studies of recent or living human populations relevant to the understanding of historic properties; and relocation of properties whose data value can best be preserved by so doing.

K. Keeper of the National Register. The official designated by the Secretary as having the authority to to place districts, buildings, sites, structures and objects on the National Register and who is given responsibility for maintaining the National Register. The official designated is the Associate Director, Cultural Resources of NPS.

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3. Timing.

A. General. The provisions of this Chapter shall apply to the areas of impact (see Section 650.4.2H) within active and proposed Land and Water Conservation Fund-assisted actions. The procedures contained within this Chapter shall be incorporated and carried out as an integral component of the NEPA process. Use of the environmental certification procedure for categorical exclusions (see Chapter 650.2) does not exempt the project from compliance with this Chapter. States are responsible for carrying out these procedures as early as possible during project formulation stages and prior to project submission to NPS in order to ensure that cultural resources are considered in project planning and so that unnecessary delays are avoided. Further guidance is provided in Section 650.4.10.

B. Development Projects. Compliance with this Chapter must be complete prior to submission of the project application to NPS.

C. Acquisition Projects. Compliance with this chapter must be complete prior to the commencement of any development or demolition activities. Whenever possible, the State shall comply with these procedures prior to undertaking and Fund-assisted acquisition by utilizing one of the following options:

(1) Prior to final billing or the commencement of development if it precedes the final billing, the State shall comply with the procedures of this Chapter within the area of impact. Necessary compliance will be Fund-assisted with the exception of mitigation costs.

(2) Alternatively, the State may defer compliance until after final billing but prior to actual development. At such time, the State shall comply with the procedures of this Chapter within the proposed project's area of impact. In this instance, compliance will not be Fund-assisted unless the development occurs as part of a L&WCF project.

D. Assurance. By submitting a project application the State is making the following assurance. The State shall also require that this assurance be provided by the project sponsor if it has not been otherwise included with the State/sponsor agreement:

The State shall assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.), as

amended, by (a) consulting with the State Historic Preservation Office and with the State on the conduct of any necessary investigations to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are within the proposed area of impact of the proposed action (see 36 CFR Part 800), to conduct such investigations and to notify the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties. The State further agrees to require this assurance from local project sponsors.

E. Interim Use. Until such time as compliance with this chapter is completed, project sponsors will assure the protection of cultural resources on lands under their control acquired or proposed for development with Land and Water Conservation Fund assistance. Interim use may include only non-land disturbing activities or the replacement or renovation of existing structures which do not meet National Register criteria. Failure to protect cultural resources constitutes grounds for denial of Land and Water Conservation Fund assistance.

4. **Cost Sharing.**

A. Acquisition Projects. Cost for mitigation actions related to an acquisition project shall not be eligible for Fund assistance. All other costs incurred as a result of compliance with this Chapter, including preagreement costs of undertaking identification and evaluation measures, are eligible project costs and may be reimbursable in accordance with part 670 and Section 650.4.3C.

B. Development Projects.

(1) All costs incurred as a result of compliance with this Chapter, which do not involve costs for mitigation, are eligible project costs and may be reimbursable in accordance with Part 670 and Section 650.4.3C.

(2) Costs incurred for mitigation undertaken as a result of compliance with 36 CFR 800 or mitigation for resources discovered during L&WCF project development may be reimbursable through the L&WCF on a 50-50 matching basis provided that sufficient and timely funding is unavailable under the provisions of the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), as amended. Mitigation, whether Fund-assisted or not, shall be the responsibility of the State and shall be conducted in a manner consistent with Department of the Interior guidelines for recovery of

scientific data (36 CFR 66), and the Secretary of the Interior's Standards for Historic Preservation Projects (36 CFR 68). Since destruction of cultural resources constitutes an irreplaceable loss, failure to provide for necessary mitigation constitutes grounds for denial of L&WCF assistance.

5. Compliance Procedures.

A. NPS Responsibility. The NPS, in consultation with the SHPO, is responsible for determining whether a project proposed for L&WCF assistance will affect a property in or eligible for listing in the National Register.

B. State Responsibility. It shall be the responsibility of the State to implement, or cause to be implemented, the provisions of this Chapter on behalf of and with the concurrence of NPS.

C. Identification of National Register and Eligible Properties. The State shall identify or cause to be identified, any National Register or eligible property located within the area of impact of a project proposed for assistance under the provisions of the Land and Water Conservation Fund Act, as amended, and which may be affected by the proposed project. (States are also encouraged to consider areas which may be indirectly affected by the project.)

(1) As a first step, the State will consult the State Historic Preservation Officer, published lists of current and eligible National Register properties, published records, and individuals or organizations with historical and cultural expertise, to determine whether historic and cultural properties are known or suspected to be within those portions of the project area which may be affected. Should the SHPO not respond within 30 days (or a longer, previously agreed upon review period) to a request for information and/or a recommendation as to the need for a survey and survey methods to be employed, the State may continue with these procedures. Information and recommendations provided by the SHPO shall be based on existing information in accordance with the responsibilities of the SHPO as provided for in 36 CFR 61.

The requirement to consult with the SHPO is independent of the State's Intergovernmental Review system (E.O. 12372). In addition, the State must assure that the SHPO is provided sufficient information (such as maps, project descriptions, environmental data) to permit a determination as to the need for, as well as the extent and intensity of, a survey.

(2) After due consideration of the information obtained pursuant to Section 650.4.5.C.(1) and prior to project approval, the State shall, in consideration of SHPO recommendations, take appropriate action. Such action may include the undertaking of a professional survey of all or part of the project area which may be impacted by the project if the area has not previously been adequately surveyed (see Section 650.4.10.).

(3) In consultation with the SHPO, the State shall apply or cause to be applied, the National Register eligibility criteria as specified in 36 CFR 60 to all properties that may possess any historical, archeological, architectural, engineering or cultural value within those portions of the project area which may be affected. Should the SHPO not respond to a request for consultation within 30 days, the State may proceed in carrying out the requirements of this Chapter.

(4) If properties are identified which are on the National Register or appear to meet National Register eligibility criteria, the State shall, in consultation with the SHPO, apply or cause to be applied, the criteria of effect in accordance with 36 CFR 800.3.(a). Should the SHPO fail to respond within 30 days (or a longer previously agreed upon time) to a request for consultation, the State, with the concurrence of the NPS Regional Director, may proceed in carrying out the requirements of this Chapter.

D. Determination of Eligibility. Should any unlisted property which may be affected by a project as defined in 36 CFR 800 be identified as being potentially eligible for listing on the National Register, the NPS Regional Director, in consultation with the SHPO, shall request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR (to be reissued as part of 36 CFR 60). A Determination of Eligibility may be requested prior to applying the criteria of effect.

E. Determination of Effect. If it is determined that the project will have an effect on properties in or eligible for inclusion in the National Register, the State, in consultation with the SHPO, shall apply or cause to be applied the Criteria of Adverse Effect in accordance with 36 CFR 800.3(b). Should the SHPO fail to respond within 30 days (or a longer previously agreed upon time) to a request for consultation, the NPS Regional Director may make such a determination in consultation with the applicant.

(1) If it is determined that the project will not have an effect on the National Register or potentially eligible properties, the

State shall retain such documentation and the State may proceed in accordance with 36 CFR 800.4.(b)(1).

(2) If it is determined that the proposed project will not have an adverse effect on properties listed on or eligible for inclusion on the National Register, NPS shall forward adequate documentation, as provided by the State, to the SHPO and to the Executive Director of the Advisory Council on Historic Preservation in accordance with 36 CFR 800.4(c) and 36 CFR 800.6(a). Unless the Executive Director objects within 30 days after receipt of an adequately documented determination, the project may be approved.

(3) If it is determined that the project will have an adverse effect on the National Register or potentially eligible properties, the State and project sponsor shall, in consultation with the SHPO, determine whether the project can be modified or relocated at little or no cost to avoid the effect. Wherever possible, such modification/ relocation should be implemented. Alternatively, and if project modification/relocation is infeasible, the NPS in consultation with the State will formally determine whether the effect on a property on or eligible for inclusion in the National Register will be adverse. If this determination has as its finding that the effect is adverse, the State shall prepare or cause to be prepared a Preliminary Case Report in accordance with 36 CFR 800.13(b). NPS shall submit the report to the Advisory Council with a request for comments, and notify the SHPO of this request. Consultation shall proceed in accordance with 36 CFR 800.6.

(4) NPS shall not approve a proposed project until comments have been received from the Advisory Council on Historic Preservation, if it has been determined that the proposed project will have an adverse effect on a property in or eligible for inclusion in the National Register.

(5) If any project may have an adverse effect on any site listed or eligible for listing in the National Register, it may not be submitted to the NPS under the consolidated grant procedures (see Chapter 660.1).

6. Resources Discovered During Construction. If cultural resources are discovered during project construction on lands acquired or being developed with L&WCF assistance, the following actions shall take place:

A. The project sponsor shall suspend construction activities which may affect the resources and immediately notify the State.

B. The State will notify the appropriate NPS Regional Office and the State Historic Preservation Officer. Telephone notification followed by a telegraphic abstract of the situation and request for appropriate action shall constitute notification.

C. The NPS Regional Director will immediately notify the Department Consulting Archeologist (DCA). Within forty-eight hours of notification, the DCA, in consultation with the Regional Director, will investigate the situation and recommend appropriate actions pursuant to P.L. 93-291 and 36 CFR 800.

7. Data Recovery. When it is determined that the project will have an adverse effect on a property in or eligible for listing in the National Register, all feasible and practicable alternatives to avoid or beneficially incorporate the cultural resources into the project should be considered. If NPS, in consultation with the ACHP and the SHPO, determines there is no alternative but to recover the scientific, prehistoric, historical or archeological data, such recovery shall be conducted in accordance with 36 CFR 800.6 and pursuant to a Memorandum of Agreement and be consistent with the Department of Interior "Statement of Program Approach" for implementation of P.L. 93-291 (44 FR 18117). In the event that timely funding under P.L. 93-291 is unavailable, such data recovery costs may be assisted in accordance with Section 650.4.4.

8. Categorical Exclusions. The following types of projects are exempted from compliance with the requirements of this Chapter:

A. Planning projects.

B. Development projects which entail only the replacement, renovation or rehabilitation of existing facilities when such facilities do not meet the criteria for listing in the National Register and when such facilities will not be relocated or enlarged in area dimensions.

9. Destruction of Cultural Resources Prohibited. Destruction of any site or property on or eligible for inclusion on the National Register prior to or in anticipation of applying for L&WCF assistance shall constitute grounds for denial of L&WCF assistance.

10. Further Guidance. This Section is intended to provide further guidance to States and project sponsors. The following are not rigid requirements, but should be viewed as performance standards. Users should consult the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation for additional information.

A. Determining the Need for a Survey

The decision regarding the need for, and extent of an identification survey should reflect consideration of a professional judgement by the SHPO and the nature of the proposed L&WCF project. In the event that the SHPO does not provide assistance or comments, the decision should reflect the judgement of qualified professionals within the appropriate disciplines of history, architectural history, and/or archeology (refer to 36 CFR 61, for guidance in selecting qualified professionals). The decision whether or not to undertake the survey will ordinarily require an interdisciplinary appraisal to ensure that properties of potential cultural significance are fully considered.

Key factors in determining the necessity for an identification survey are 1) the probability of encountering historic and cultural sites as determined by an evaluation of existing data, (i.e., literature, geology/geography), and 2) whether the proposed project may affect a historic or potentially historic site [Criteria of Effect are defined in 36 CFR 800.3.(a)].

(1) A survey will normally be necessary when a literature search, geographic location, comments from the SHPO, or evidence from a previous reconnaissance survey indicate that there is a probability of encountering archeological or historic resources in the project area. A survey will be required if archeological and historic sites are known to be present but the area has not been adequately surveyed. If evidence from a previous reconnaissance survey indicates there is a likelihood of locating cultural resources in the project area, an intensive survey will be necessary prior to development.

(2) A survey will not normally be necessary for projects under the following circumstances:

(a) When the proposed project area has been adequately surveyed by professionals within the appropriate discipline.

(b) When there is substantive evidence that the probability of encountering cultural resources in a proposed project area is highly unlikely. Examples of such evidence would include, but are not limited to: 1) evidence from a previous reconnaissance survey, which indicates that there is little likelihood of locating cultural resources in the project area, or 2) documentation or other evidence that the area has been previously impacted by land-

altering or other activities to such an extent as to preclude the presence of cultural resources.

When considering archeological resources, disturbed areas should be accorded the same thought and attention as undisturbed areas and not necessarily be categorically excluded from being surveyed. This is because experience has demonstrated that disturbances are often superficial and that important historic and prehistoric archeological sites may exist beneath the disturbed surface.

(c) When no land-altering actions are involved in the project; e.g., when it includes only the replacement or renovation of existing non-historic facilities.

B. Conducting the Survey

For acquisition projects it is recommended that, when feasible, any necessary surveys take place prior to project approval or prior to final billing. The exact nature of the survey activities will vary depending on the planning stage, the nature of the undertaking, the area of project impact, and the natural and cultural setting. The following process will usually be appropriate.

(1) Background Research and Evaluation of Existing Data

Very few areas of the Nation have as yet been systematically surveyed for historic and archeological properties. Hence, documentary research alone will seldom be adequate. Still, this is normally the most useful starting point. Such research will yield information about both known historic resources and the level of knowledge about the resources of an area.

Because of its specialized nature, this research should be undertaken by professionals. Historians, architectural historians, historical architects, and/or archeologists may be required, depending in the particular situation. The work will, at a minimum. involve consultation of the current list of National Register-eligible properties maintained by the State Historic Preservation Officer (SHPO), and consultation with local specialists and other knowledgeable individuals. It will also involve examination of published and unpublished documentary sources.

The background research should provide data about: (a) the presence of known historic and archeological properties, (b) the probability of the existence of as yet undiscovered resources within the project area, and their probable nature

and distribution and (c) the preservation and research needs and priorities in the particular region. Finally, (d) this background evaluation should determine if a further historic resource survey will be needed to provide the agency with adequate planning data.

(2) Field Inspection

If background research and evaluation of existing data fail to produce information sufficient for project planning and historic resource management purposes, then it should be conducted by qualified personnel using a systematic research approach, and maintaining adequate records. In general, the nature of the field inspection will be affected by the level of project planning and results of previous studies.

Many different types of field inspection may be appropriate in different situations. For example:

(a) Architectural resources can often be located through walk- or drive-through inspections: in some cases, particular areas may be adequately characterized by spotchecks.

(b) In cases where it seems unlikely that cultural resources will be encountered but no documentation is available to support this prediction, a reconnaissance survey may be the only survey necessary to verify the presence or absence of cultural resources within the project boundaries.

(c) When project areas are small and reconnaissance surveys indicate that cultural resources are

(d) If the probability of encountering cultural resources is high and the project area is relatively small, it would be more cost effective and less time consuming to proceed with a single survey, while combining the features of both the reconnaissance and the intensive survey.

(3) Reconnaissance Survey

A reconnaissance survey is designed to provide a general impression of an area's historic properties and their values, and involves small-scale field work relative to the size of the area which may be impacted. A reconnaissance survey is not designed to provide sufficient data to insure identification of all historic properties in an area. Rather, it would aid the project administrator to:(a) identify obvious or well-known properties; (b) check the existence and conditions of

properties tentatively identified or predicted from background research; (c) identify areas where historic properties are obviously lacking; and (d) indicate where certain kinds of properties are likely to occur, thus making possible a more informed and specific intensive survey at a later stage of planning. A reconnaissance survey should be as inclusive as possible. It should include, for example, consideration of properties less than 50 years of age which may be significant.

(4) Intensive Survey

An intensive survey is designed to provide detailed information sufficient to identify and evaluate properties within the project area that might qualify for inclusion in the National Register of Historic Places, and which, by virtue of their location within or relative to the project site, may be subject to potentially destructive use or development. Precise field techniques necessary to identify historic properties vary among the different regions of the United States, as well as within regions. SHPO staff or the staff of the National Register, should be consulted for assistance in developing plans for such surveys. A multidisciplinary team of surveyors composed of qualified specialists may be needed, depending on the nature of the resources identified in the reconnaissance survey. Archeological resources can usually be evaluated only through a combination of surface examination and subsurface investigation.

The survey report should contain full descriptions of methods, field procedures, and results, and sufficient data to permit evaluation of all historic properties identified against the National Register criteria for eligibility, as set forth in 36 CFR 60. The report should also provide data documenting the absence of historic properties in locations where their presence had been predicted. Survey data should be recorded on inventory forms, preferably those used in the Statewide Historic Survey. "Guidelines for Level of Documentation" were published in the Federal Register, Vol. 42, No. 183, September 21, 1977, along with procedures for determinations of eligibility for inclusion on the National Register, 36 CFR 63.

EEO CONTRACT COMPLIANCE

1. **General.** The regulations set out in this chapter implement certain contract compliance procedures required by Executive Order 11246, as amended, and by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (41 CFR 60-4). These regulations shall apply to all Land and Water Conservation Fund grants involving Federally assisted construction contracts and subcontracts in excess of $10,000. In determining whether Fund-assisted construction contracts exceed this dollar limit, the total amount of the contract awarded rather than the amount of Federal assistance shall apply.

2. **Coordination.** It is the responsibility of the State to insure that State and local project sponsors are in compliance with these regulations. The State will cooperate with the National Park Service and the Secretary of the Interior in obtaining the compliance of project sponsors, construction contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders. The State will furnish such information as may be required for the supervision of such compliance, and it will otherwise assist the National Park Service in the discharge of their duties under Executive Order 11246, as amended (3 CFR 169), its implementing regulations (41 CFR 60), and the relevant Orders of the Secretary of Labor.

3. **Women and Minority Construction Hiring Goals.** The Department of Labor has developed regulations regarding goals and timetables for female and minority participation in the construction industry (41 CFR 60-4). Certain geographic areas have been established by the Office of Federal Contract Compliance Programs for the purpose of establishing goals for minority participation in the construction industry. A list of geographic areas is found in Appendices A and B of Women and Minorities in Construction (published by the OFCCP in the 5/5/78 Federal Register).

   A. Goals and timetables established for women are national in scope and apply uniformly throughout the nation. As such there is one set of goals, found in Appendix A of Women and Minorities in Construction. (See above reference).

   B. Goals and timetables established for minorities apply only in the specific geographic areas listed in Appendix B of Women and Minorities in Construction. (See above reference).

4. **State Responsibilities.** The following are State responsibilities under Executive Order 11246 for State sponsored projects and responsibilities which must be required of local project sponsors.

Manual Release 151
Replaces all preceding manual releases

A. Include the following in solicitation for offers and bids on federally assisted construction contracts over $10,000 (not required for newspaper or advertisements):

(1) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity," including goals which are to be inserted by contracting officer or applicant. (see Attachment 650.5A). Goals may be obtained from the OFCCP.

(2) "Standard Federal Equal Employment Opportunity Construction Contract Specification." (see Attachment 650.5B).

B. For construction contracts over $10,000, the following must be included in the contract:

(1) "Equal Opportunity Clause". (This may be included by reference Attachment 650.5C).

(2) "Standard Federal Equal Employment Opportunity Construction Contract Specification." (See Attachment 650.5B).

(3) "Certification Non-Segregated Facilities" signed by prime contractor and subcontractor. (See Attachment 650.5D).

C. Provide notice of contract awards subject to these provisions to Director of OFCCP within 10 days after the award (Notice includes name, address and telephone number of contractor, employer identification number, dollar amount of contract, estimated starting and completion dates, contract number and geographical area in which the contract is to be performed). Notice should be sent to OFCCP's Regional Office or Area office. The location of these offices may be obtained from the OFCCP or the Regional Office of NPS.

D. Cooperate with the Director of NPS and the Director of the OFCCP in the implementation of the program.

E. Insure that EEO posters are displayed on Federally assisted construction sites. Posters may be obtained from the OFCCP.

F. Insure that contractors engaged in Federally assisted construction contracts are providing data and reports to the appropriate OFCCP regional office as required or requested. (See Section 650.5.5).

G. Insure that the provisions of the "Equal Opportunity Clause" (Attachment 650.5C) are followed for construction contracts involving force account labor.

H. Carry out sanctions and penalties imposed upon the federally assisted construction contractor or subcontractor by the Secretary of Labor pursuant to Executive Order 11246, and refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Executive Order 11246, as amended.

5. Contractor Responsibilities. The following are the responsibilities of federally assisted construction contractors under Executive Order 11246:

A. Under Executive Order 11246, the contractor must do the following if the contract is for $10,000 or more:

(1) Abide by the provisions of the "Equal Opportunity Clause" (Attachment 650.5C) whether it applies to government construction contracts or whether it applies to federally assisted construction contracts.

(2) Abide by the provisions of the following:

(a) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity." (Attachment 650.5A).

(b) "The Standard Federal Equal Employment Opportunity Construction Contract Specification." (Attachment 650.5B)

(3) Insure that personnel decisions are also in accordance with the following:

(a) Uniform Guidelines on Employee Selection Procedures.

(b) Sex Discrimination Guidelines.

(c) Guidelines on Discrimination Because of Religion or National Origin.

(4) Incorporate into all subcontracts the following:

(a) "The Equal Opportunity Clause." (Attachment 650.5C).

(b) "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity." (Attachment 650.5A).

(c) "The Standard Federal Equal Employment Opportunity Construction Contract Specification". (Attachment 650.5B).

(5) Provide data and reports to OFCCP as required or requested including the following:

(a) One time notification within 10 days of all construction projects in the designated geographic area, federal and nonfederal by agency, contract number, location, estimated dollar value, percent completed and project completion date.

(b) Notification of any subsequent construction work (Federal and non-Federal) in the designated geographic area in excess of $10,000.

(c) Workforce Utilization Report to be filed monthly. (Form CC-257).

(6) Maintain non-segregated facilities.

(7) Include a signed "Certification of Non-Segregated Facilities" in contracts and require subcontractors to include a signed "Certification of Non-Segregated Facilities. (See Attachment 650.5D).

(8) Expressly state in all employment solicitation or advertising that the contractor is an Equal Opportunity Employer.

(9) Display Equal Opportunity Poster.

(10) Allow OFCCP personnel access to site, records, and employees for purpose of determining the contractor's compliance status.

(11) Refrain from entering into contracts with contractors debarred from Federal contracts or federally assisted construction contracts by the Secretary of Labor.

6. Sanctions. In the event of noncompliance with the provisions of this chapter, sanctions outlined in Section 303(b) of Executive Order 11246 and 41 CFR 60-1.4(b) may include one or all of the following actions:

A. Cancellation, termination or suspension, in whole or in part of the grant.

B. Refraining from extending any further assistance to the project sponsor until satisfactory assurance of future compliance has been received.

C. Referring of the case to the Department of Justice for appropriate action.

7. **Approval of Additional Requirements.** The National Park Service will not require or propose to require the performance of duties in addition to those set forth in Executive Order 11246, as amended, its implementing regulations, and the requirements of this chapter unless written approval is obtained from the Department of Labor, Office of Federal Contract Compliance Programs.

8. **Complaints.** States and local project sponsors receiving complaints alleging violation of Executive Order 11246, as amended, by contractors or by any of their subcontractors shall promptly transmit such complaints to the appropriate Department of Labor Regional Office (Office of Federal Contract Compliance Programs).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

TIMETABLES	Goals for Minority Participation for Each Trade	Goals for Female Participation in Each Trade
	(Insert Goals For Each Year)	(Insert Goals For Each Year)

These goals are aplicable to all the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Employment Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith efort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project-to-project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor, employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of

the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

(EXECUTIVE ORDER 11246)

1. As used in these specification:

   A. "Covered area" means the geographic area described in the solicitation from which this resulted.

   B. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   C. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   D. "Minority" includes:

      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

      (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

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3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 A through P of this Attachment. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulation promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which

the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.

C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

D. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and *trainee programs relevant to the Contractor's employment needs,* especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7B above.

F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper; annual report, etc.; by specific review of the policy with all management personnel and with all minority and female

employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

G. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

H. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

K. Validate all tests and other selection requirements where here is an obligation to do so under 41 CFR Part 60-3.

L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

M. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

N. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7A through P). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7A through P of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor maybe in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of this Attachment, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause.

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure the applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicant will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant contract, loan, insurance, guarantee; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding $10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

_____ _____
Signature Date

_____
Name and Title of Signer (Please type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

NATIONAL FLOOD INSURANCE PROGRAM

1. Scope. The Flood Disaster Protection Act of 1973 (P.L. 93-234) requires the purchase of flood insurance as a condition of receiving any Federal financial assistance (including Land and Water Conservation Fund assistance) for acquisition or construction purposes in special flood hazard areas located in any community currently participating in the National Flood Insurance Program authorized by the National Flood Insurance Act of 1968. These special flood hazard areas are identified by the Flood Insurance Administration of the Federal Emergency Management Agency.

2. Improvements Eligible for Flood Insurance Coverage.

   A. Definitions. For the purposes of the National Flood Insurance Program, the term "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. The terms building and mobile home are further defined as any walled and roofed structure that is principally above ground and affixed to a permanent site. Structures and their contents which meet these definitions are referred to as insurable improvements in this chapter.

   B. Examples of insurable improvements for which insurance is required include, but are not limited to the following:

      (1) Restroom facilities.

      (2) Administrative buildings.

      (3) Bathhouses.

      (4) Interpretive buildings.

      (5) Maintenance buildings and sheds for landscaping tools or other equipment.

      (6) Sheltered facilities consisting of two or more walled sides and a roof.

   C. Examples of improvements for which insurance is not required include, but are not limited to the following:

(1) Open picnic shelters.

(2) Permanently affixed outdoor play equipment such as swings and slides.

(3) Sun shades covering outdoor ice skating rinks.

(4) Outdoor swimming pools.

3. Requirement for Flood Insurance

A. Flood insurance will be required for insurable facilities located within special flood hazard areas for which the Federal Insurance Administration has issued a flood hazard boundary map or a flood insurance rate map. If the Federal Insurance Administration withdraws the applicable map(s) for a special flood hazard area for any reason, the insurance requirement is suspended for projects located in that special flood hazard area which are approved during the period the map(s) is (are) withdrawn.

B. Communities identified as having special flood hazard areas must qualify within one year of notification by the Flood Insurance Administration. If an identified community has not qualified for the program by the prescribed date, no financial assistance can be provided for acquisition or development of insurable improvements. Such assistance will remain unavailable until the community has qualified. Financial assistance for non-insurable acquisition or development or for projects outside of the special flood hazard areas is not affected by whether the community is qualified or not qualified for flood insurance.

After a community has qualified for the flood insurance program, financial assistance for acquisition or development of insurable improvements will be predicated upon purchase of flood insurance for those improvements by the project sponsor.

C. Flood insurance required by P.L. 93-234 must be carried on insurable improvements throughout their useful life.

D. Flood insurance is not required on any State-owned property that is covered under an adequate State policy of self insurance. A revised list of States to which this exception applies will be published periodically by the Flood Insurance Administration of the Federal Emergency Management Agency.

4. Amount of Insurance

A. The amount of insurance required by P.L. 93-234 is the lesser of (1) the development cost of the insurable improvement or (2) the maximum limit of coverage made available with respect to the particular type of facility under the National Flood Insurance Act of 1968. The amount is based on the total cost of the insurable improvement, not just the Federal share.

B. Whenever flood insurance is available to cover a facility during construction, the project sponsor will obtain such coverage as soon as the facility becomes insurable. Coverage is usually available as soon as construction progresses beyond the excavation phase.

FLOODPLAINS AND WETLANDS

1. General. Project sponsors must comply with the provisions of 44 CFR 6342 Section 2 on all proposals involving floodplains and wetlands.

   A. All projects must comply with the intent of Executive Orders 11988, "Floodplain Management", and 11990, "Protection of Wetlands", and with the U.S. Water Resources Council's "Floodplain Management Guidelines for Implementing E.O. 11988" (43 FR 6030, February 10, 1978).

   B. The ultimate authority for all States in the floodplain management decisionmaking process remains with NPS.

   C. The environmental assessment for all development projects must state whether or not there will be an impact on floodplains or wetlands.

2. Development Projects. Direct or indirect L&WCF support of floodplain development or construction in wetlands shall be avoided when there is an adverse impact on the natural and beneficial values and practicable alternatives exist.

   A. When activities must be carried out in a floodplain or wetland, the work must be done in a manner which, to the extent possible, will minimize harm to lives, property and floodplain values, and will restore and preserve the natural and beneficial values served by floodplains and wetlands.

   B. Flood proofing of eligible structures shall be eligible for financial assistance from the Land and Water Conservation Fund.

3. Acquisition. Acquisition projects for the future establishment of facilities which do not have long- or short-term adverse impacts associated with the occupancy or modification of floodplains or wetlands, nor direct or indirect support of floodplains or wetlands development are excluded from these guidelines. However, these guidelines do apply to acquisition projects for future development which may have the potential for resulting in such impacts or support.

4. Excluded Facilities. Certain types of recreation development often are consistent with the intent of the Executive Orders. These types of developments will be reviewed, and when it is found that they neither have long- or short-term adverse impacts associated with the occupancy or modification of floodplains or wetlands, nor do they directly or indirectly support floodplains or wetlands development, they are

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excluded from any further compliance with these guidelines. These are the following:

A. Scenic overlooks and trails.

B. Boating facilities excluding boat houses.

C. Picnic and camping facilities including appropriate sanitary and other support facilities needed to provide full utilization of recreational developments, provided that flood resistance is a consideration in their design and construction.

D. Outdoor water sports facilities such as beaches (not excluded for wetlands).

E. Entrance, access and internal roads to existing parks (not excluded for wetlands).

F. Outdoor shooting ranges (not excluded for wetlands).

G. Outdoor play courts (not excluded for wetlands).

H. Beautification of an existing outdoor recreation area, such as landscaping.

I. Parking lots for existing parks, sports and playfields, and playgrounds (not excluded for wetlands).

J. Wildlife observation stations and environmental education facilities, excluding buildings.

5. Environmental Documentation. The environmental documentation shall include:

A. The extent of the direct and indirect impacts associated with direct and indirect support of floodplain and wetlands development.

B. Measures to be taken to minimize harm to lives and property, and to the natural and beneficial floodplain values; and to restore and preserve the values served by floodplains and wetlands.

C. Alternative actions and locations considered in the event of an adverse impact.

D. Assurance that all State and local floodplain and wetlands regulations and standards are being met.

E. A map delineating the floodplain or wetlands.

6. **Public Involvement.** The project sponsor shall ensure that the general public has an opportunity for early review of the development plans or proposals for actions affecting floodplains or wetlands. In all cases, except for the excluded facilities listed in 650.7.3 and 650.7.4, a press notice will be published in the local media briefly describing the proposed action and urging members of the public to provide their views to the sponsor. It shall expressly state that the proposed site is in a floodplain or wetland.

7. **Intergovernmental Review.** The project sponsor or the State shall include a copy of the press notice and public comments received, the Notice of Intent and the proposed environmental assessment with the project information submitted to the State's Intergovernmental Review System established under E.O. 12372 (see Chapter 650.8) In addition to the documentation required in 650.7.5 above, the assessment/EIS shall explain why the proposed action is to be taken in the floodplain or wetland and include a simple location map.

8. **Adverse Comments.** When adverse comments are received as a result of the Intergovernmental Review process or early public review, the NPS Regional Office will forward documents to the agencies listed below.

   A. Environmental Protection Agency.

   B. Federal Insurance Administration.

   C. Fish and Wildlife Service

   D. U.S. Geological Survey.

   E. Bureau of Reclamation (western States only -Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming)

   F. Corps of Engineers

   G. Soil Conservation Service.

   H. State Water Resources Agency.

   I. State Liaison Officer (when appropriate).

   J. State Historic Preservation Officer (when appropriate).

K. State's Intergovernmental Review System Single Point of Contact (when appropriate).

L. State Wildlife Agencies (when appropriate).

M. Appropriate public interest groups.

9. SCORPS. In accordance with Section 2(c) of Executive Order 11988, "Floodplain Management", Statewide Comprehensive Outdoor Recreation Plans must, to the extent possible, address the requirements and goals of the executive orders on floodplain and wetlands.

10. Certification. States may document their compliance with these Executive Orders through the usual certification process for streamlined and consolidated project applications (see Chapter 660.1).

A. For all other L&WCF project application, the State will be granted the authority to simply certify project compliance with these guidelines, without having to maintain compliance documentation for each project if it can demonstrate that its floodplain and wetlands State laws are equal to or stronger than the Executive Orders. The NPS Regional Office will make this determination.

B. Finally, in order to eliminate duplication of paperwork and procedures, existing State or local procedures may be utilized to meet all or part of the requirements of the Orders. The procedures used, however, must be at least equivalent to those mandated by the Orders and Water Resources Council's February 10, 1978 guidelines. Compliance with the project sponsors floodplain procedures must be fully documented for each project. NPS Regional Offices shall determine if a State or one of its political subdivision's procedures meet the equivalency requirement.

11. Records. In accordance with the documentation requirements of the Executive Orders, records will be kept by the States on the type and number of projects affected by these floodplain or wetlands regulations, the number of acres affected and the mitigation made.

INTERGOVERNMENTAL REVIEW SYSTEM (E.O. 12372)

1. **Purpose.** For NPS financial assistance programs, a State which has established an OMB sanctioned intergovernmental review system must specifically identify the program(s) for which it wishes to exercise Executive Order (EO) 12372 review authority. For States which have established such a system and chosen the L&WCF program for review, there is no EO 12372 mandated requirement per se for review and comment on L&WCF Statewide Comprehensive Outdoor Recreation Plans (SCORPs). Such States must be provided the opportunity, however, to review proposals for L&WCF grants. SCORPs are impacted by the E.O. 12372 provision of Section 9.12 of 43 CFR Part 9 allowing States the option of simplifying, consolidating or substituting State plans. (see Attachment 650.8A)

2. **Single Point of Contact (SPOC).** States establishing intergovernmental review systems in accordance with EO 12372 must designate a "Single Point of Contact" (SPOC). The SPOC will receive proposals for review if the State has selected the L&WCF program for coverage. NPS will, as under A-95, require that grant applicants (both locals and State) maintain responsibility for submission of applications for review and comment to the SPOC. The SPOC may seek comments from other State agencies, Regional planning commissions/councils of government, local officials, and others.

3. **Comment Period.** L&WCF proposals must be submitted by the applicant to the SPOC at least 60 days in advance of the final decision on funding or denial of a proposal.

4. **Response to State Comments.** States must submit comments on L&WCF assistance proposals directly to the appropriate NPS Regional Office. The State must provide NPS with copies of all comments which it receives or evidence that the SPOC was provided the opportunity to comment on the proposal. If NPS decides not to accept the recommendation (to deny funding or to modify the proposal) of a SPOC, it must provide the SPOC with a written explanation of the failure to accommodate at least 10 days (plus five additional days to allow for receipt through the mail) in advance of carrying out its (NPS's) decision to approve a proposal in accord with Section 9.10 of 43 CFR Part 9 (see Attachment 650.8A)

5. **Non-Selected Programs and Non-Participating States.** For States with EO 12372 review mechanisms which have not selected the L&WCF program for coverage, and for States that have not established a review system, NPS nonetheless has the obligation of notifying directly affected State, areawide and regional agencies, and local governments of proposed actions. This may be accomplished through publication of the notice of

intent in the Federal Register or (preferred) through direct submission by the applicant of notices of intent. Such notices should include a detailed description of the proposal, an address where comments may be forwarded, and the deadline for comment. The review and comment period for this type of review need not be the same as the review period for selected programs in participating States (up to 60 days) but should be as close to the same time period as is feasible. Where NPS fails to accommodate comments on non-selected programs or from non-participating States, there is no requirement to provide States with an advance notice prior to taking action on a proposal.

6. **Simplification, Consolidation, and Substitution of State Plans.** In accordance with EO 12372 and the Department's regulations on implementation referred to in Section 9.12 of 43 CFR Part 9 (see Attachment 650.8A) States may simplify, consolidate, or substitute Federally required State plans including the Statewide Comprehensive Outdoor Recreation Plan (SCORP). Prior approval of NPS is not required in order for a State to take advantage of this provision. The provision applies to the form in which the plans are presented, but not the content. This means that a plan may, as an example, show up as a chapter of a larger comprehensive plan covering housing, transportation, the State budget, etc. The information provided must, however, continue to meet existing NPS SCORP requirements for content.

7. **Environmental Requirements.** NPS must continue to assure that requirements of the National Environmental Policy Act (NEPA) are met. Under A-95, grant applications were reviewed by clearinghouses for environmental compliance. Such reviews may or may not be conducted by States under EO 12372-established review systems. Therefore, the State should be contacted early in the application process to determine if such a review will be conducted and to determine (if needed) where the proposal should be forwarded in order for environmental requirements to be met. Detailed guidance on meeting environmental requirements as they relate to EO 12372, are contained in Chapter 7 of the Departmental Manual, 511 DM. (see Attachment 650.8B).

EXCERPTS FROM E.O. 12372 REGULATIONS (43 CFR PART 9)
(FEDERAL REGISTER, VOL. 48, NO. 123, Friday, June 24, 1983)

Section 9.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

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

Section 9.12 How may a State simplify, consolidate, or substitute Federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans

into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute Federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

EXCERPTS FROM DEPARTMENT OF INTERIOR MANUAL-511 DM 7

Chapter 7 Environmental Impact

7.1 Background. The Department's procedures for compliance with the National Environmental Policy Act (NEPA), adopt the regulations of the Council on Environmental Quality (CEQ) and are included in 516 DM 1-7, Protection and Enhancement of Environmental Quality. This chapter complements those procedures.

7.2 Procedures. Based on 516 DM 1.5, bureaus and offices will utilize to the maximum extent possible existing notification, coordination and review mechanisms.

A. Executive Order 12372 Process - To the extent feasible, the Department will work with States to integrate handling of the NEPA consultative process with the official State review process.

(1) When the State has agreed to incorporate the review of NEPA documents in its process, the State will designate the single point of contact with responsibility for assuring that appropriate State, metropolitan, regional and local agencies authorized to develop and enforce environmental standards are informed of such projects and serving as the focal point for obtaining information and comments on Federal and Federally assisted projects.

(2) In the case of major Federal actions significantly affecting the quality of the human environment, bureaus and offices will send copies of environmental impact statements to the State single point of contact for review and comment. These actions may be Federal assistance projects, direct Federal development projects, or Federal leases, licenses or permits.

(3) In the case of Federal assistance projects listed in Appendix 1 to 511 DM 1, applicants may be required to submit to the State single point of contact an analysis of the anticipated environmental effects of the proposed project. Applicants are made aware of this requirement by bureau distributed application materials, in preapplication conferences, or in response to inquiries regarding procedures.

B. No Executive Order 12372 Process - If a State has not established a process, or the program or activity has not been selected for a State process, the bureau or office is responsible for assuring that requirements for managing the NEPA process are met in accordance with 516 DM.

Manual Release 151
Replaces all preceding manual releases

C. Other Environmental Review and Consultation Requirements - Bureaus and offices should refer to a list of related environmental review and consultation requirements which is published as a supplementary directive by the Office of Environmental Project Review.

TITLE VI GUIDELINES

1. General.

A. Authority. These guidelines are issued under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et. seq; Executive Order 11764; Department of Justice Regulations 28 CFR 42; and Department of Interior Regulations 43 CFR 17.

B. Purpose. (43 CFR 17.1; 28 CFR 42.401) These guidelines provide detailed information on the compliance requirements of Title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination with respect to federally assisted programs administered by the Department of the Interior. Included in the guidelines are procedures for filing complaints and the responsibilities of the Department and its grantees in attaining compliance with the Act.

C. Definitions. (43 CFR 17.12; 28 CFR 42.402)

(1) "Act" means the Civil Rights Act of 1964, and any guidelines, rules and regulations of the Department effectuating Title VI of this Act.

(2) "Applicant" means a qualified entity which submits an application for assistance under the Land and Water Conservation Fund Act.

(3) "Department" means the U.S. Department of Interior.

(4) "Director" means the Director of the Office for Equal Opportunity of the Department.

(5) "Federal Financial Assistance" means (1) grants and loans of Federal funds, (2) grants or donations of Federal property and interests in property, (3) the detail of Federal personnel (4) the sale or lease of, or the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(6) "Primary Recipient" or "Grantee" means a State that is authorized to contract for or extend Federal financial assistance to itself or to a subrecipient for the purpose of carrying out a program of the Department.

(7) "Subrecipient" or "Subgrantee" means any political subdivision or instrumentality of a State, public or private institution, or any entity or individual to whom Federal financial assistance is extended.

(8) "Compliance Review".

(a) "Post-Award Compliance review" means an onsite, comprehensive assessment of the Title VI compliance of an agency that has received Federal financial assistance from the Department. Such reviews are designed to determine if programs and activities of the agency are administered and operated in compliance with the Act.

(b) "Follow-up Compliance review" means a follow-up examination of specific aspects of a grantee's Federally assisted program or activity to determine whether the grantee has resolved reported conditions of noncompliance.

(9) "Compliance Officer" means an Equal Opportunity Specialist assigned the responsibility of conducting Title VI Compliance Reviews.

(10) "Covered Employment" means employment practices covered by Title VI.

D. Covered Employment. (43 CFR 17.3(6)(c); 28 CFR 42.409) Where employment practices directly affect services to beneficiaries under a federally assisted program to which these guidelines apply, that recipient's or subrecipient's employment practices shall be subject to the nondiscrimination provisions of the Act. Enforcement of the Act with respect to covered employment practices shall not be superseded by State or local merit systems relating to such employment practices.

2. **Compliance Responsibilities.**

A. OEO Responsibility. The Office for Equal Opportunity (OEO), as authorized by the Secretary of the Interior, shall assure that no person participating in a program funded in whole or in part by the National Park Service (NPS) is subjected to discrimination on the basis of race, color, or national origin. This shall be accomplished

through continuing policy direction, oversight, and compliance reviews of selected recipients and subrecipients as well as technical assistance and program evaluation of NPS Regional Offices.

B. NPS Responsibility. The National Park Service as primary grantor of federal assistance for recreational acquisition and development, has direct responsibility for assuring that the State and subrecipients are in compliance with the provisions of the Act.

The NPS shall execute its responsibility through:

(1) providing guidance to the States in establishing an open project selection process to allocate L&WCF assistance among applicants,

(2) notifying OEO of any inconsistencies with Title VI having arisen from onsite facility reviews conducted by NPS personnel, and

(3) cooperating with OEO toward seeking a satisfactory resolution of any inconsistencies found, including efforts toward seeking voluntary compliance enforcement procedures and follow-up reviews.

C. Primary Recipient Responsibility. (43 CFR 17.4) (28 CFR 42.407) The States, as primary recipients of assistance, are responsible to give reasonable assurance that the applicant and all subrecipients will comply with the requirements imposed by Title VI, including methods of administration which give reasonable assurance that anynon-compliance will be corrected. This shall be accomplished through:

(1) establishing an open project selection process (see Chapter 660.4) according to the standards of NPS,

(2) providing the State Civil Rights Agency or Authority (if it exists) the opportunity to comment upon applications submitted.

(3) notifying OEO of any inconsistencies with Title VI having arisen from onsite facility reviews conducted by State personnel (where the inconsistency cannot be corrected at the State level),

(4) cooperating with OEO toward seeking a satisfactory resolution of any inconsistencies found, including efforts toward seeking voluntary compliance, enforcement procedures and follow-up reviews, and

(5) assuring that each subrecipient/applicant is provided a copy of these guidelines.

D. Coordination of Responsibility. The Office for Equal Opportunity will periodically conduct compliance reviews of the State's administration of the L&WCF program, including the compliance of subrecipients with the Act. OEO and NPS will provide the State, subrecipients and applicants for assistance with such technical assistance as necessary to reasonably assure compliance with the Act. Federal, State, and local officials are expected to cooperate fully toward securing voluntary compliance where deficiencies in program or facilities may be found.

3. **Title VI Complaint Procedures.**

A. General. (28 CFR 42.408) (43 CFR 17) This section prescribes the procedures of the Department and its primary recipients with respect to the prompt processing and disposition of complaints.

B. Who May File. Any person, or specific class of persons, who believes that he or she has been subjected to discrimination as prohibited by the Act may personally, or by representative, file a complaint.

C. How, When, and Where to File. (28 CFR 42.408) All complaints filed under Title VI must be in writing, and must be signed by the complainant and/or the complainant's representative. In the event that a complaint is made in other than written form, the official receiving the complaint must instruct the complainant to reduce the complaint to writing and submit it to the Office for Equal Opportunity, Department of the Interior for prompt processing. The complaint should contain: the name, address and telephone number of the complainant; the name and address of the alleged discriminatory official or recipient; the basis of the complaint and the date of the alleged discrimination.

Complaints must be filed within 180 days from the date of the alleged discrimination. The time limit for filing may be extended by the Director of the Office for Equal Opportunity. Complaints should be filed directly with the Office for Equal Opportunity, U.S. Department of the Interior, Washington, D.C. 20240. In the event that complaints are received by NPS and/or recipients, such complaints shall be forwarded to the Office for Equal Opportunity within 10 days.

(1) Public Notification of Right to File a Complaint. The NPS shall be responsible for ensuring that its recipients inform the

public of their right to file a complaint. Where primary recipients extend Federal assistance to subrecipients, the primary recipient shall also be responsible for ensuring that this standard is met. (28 CFR 42.405).

(a) This is to be accomplished by distribution and display of posters explaining the nondiscrimination provisions to Title VI as they apply to State and subrecipient recreation programs (see Attachment 650.9A). Posters must be placed in at least one conspicuous place in each funded system, but preferably will be visible in several locations. In addition to Title VI requirements, posters should note the availability of additional Title VI information and explain briefly the procedures for filing complaints.

(b) NPS and its recipients shall also include information on Title VI requirements, complaint procedures, and the rights of beneficiaries in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs or activities. Where a percentage of the population in excess of 10% (or 5,000) speaks a language other than English, the above described material should be prepared in the appropriate language.

D. Complaint Processing. (28 CFR 42.408) (43 CFR 17.6)

(1) Acknowledgement of Complaint. The Office for Equal Opportunity shall acknowledge in writing, the receipt of every complaint within 10 days of reception. Acknowledgement letters shall be sent to the complainant, NPS and the primary recipient.

(2) Complaints Log. Recipients shall maintain a log of any Title VI complaint received. Moreover, OEO shall maintain a log of all such complaints received for processing. The purpose of the complaint log is to provide essential information and data regarding each complaint being processed by the Department. Each log must contain a case number, the complainant's name, address and telephone number. The log must also include a description of the complaint; the date the complaint was filed and investigation completed; the disposition of the case; all other information pertinent to the complaint. (28 CFR 42.408).

(3) Routing responsibilities. When NPS or any primary or subrecipient receives a complaint, the office in receipt must log in the complaint, note the date of receipt on the

complaint and maintain a confidential copy for its records. The original complaint document must be forwarded to the Office for Equal Opportunity within 10 days of receipt pursuant to Section 650.9.3C. OEO shall acknowledge its receipt and notify the recipient, as well as NPS, of the assigned case number.

(4) Determination of Jurisdiction. Upon receipt of a complaint by the Department, the Office for Equal Opportunity shall determine whether the complaint comes within the purview of the Act. When the Department lacks jurisdiction over a complaint, the Director shall refer the complaint to the appropriate State or Federal agency that has responsibility for addressing the concern. Upon receipt of such a complaint, the OEO shall notify the NPS, recipient and complainant's representative of its actions.

E. Complaints Investigations. (43 CFR 17.6(d))

(1) Scope. Investigation shall be confined to issues and facts relevant to allegations in the complaint.

(2) Confidentiality. Complainants shall be offered a pledge of confidentiality as to their identity. This offer, if accepted, shall be binding on the investigator. Complainants shall be interviewed at all times in places which will not create risk of compromising confidentiality. Except where essential to the investigation, the investigator shall not reveal the identity of the complainant to the respondent or to any third party. If the investigator determines the necessity to reveal the complainant's identity, complainant's permission to do so must be secured.

(3) Conduct of Investigation. Upon determination of jurisdiction by the Department, the Office for Equal Opportunity shall promptly initiate an investigation of the matter.

(4) Investigation Reports. In all instances where an investigation has been conducted, an investigation report shall be prepared, with findings and recommendations. The complainant and the agency against whom the complaint is made shall be notified in writing of the disposition of the matter.

(5) Investigation by Primary Recipients. The Director, within 10 working days of the receipt of a complaint, may authorize a primary recipient to investigate the complaint and make

findings and recommendations subject to OEO approval. Upon delegation of authority by the Director, a primary recipient may investigate complaints filed against subrecipients. The investigative report will be provided to OEO within 30 days of authorization to investigate. The primary recipient may not investigate any complaint in which it, or any of its officers or employees is implicated. If at any time prior to its completion, it is determined that investigation of a complaint has been improperly conducted, the Director may withdraw the primary recipient's authority to investigate. If the complainant is dissatisfied with the findings of the investigation, the complainant may appeal the findings to OEO for its decision within 5 days of the complainant's receipt.

4. Compliance Review Procedures.

A. General. (28 CFR 42.407) (43 CFR 17.6a) This section prescribes the types of compliance reviews which will be conducted periodically to ensure that the Department's outdoor recreation programs are operated in compliance with the Act. Such reviews will cover NPS, primary recipient and subrecipient operations.

B. Compliance Review Responsibilities. (28 CFR 42.411) (43 CFR 17.5) The Office for Equal Opportunity shall periodically conduct onsite compliance reviews and desk audits of NPS primary recipients and subrecipients. Moreover, primary recipients shall review the operations of its subrecipients. These reviews shall be accomplished in accordance with Section 650.9.4E.

The office that conducts the compliance review shall prepare and issue a report on its findings and recommendations to the reviewed entity after the onsite review is completed to assist the review entity in voluntarily complying with the Act. However, remedial action must be initiated by the recipient or subrecipient to correct the deficiency(s). Where conditions of noncompliance have been found, such conditions must be resolved by the recipient within a reasonable period of time. A copy of the report and related correspondence shall be kept on record by the office performing the review for a period of 3 years. This information shall be made available to the OEO upon request.

C. Determinations of Compliance. All determinations of compliance with the Act shall be made by OEO. It is expected that NPS will review Title VI aspects of the program in conjunction with ongoing program reviews.

D. Selection Criteria.

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(1) Post-Award Reviews. In the selection of recipients and subrecipients for post-award review, OEO shall base selections on such factors as:

(a) available compliance information collected from previous reviews;

(b) frequency of past compliance reviews conducted of the recipients;

(c) community racial patterns;

(d) Title VI complaints of alleged discrimination;

(e) size of the federally assisted program or activity; and

(f) amount and type of Federal assistance to the recipient.

E. Compliance Reviews.

(1) Compliance Reviews of Primary Recipients by OEO. Recipient compliance shall be based on the following:

(a) Whether the primary recipient, in allocating Federal funds, has considered the criteria set out in Section 650.9.2C in meeting the nondiscrimination provisions of Title VI.

(b) Whether the primary recipient is adequately providing Title VI information to its subrecipients and by what means (i.e. through posters and brochures). Where necessary, whether bilingual information is also available.

(c) Whether Title VI complaints received by the primary recipient are forwarded immediately to OEO.

(d) The frequency and quality of all compliance assistance provided by the primary recipient for its subrecipients.

(e) Whether Title VI compliance responsibilities have been designated to qualified primary recipient staff personnel and whether such responsibilities are being effectively executed.

(2) Compliance Reviews of Subrecipients. Subrecipient compliance with the Act shall be based on the following:

(a) Whether and by what means the subrecipient notifies the public that its programs are offered on a nondiscriminatory basis:

(i) Whether the Title VI ("An Equal Opportunity for All") poster or one comparable is visible in conspicuous areas on the premises. (see Attachment 650.9A).

(ii) Where mailing and/or telephone lists are used to inform the public of subrecipient programs, whether such lists are comprised of a racial and ethnic cross-section of the community.

(iii) Where necessary, whether bilingual informational materials are provided the public.

(b) Whether racial data concerning minority participation in subrecipient programs is gathered and maintained for review, where program participation has been found to be deficient.

(c) Adherence to Title VI complaint procedures pursuant to Section 650.9.3.

(d) Whether records indicate that complaints of alleged discrimination have been received and forwarded to OEO.

(e) Where planning and advisory groups exist, whether membership includes minority representatives.

(f) Whether services and programs are comparable in minority and majority communities with respect to development and maintenance standards.

(g) Whether all persons have an equal opportunity to participate in programs and activities without discrimination or segregation by race, color or national origin. More specifically:

(i) Accessibility of facilities and services to the minority community.

(ii) Where admission fees are charged for program participation, whether such fees are equal in both minority and majority communities.

(iii) Adequacy of outreach program to the minority community.

F. If Non-Compliance is Found. (28 CFR 42.411)

(1) Voluntary Compliance Defined. Voluntary Compliance means willingness to correct conditions of noncompliance identified by complaint investigations or compliance reviews. Departmental regulations (43 CFR 17.7) require the resolution of an apparent condition of noncompliance by informal means whenever possible.

(2) Procedures for Achieving Voluntary Compliance.

(a) In every case where a complaint investigation or compliance review results in a finding of noncompliance, the Director shall notify the primary or subrecipient through certified mail of the apparent noncompliance. The notice shall clearly identify the conditions of noncompliance and offer a reasonable time to willingly comply.

(b) The Office for Equal Opportunity shall record the date the recipient received notice, and shall note and record the last day afforded the primary or subrecipient for voluntary compliance before initiating the administrative process to terminate Federal assistance.

(c) The primary or subrecipient may request a meeting for the purpose of discussing the problem areas or requirement for compliance. The principal investigator will accompany the Director or his designated representative to the meeting for the above stated purpose.

(d) The Director or his designee shall approve the primary or subrecipient's voluntary compliance plans, methods, procedures, and proposed actions if such approval will result in compliance with the Act.

(3) Sanctions Available to the Department. When an applicant for or a recipient of Federal financial assistance is found to be in noncompliance with the Act, and compliance cannot be achieved by voluntary means, the Act provides several enforcement alternatives. If discrimination based on race, color, or national origin or any other technical violation of the Act is found in an applicant's program, the Office for Equal Opportunity can recommend temporary deferral of federal funds to the agency awarding the grant until full compliance has been satisfactorily established. If the grant has been made, the Office for Equal Opportunity may initiate administrative proceedings for the termination of current

and future funding. Alternatively, the OEO may enforce the Act by "any other means authorized by law." Although not explicitly stated by the Act, such other means include referral to the U.S. Department of Justice for appropriate judicial enforcement.

No order suspending, terminating, or refusing to grant assistance to a primary or subrecipient can become effective until the Office for Equal Opportunity has:

(a) Advised the primary or subrecipient of its failure to comply and determined that compliance cannot be secured by voluntary means.

(b) Made an express finding on the record after opportunity for hearing of a failure by the applicant or primary or subrecipient to comply with a Title VI requirement.

(c) Obtained approval of the action to be taken from the Secretary of the Interior (43 CFR 17.7(c)).

(d) Ensured that the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved.

(e) Submitted a full written report of the circumstances and the grounds for such action to the Secretary.

G. If No Conditions of Non-Compliance Are Found. Where the Director or his designee determines that review and investigation findings do not support an allegation of discrimination, the complaint shall be administratively closed. Within five (5) working days of the closing date, the complainant will be notified through certified mail of the decision and given the reason(s) for the decision reached.

H. Referrals to the U.S. Department of Justice. (28 CFR 42.408 & 411) The Department shall report to the Assistant Attorney General of the Civil Rights Division on January 1 and July 1, of each year, the receipt, nature and disposition of all processed Title VI complaints. Any conditions of noncompliance in a recipient program or activity which cannot be voluntarily resolved by OEO, shall also be reported to the Assistant Attorney General for appropriate judicial enforcement within 60 days.

MINORITY BUSINESS ENTERPRISE (MBE) DEVELOPMENT

1. General

A. Authority. These guidelines were established under the authority of Executive Order 12432 dated July 14, 1983, Minority Business Enterprise Development.

B. Purpose. These guidelines were established to provide detailed information on the compliance requirements of Executive Order 12432. They provide guidance and oversight for programs for the development of minority business enterprise and to implement the commitment of the Federal Government to the goal of encouraging greater economic opportunity for minority entrepreneurs.

C. Definitions.

(1) "A MBE concern" is a business which is:

(a) certified as socially or economically disadvantaged by the Small Business Administration (SBA);

(b) certified as a minority business enterprise by a State or Federal agency; and

(c) an independent business concern which is at least 51 percent owned and controlled by a minority group member(s).

(2) A "minority group member" is a citizen of the United States and one of the following:

(a) Black American;

(b) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);

(c) Native American (American Indian, Eskimo, Aleut, or native Hawaiian); or

(d) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian subcontinent).

(3) A women's business enterprise concern is a business which is certified as such by a State or Federal agency and is an independent business concern which is at least 51 percent

owned by a woman or women who also control and operate it.

2. Compliance Responsibilities.

A. State. The State shall comply with Executive Order 12432, Minority Business Enterprise Development by:

(1) Placing minority business firms on bidder's mailing lists;

(2) Soliciting these firms whenever they are potential sources of supplies, equipment, construction, or services;

(3) Where feasible, dividing total requirements into smaller needs, and setting delivery schedules that will encourage participation by these firms;

(4) Using the assistance of the Minority Business Development Agency of the Department of Commerce, the Small Business Administration, the Office of Small and Disadvantaged Business Utilization, Department of the Interior (DOI), the Business Utilization and Development Specialists who reside in each DOI bureau and office, and similar State and local offices, where they exist;

(5) Reporting quarterly on all active projects approved after September 30, 1984, which involve $500,000 or more in L&WCF assistance (except for acquisition projects). Such reports will be submitted on a SF-334 (Attachment A) to the National Park Service Regional Office. The first report will be submitted prior to the commencement of any construction.

B. National Park Service. The National Park Service (NPS) is committed to minority business development and to encourage economic opportunity for minority entrepreneurs through the development of annual plans and development of procedures to provide opportunity for minority firms to participate. NPS is required by Executive Order 12432, to file quarterly reports concerning performance of Minority Business Enterprise (MBE) Development. L&WCF compliance will be satisfied by:

(1) Incorporating a statement pertaining to MBE compliance in the general provisions of all grant agreements;

(2) Reporting quarterly on all grants (except for acquisition projects) which involve $500,000 or more in L&WCF assistance;

(3) For those grants amounting to $500,000 or more in L&WCF assistance, there will be a one-time submission of the form SF-334 when no subcontracting opportunities exist under a grant or cooperative agreement;

(4) Block 7 of the form SF-334, used to furnish the name, address, phone number, dollar amount, and award date for each subagreement (subcontract), is no longer required to be filled out unless the subagreement is $10,000 or more.

NPS Regional Offices will transmit to the WASO Recreation Grants Division SF-334's documenting project sponsor efforts to hire minority business firms.

SF 334's are due to the Washington Office from the Regions within one month following the end of each fiscal quarter (i.e., January 31, April 30, July 31, and October 31). The NPS Washington Office will consolidate the reports from the Regions and forward them, through the Assistant Director, Minority Business Enterprise, to the Department of the Interior Office of Small and Disadvantaged Business Utilization (OSDBU) within 10 days from the dates indicated above.

OMB NOS> 9999-0001 AND 0640-0017
EXPIRES: APRIL 30, 1990

MBE/WBE* UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENT, AND OTHER FEDERAL FINANCIAL ASSISTANCE

PART 1. (NEGATIVE REPORTS MAY BE REQUIRED)

1A FEDERAL FISCAL YEAR 19_____	1B. REPORTING QUARTER (Check appropriate box) ☐ 1st (Oct.-Dec.), ☐ 2nd (Jan.-Mar.), ☐ 3rd (Apr.-Jun.), ☐ 4th (Jul.-Sep.)
2 FEDERAL FINANCIAL ASSISTANCE AGENCY (Department/Agency, Bureau/Administering Office, Address)	3. REPORTING RECIPIENT (Name and Adedress)
2A. REPORTING CONTACT / PHONE:	3A. REPORTING CONTACT / PHONE.
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER	4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM
4C. TYPE OF FEDERAL ASSISTANCE AGREEMENT ☐ GRANT ☐ COOPERATIVE AGREEMENT ☐ OTHER FEDERA FINANCIAL ASSISTANCE	
5A. PERIOD WHEN PROCUREMENT UNDER THIS AWARD WILL OCCUR START DATE:	END DATE:
5B. AMOUNT OF TOTAL PROJECT DOLLARS PLANNED FOR PROCUREMENT THIS FISCAL YEAR $	5C. RECIPIENT'S MBE/WBE GOALS (Percednt of total procurement dollars (5b) for each) MBE % WBE %
5D. MBE/WBE PROCUREMENT ACCOMPLISHED THIS QUARTER MBE $ WBE $	5E. NEGATIVE REPORT (Check) ☐ SEE INSTRUCTIONS
6 COMMENTS :	
7. NAME OF AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE

*WBE reporting is optional at thed direction of Federal financial assistance agnecy

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORMN 334
P rescribed by DEPARTMENT OF COMMERCE

PART II. MBE/WBE PROCUREMENTS OVER $10,000 MADE DURING REPORTING QUARTER

Procurement Made By		Business Enterprise		$ Value of Procurement	Date of Award (MM/DD/YY)	Type of Product or Service[1] (Enter Code)	Name/Address of MBE/WBE Contgractor or Vendor [1]
Reciopient	Other	Minority	Women				

[1] Type of product of service codes:

1 = Agriculture
2 = Mining
3 = Construction
4 = Manufacturing
5 = Transportation
6 = Wholesale Trade
7 = Retail Trade
8 = Finance, Insurance, Real Estate
9 = Services
a = Business Services
b = Professional Services
c = Repair Services
d = Personal Services
10 = Other

INSTRUCTIONS

Manual Release 151
Replaces all preceding manual releases

MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS. AND OTHER FEDERAL ASSISTANCE
Standard Form 334

A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138, and 12432 and OMB Circular A-102. Standard Form 334 must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance valued at $500,000[1] or more *and* which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to agency award officials within one month following the end of each Federal fiscal year quarter (i.e. January 31, April 30,1 July 31 and October 31) during which *any* procurement in excess of $10,000 is actually executed under this assistance agreement.

B. Definitions:

Procurement is the acquisition athrough order, pruchase, lease or barter of supplies, equipment, construction or services needed to accomplich Federal assistance programs.

A *minority business enterprise* (MBE) is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; *and* (2) whose daily business operations are managed and directed by one or more of the minority owners.

There is no standard definition of *minority individuals* used by all Federal financial assistance agencies. However, recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive Order 11625. The reporting contact at your Federal financial assistance agency can provide additional information.

A *woman business enterprise* (WBE) is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women; *and*, (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are suggested:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's AMinority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/ WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable reporting quarter. (Federal fiscal year runs from AOctober 1 through September 30.)
2. Identify the Federal financial assistance de- p artment or agency including the bureau, office or other subactivity which administers your financial assistance agreement.
3. Identify the agency, state, authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.

4a. Assistance agreement number assigned by Federal financial assistance agency.

4b. If appropriate, identify specific department or agency Federal financial assistance program under which this project is awarded.

4c. Check type of Federal assistance.

5a. Period during which contracts and other purchasses under this award will actually be executed.

5b. Includes procurement using Federal funds plus recipient matching funds and funds from other sources.

5c. Portion ot total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of the Federal financial assistance agency, a fair share goal shall be determined byh each recipient.

5d. Dollar amount of all MBE/WBE contracts awarded under this assistance agreement this quarter.

5e, Check only if one or more procurements in excess of $10,000 were executed this reporting quarter but *no* MBE/WBE procurements occurred. Sign

[1] There is no reporting threshold for the Environmental Protection Agency (EPA). Recipients of EPA financial assistance must repe size of the award.

and date form and eturn it to Federal financial assistance agency.

6. Additional comments or explanations. Please refer to specific item number(s) if appropriate.

7. Name and title of official administrator or designated reporting official.

8. Signature and month, day, year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement over $10,000 made under this assistance agreement during the reporting quarter, provide the following information. (Recipients may also report on individual MBE/WBE procurements of less than $10,000 if they want these credited toward their MBE/WBE goals, however, reporting on smaller procurements is not required.)

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.

2. Check MBE or WBE.

3. Dollar value of procurement.

4. Date of aware, shown as month, day, year.

5. Using codes at the bottom of the form, dientify type of product or service acquired through this procurement (eg., enter 1 if agriculture, 2 if mining, etc.).

6. Name and address of MBE/WBE firm.

TYPES OF APPLICATIONS

1. **General.** There are three types of applications to be used by the States in requesting L&WCF Assistance from the Service: the Complete Single Project, the Consolidated Grant, and the Streamlined Single Project. These application types vary in the amount of documentation required for submittal to the Service and in the extent of review by the Service for compliance with program requirements.

2. **Complete Single Project.** This application requires the States to submit to the Service all information which has a significant bearing on the project for complete review by the Service in determining compliance with program requirements. This type of application must be used by all SCORP Planning projects and by proposals for the Secretary's Contingency Reserve Fund.

   A. Documentation to be submitted to the Service for a Complete Single Project application includes the following:

      (1) Project Agreement (original and one hand-signed copy plus one other copy);

      (2) A Description and Notification Form (DNF) (original);

      (3) Intergovernmental Review E.O. 12372 comments (one copy);

      (4) Environmental information in accord with Chapter 650.2 requirements (one copy);

      (5) A Standard Form 424 (one signed copy);

      (6) A dated project boundary map in accordance with Section 660.2.6 and a location map (one copy each);

      (7) Parcel maps and/or development plan including floor plans as appropriate (one copy each);

      (8) DI 1350 - Title VI Assurance of Compliance (one copy with original signature);

      (9) One DI-1953 Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Primary Covered Transactions;

      (10) Acquisition schedule which identifies parcel(s) to be acquired, acreage, and estimated value (one copy);

(11) On-site inspection report in accord with the on-site inspection agreement (one copy);

(12) A SCORP reference to indicate how the project meet priority outdoor recreation needs as identified in the Statewide Comprehensive Outdoor Recreation Plan and Action Program (one copy);

(13) All other information which has a significant bearing on the project.

3. Consolidated Grant. A consolidated grant may encompass a number of project elements (i.e. single projects) under one application and agreement. Each element of a consolidated grant may consist of acquisition and/or development projects sponsored by State and/or local public agencies. A State may include all or a portion of its available apportionment during a fiscal year under one consolidated grant. A consolidated grant must contain at least five (5) project elements.

A. Documentation to be submitted to the Service for a consolidated grant will be limited to the following:

(1) Project agreement covering the consolidated grant as a whole (original and one hand-signed copy plus one other copy);

(2) A Description and Notification Form for each project element (original);

(3) Intergovernmental Review E.O. 12372 comments for each project element, (one copy);

(4) Environmental information in accord with Chapter 650.2 requirements for each project element of the consolidated grant (one copy);

(5) A Standard Form 424 for the consolidated grant as a whole (original);

(6) A dated project boundary map in accordance with Section 660.2.6 for each project element (where the map does not adequately show project location, a location map will be provided.); and

(7) A SCORP reference for each project element to indicate how the project meet priority outdoor recreation needs as identified in the Statewide Comprehensive Outdoor Recreation Plan and Action Program (one copy);

B. Documentation to be retained by the State for a consolidated grant is as follows:

(1) One Standard Form 424 will be completed for the consolidated grant as a whole;

(2) All documents required for a Complete Single Project Application (see Section 660.2.A.) will be completed for each project element; and

(3) All other information required by the L&WCF Manual.

C. Flexibility. The consolidated grant allows the State to adjust funding levels and to add or withdraw project elements in accord with the following guidelines:

(1) The State may shift funds between project elements to increase an element's L&WCF assistance (as indicated in the Description and Notification Form) by no more than 50 percent of the original L&WCF assistance level. Increases beyond this limitation will require an amendment approved by the Service. Amendments will be required for changes to the L&WCF Fund amount indicated on the consolidated grant agreement. L&WCF assistance for any one project element may not exceed 50 percent of that element's total cost. Where a project element's funding is reduced, the State is responsible for assuring completion of a viable recreation project as agreed upon in the project scope.

(2) The State may include in the total cost of the consolidated grant a contingency fund not to exceed 10 percent of the sum of the cost of all project elements. The withdrawal of an element will not affect the original contingency amount. The amount included as a contingency will be indicated on the bottom of the first page of the project agreement.

(3) Project elements may be added by amendment to the consolidated grant only in the fiscal year in which the consolidated grant is approved.

(4) Project elements may be withdrawn from a consolidated grant unilaterally by amendment prior to the first billing for that project element. After the first payment and prior to project element completion, project elements may be terminated upon agreement of both the State and the Service by amendment. However, the provisions of Section 6(f) of the Land and Water Conservation Fund Act will apply to any

lands acquired or developed with Fund assistance, even if the project element is terminated. (see Chapter 675.8).

D. Exclusions. The following conditions will disqualify a project element for inclusion in a consolidated grant application.

(1) The project element involves supplemental funding (see Section 670.1.5.).

(2) The project element involves staged acquisition or development plans.

(3) The project element is funded from the Secretary's Contingency Reserve Fund.

(4) The project element involves a property eligible to be listed on the National Register of Historic Places (see Chap. 650.4) unless its inclusion in the consolidated grant is approved by the Service in consultation with the Advisory Council on Historic Preservation.

(5) The project element is a SCORP Planning project.

4. **Streamlined Single Project.** Under this option, the State will be required to submit only limited documentation for a single project. This option will be available for acquisition and development projects not exceeding $100,000 in L&WCF assistance. (see Section 660.1.5).

A. Documents to be submitted by the State to the Service for a Streamlined Single Project application include:

(1) A Standard Form 424;

(2) Project agreement (original and one hand-signed copy plus one other copy);

(3) Environmental information in accord with Chapter 650.2 guidelines;

(4) A dated project boundary map in accordance with Section 660.2.6. (Where the map does not adequately show project location, a location map will also be provided);

(5) One DI-1953, Certification Regarding Debarment Suspension, and other responsibility matters, primary covered transactions;

(6) A Description and Notification Form; and,

(7) A SCORP reference to indicate how the project meets priority outdoor recreation needs as identified in the Statewide Comprehensive Outdoor Recreation Plan and Annual Action Plan (one copy).

B. All other documentation required for a Complete Single Project Application listed under Section 660.1.1A and pertinent information relating to other L&WCF Manual requirements will be retained by the State.

C. Use of the Streamlined Single Project Application with unlimited funding may be allowed by the Regional Director (see Section 660.1.5).

5. **Implementation of Consolidated Grant and Streamlined Single Project Application.** Use of the Consolidated Grant and unlimited funding under the Streamlined Single Project application type will be phased into the program based on each State's demonstrated ability to utilize these approaches. The use of these two application types may be extended to individual States by the Regional Director commensurate with the demonstrated quality of program administration by the State. The decision to extend such authority will be based on the adequacy of the State's staffing level to handle additional administrative responsibility; the success of the State's experience with the certification project approach (see Section 660.5.6); recent audit records; Regional Office program review findings; and the State's record for submitting properly documented and actionable project proposals.

In utilizing these two application types, the Service will rely on the certification by the State of project eligibility and legal compliance, and limit its review to the adequacy and correctness of the documents submitted. Therefore, more emphasis will be placed on pre-approval program coordination and assistance by the Service. This will be particularly emphasized for Consolidated Grants where Service personnel will assist and consult with the State in the packaging and review of the project elements.

6. **Contingency Reserve Projects.** Proposals for assistance from the Secretary's Contingency Reserve Fund must meet the criteria found in Chapter 600.4 and be submitted as a Complete Single Project application.

APPLICATION AND AMENDMENT PROCEDURES

1. **General.** This chapter deals with the procedures and requirements for submitting an acquisition and/or development project application to NPS for L&WCF assistance and for amending and approving such projects. The application procedures for planning projects are covered in Part 630.

2. ***Background to the Application.*** *Before* submitting an application to NPS for L&WCF assistance, the following conditions must be met:

   A. The State's SCORP program must meet the requirements of the Land and Water Conservation Fund Act and the requirements of Part 630. Project applications must be received by the Service while there is a sufficient period of eligibility remaining to permit thorough processing of the application. Applications which cannot be processed prior to the revocation of eligibility will not be acted upon until the State's eligibility has been reinstated.

   B. The State's apportionment balance from the National Park Service must be adequate to cover the proposed project or stage to be activated, or Land and Water Conservation Fund Contingency Reserve monies must be required for that part of the Federal share for which the State's remaining unobligated L&WCF apportionment is insufficient.

   C. The sponsoring agency must have developed the plans for its proposed project to the point where the project scope can be described and reasonable estimates of cost can be made.

3. **Submission of an Application.** Project applications should be received at least 60 days in advance of the proposed acquisition or the beginning of construction (see Section 670.1.3B for exceptions).

4. **Application Forms.** All applicants will use the Federal Assistance Application For Construction Programs: Standard Form 424 and OMB Form 80-RO184. (see Attachment 660.3A). One signed copy of the above forms will be submitted to the Service when using a Complete Single Project Application. For Consolidated Grant and Streamlined Single Project applications, the State shall prepare both forms, retaining the 80-RO184 on file and submitting one signed copy of the SF424 to the Service.

   For Consolidated Grants, these forms will be prepared for the whole grant and not for each project element. Instructions for filling out these forms are included in Attachment 660.3A.

For staged projects (described in Section 660.5.5B), a separate Part III, Section B of OMB Form 80-RO184 for each stage must be included in the application. As approval is requested on a qualified stage, a revised Part III, Section B must be prepared if changes have occurred in the stage since initial qualification which increases or decreases costs or alters the allocation of funds among the stage's scope items. Note that a staged project may not be submitted as an element of a consolidated grant.

5. Agreement Forms. A project agreement (see Attachment 660.3.B) which establishes the framework for accomplishing the project will be negotiated between the Service and the State for each project. Execution of the agreement by the Service constitutes its approval of the project.

A. Framework of the Agreement. The major points of the project agreement are as follows:

(1) It sets forth the obligations assumed by the State through its acceptance of Federal assistance, including the rules and regulations applicable to the conduct of a project under the Act and any special terms and conditions to the project established by the Service and agreed to by the State.

(2) It obligates the United States to provide grants up to a designated amount for eligible costs incurred on the project on the basis of information and cost estimates contained in the proposal. This amount is the "support ceiling," and may vary as a percentage of total eligible costs, but in no event will it exceed 50 percent of the total cost indicated on the agreement forms.

(3) It sets forth methods of costing, accounting, incurrence of costs, and similar matters.

(4) The date of approval is the beginning of the project period, unless the Service has granted for that project a waiver of its policy of not approving costs retroactively (see Section 670.1.3.B.). A termination date is included. The total project period should normally be three years, and should not exceed five years. When a project element is added to a consolidated grant by amendment, the project period for that element begins when the amendment is approved.

(5) It describes what is to be done and how it will be accomplished. If the project is to be staged, the sequence and content of the stages are shown.

B. Submission of the Agreement. In applying for L&WCF assistance, the State will submit three (3) copies of the project agreement to the

Service. The original and one copy of the agreement must be hand signed by the State Liaison Officer or the officially designated alternate and be submitted by the State agency designated by State law or the Governor to administer the L&WCF program in the State. The General Provisions of the project agreement (see Attachment 660.3B) are included by reference in the project agreement, and therefore they need not be submitted to the Service as part of the agreement.

(1) For consolidated grants, only one agreement will be negotiated between the State and the Service to cover all the project elements. The project scope and fund amount of each project element, as written of the official project agreement for consolidated grants. Also the amount of contingency funds (see Section 660.1.3C(2)) included in the consolidated grant should be indicated at the bottom of the first page of the agreement form.

(2) For staged projects, the agreement form will indicate the amount of funding being requested for the first stage. Approval of additional funds for future stages will be handled as amendments to the project agreement.

C. Notification to the State. A signed copy of the approved agreement will be returned by NPS to the State Liaison Officer and will constitute necessary notification of project approval.

D. Local Sponsor Responsibilities. The agreement binds the Federal Government and the State to certain obligations. When the project sponsor is a local unit of government or an Indian Tribe, the State Liaison Officer will make such arrangements with the sponsor as necessary for the successful completion of the project and the enforcement of Federal laws and regulations.

6. **Dated Project Boundary Map.** In applying for L&WCF assistance the State will submit to the Service a signed and dated project boundary map which clearly delineates the area to be included under the conversion provisions of Section 6(f)(3) of the L&WCF Act. (see 675.9.3). For a consolidated grant, one dated project boundary map will be prepared for each project element.

A. Project Area. At a minimum, this area must be a viable public outdoor recreation area which is capable of being self-sustaining without reliance upon adjoining or additional areas not identified in the scope of the project. Except in unusual cases where it can be shown that a lesser unit is clearly a self-sustaining outdoor recreation resource, this area will be the park, open space, or recreation area being developed or added to. Exceptions will be

made only in the case of larger parks where logical management units exist therein. In no case will the areas covered by Section 6(f)(3) of the Act be less than that acquired with L&WCF assistance.

B. Requirements. The project boundary map and/or attachments thereto will identify the following:

(1) The title and number of the project or project element. (2) The date of map preparation.

(3) The area(s) under lease and term remaining on the lease(s).

(4) All known outstanding rights and interests in the area held by others. Known easements, deed/lease restrictions, reversionary interests, etc. are to be included. Those outstanding rights and interests which, in the opinion of the State, would not adversely impact the utility and viability of the recreation area if excercised and not intended to be included under the conversion provisions of Section 6(f)(3) of the Act should be specifically identified (see Sections 640.3.4 and 660.5.2C).

(5) The project area in sufficient detail so as to be legally sufficient to identify the lands to be afforded protection under Section 6(f)(3) of the Act. The following methods of identification are acceptable:

- Deed references.
- Adjoining ownerships.
- Adjoining easements of record.
- Adjoining water bodies or other natural landmarks.
- Metes and bounds.
- Government survey.
- Where one or more of the above methods are not readily suited for area identification, measurements from permanent locators may be used. A formal survey is not required, however.

C. Review. Prior to final approval of a project, the Service will review and accept the dated project boundary map's identification of the area to be protected by Section 6(f)(3) of the Act as well as any land or rights in land excluded from that protection.

D. Alteration to Project Area. Prior to the date of final billing for the project or project element, the State and the Director may mutually agree to alter the project area to provide for the most satisfactory unit intended to be administered under the provisions of Section

6(f)(3), except that acquired parcels are afforded Section 6(f)(3) protection as L&WCF reimbursement is provided.

7. Description and Notification Form (DNF). The Description and Notification Form (see Attachment 660.3D) will be used to provide data input for the Service's automated project information system. Also, facility codes and target dates indicated on this form by the State will provide additional detail on the project.

The State will submit a Description and Notification Form for each single project or project element.

The Description and Notification Form will serve added functions for consolidated grants. The project scope for each project element listed in the consolidated grant agreement will be set forth in the "scope narrative" section of the Description and Notification Form. In this case, the "scope narrative" section is part of the official project agreement. The funding for the project element will also be indicated on the DNF form and will become a part of the official project agreement. Also the Description and Notification Form will provide the detailed information on each project element needed to supplement the SF 424 for information and/or notification purposes.

A. Project Scope. The Scope Narrative section of the Description and Notification Form will be completed for each project element of a Consolidated Grant. In addition Regional Directors or States may decide to complete this section for single projects also.

(1) For acquisition projects the number of acres to be acquired and the type of conveyance will be specified. The size of the acquisition may be increased or decreased by 20 percent or 10 acres, whichever is greater, before an amendment is required. However, L&WCF assistance will not be provided if it is determined by the Service that a reduction in project size results in a non-viable recreation area. Increases which may have a significant impact on the environment will be coordinated with NPS in accordance with Chapter 650.2.

(2) For development projects, the project scope will be defined by the Primary Facility Groups identified in paragraph (3) below. Facilities listed under each Primary Facility Group are included in the project scope by definition. Changes only involving facilities within a Primary Facility Group may be made without an amendment. However, changes involving facilities in different Primary Facilities Groups will require an amendment. In either case, changes which may have a significant impact on the environment will be coordinated with the Service in accordance with Chapter 650.2.

Facilities not listed in a Primary Facility Group but named in the scope narrative of the project agreement and/or DNF will be treated as individual Primary Facilities Groups for amendment purposes.

(3) The Primary Facility Groups are identified by A,B,C...and the subgroups are identified by 1,2,3...A Primary Facility Group may also include any of the Primary Facility Groups listed in parentheses as a subgroup.

A Campgrounds (A,B,C,E,H,Q,S)
1. tent sites
2. trailer/camper sites
3. group campground
4. day camp

B Picnic areas (B,C,H,Q,S)
1. family site
2. group shelter

C Sports and playfields (B,C,H,Q)
1. general purpose playfields
2. baseball/softball
3. football/soccer
4. tot lot
5. tennis courts
6. other courts
7. rifle/pistol range
8. trap/skeet field
9. archery range
10. rodeo area
11. track facility

D. Golf course (B,D,H,Q,S)
1. regular course
2. par 3 course
3. driving range

E. Swimming facilities (B,E,H,Q,S)
1. pool (except sheltered pools)
2. wading pool
3. spray pool
4. swimming beach
5. bathhouse

F. Boating facilities (B,F,G,Q,S)
1. launch ramp
2. berths

3. boat lift

G. Fishing facilities (B,F,Q,G)
1. pier
2. stream improvement
3. fish access

H. Trail (B,H,Q)
1. hiking
2. horse
3. bicycle
4. motorized
5. nature
6. exercise

J. Winter sports facilities (J,Q,)
1. ski lift
2. ski slope
3. ski jump
4. sled/toboggan run
5. skating rink
6. ski trails
7. snowmobile trails
8. warming huts

K. Sheltered pool (K, Q)

L. Sheltered ice rink (L, Q,)

M. Hunting (B, H, M, Q)

N. Natural area (B, H, N, Q)

P. Passive parks (B, N, Q, P)

Q. Support facilities (Q)
1. walkways
2. site improvement/landscaping
3. utilities
4. equipment
5. roads
6. parking
7. lighting
8. signs
9. comfort station
10. concession bldg.
11. maintenance bldg.

R. Amphitheater/Band Shell (Q, R)

S. Lake Impoundments (Q, S)

T. Visitor Information Center (T, Q,)

U. Interpretive Center (U, Q,)

B. Project Period. A project period approximating three years but not exceeding five years will be used on the agreement and DNF forms for single projects. All new consolidated grants will be limited to a three year project period. This reduces the necessity for amendments and improves program management flexibility. Planning projects are excluded from this policy.

(1) Target dates. Because most projects should be completed in less than five years, target dates will be provided for each project and project element in order to track progress and performance. The target dates will be entered on the Description and Notification Form. For single projects these dates will agree with the work projections indicated under Part IV (Program Narrative) of the Application Form.

(2) Time extensions. A period of one year shall be considered as the minimum time extension of a project period when amending a project.

(3) Consolidated Project Extensions. All new consolidated projects will be limited to a three year project period. Before any time extension is granted, all elements of a consolidated project which are completed must be closed out. One year will be the maximum period for any time extension to a consolidated project or element. Approval for any time extension for a consolidated project or element has been delegated to the Chief, Division of Recreation Grants.

When a time extension is requested, the following status report must be submitted for each element (including those closed out) of the consolidated project:

a. original obligation amount;
b. actual or current obligation amount;
c. amount expended;
d. percent completed;
e. status (i.e. closed out or active).

(4) Beginning and Ending Dates. The beginning date of a project normally will be the date of approval. When a waiver of

retroactivity has been granted, the effective date of the waiver shall be used as the beginning date of the project period. In the case of a project element added to a consolidated grant by amendment, the beginning date will be the date the amendment is approved. The ending date for the Secretary's Contingency Reserve Fund projects will be completed by the Regional Office in accordance with Chapter 600.4.

8. Information. All significant data must be disclosed in the application and its supporting documents. Failure by the State to consider information which might have a significant bearing on the eligibility of a proposal might be cause for refusal, cancellation, or recovery of Federal assistance.

The project proposal, including all information required by the Service to be on file at the State level, is considered to be a public record. However, there may be some information which the project sponsor or the State wishes to keep confidential. These items should be identified specifically to the Service. The Service will consider such requests on their merits and within the limits imposed by Federal regulations and statutes on public disclosures.

Copies of proposals may be distributed by NPS to other public agencies for information or comment.

9. Amendments. An amendment form (see 660.3 Attachment C) is required to add to or alter the signed agreement. When the amendment is signed by the Service it becomes part of the agreement and supersedes it in the specified matters.

A. Amendments are required in the following situations:

(1) To activate a qualified stage of a staged project (see Section 660.2.4). In this case, an amendment will be necessary each time funding is requested for the activation of another stage. The amendment will indicate the stage to which it applies and the amount of the new obligation.

(2) To add or delete a project element of a consolidated grant.

(3) To increase or decrease the total L&WCF assistance for a single project or consolidated grant.

(a) Unless a new element is added to a consolidated grant or an increase to an existing element exceeds the allowed flexibility provided in (4) below, added funds will be placed in the project's contingency fund (see 660.1.3.C.).

(b) Decreases in L&WCF assistance will be taken from a consolidated project's contingency or individual elements as specified by the State.

(4) To increase the L&WCF assistance for a project element when it exceeds 50 percent of the element's original funding level, and for every increase thereafter. (see Section 670.1.4).

(5) To add or delete a Primary Facility Group of the project scope (see Section 660.2.7A and 670.1.4).

(6) To increase or decrease the acreage to be acquired by more than (6) 10 acres or 20 percent whichever is greater (see Section 660.2.7A). Any major change in the location of the project site to be acquired shall require approval by NPS.

(7) To extend the project period.

(8) To amend the project area due to a Section 6(f)(3) conversion that involves off site replacement land, replacement at a later date, or a significant number of acres to be converted (see Chapter 675.9.3C).

B. Documentation. The following items should be submitted by the State to the Service when requesting an amendment:

(1) An Amendment to the Project Agreement Form (see Attachment 660.3C) (3 copies, the original and one copy must be hand signed);

(2) Standard Form 424 (one copy);

(3) Letter explaining the changed conditions and how they affect the project;

(4) Environmental information in accord with Chapter 650.2 (required only for amendments which may have an affect on the environment);

(5) If an amendment to the project agreement, for both staged and non-staged projects, changes or adds to any information included in the initial application (Standard Form 424), the State shall prepare revised parts of the above form for those parts that are affected by the amendment. (see Attachment 660.3A).

(6) One DI-1953, Certification regarding debarment, suspension and other responsibility matters, primary covered

transactions, when the amendment involves an increase in the dollar amount.

The Service will complete the Description and Notification Form unless the Regional Office requests the State to do so.

When more than one project element of a consolidated grant is amended, only one Standard Form 424 for the consolidated grant will be required. The Service will attach a revised project element Description and Notification Form to the Standard Form 424 for notification purposes.

C. Time Extensions. An amendment to extend the ending date of the project period cannot be made for less than one year [see also 660.2.7.B.(2)].

D. Unexpended Balance. Amendments are not necessary to return the unexpended balance, at the time of project completion, to the State's apportionment.

E. Consolidated Contingency Amount. When a consolidated project element is amended to increase the L&WCF amount, the increase will be taken from the consolidated grant contingency amount unless the State amends the consolidated grant's total L&WCF assistance to allow for the increase or indicates reductions to other elements. When a consolidated project element is deleted, the L&WCF assistance allocated to that element will be placed in the project contingency unless deobligated from the consolidated grant by amendment.

10. **Withdrawal or Changes in Project Application.** Prior to approval, an application may be altered or withdrawn by a letter from the State Liaison Officer to the Regional Office. The new material pertaining to a suggested change will be made a part of the application and will be evaluated in conformance with the criteria found in Chapter 660.5. A new project agreement may be required if the change is significant.

An approved project or project element can be withdrawn unilaterally by the State at any time before the first payment on the project or element is made. A project element must be withdrawn from a consolidated grant by amendment. Project elements can be added to a consolidated project only in the fiscal year in which the project is approved [see also 660.1.3.C.(3)].

APPLICATION FORMS

1. **General.** This chapter contains the forms used in applying to the Service for Land and Water Conversation Fund Assistance. These forms and related material are contained in the following attachments:

   A. Federal Assistance Application for Construction Programs: SF 424

   B. Land and Water Conservation Fund Project Agreement.

   C. Land and Water Conservation Fund Amendment to the Project Agreement.

   D. Land and Water Conservation Fund Description and Notification Form.

   E. Documentation to be sent from Regional Office to Washington Office.

   F. Federal Assistance Award Data System Reporting Form.

   Instructions for completing each form are included in these attachments. Procedures for submission of these application forms to the Service are discussed in Chapters 660.1 and 660.2.

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF ASSISTANCE *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER NO..(EIN)

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (specify): _____

8. Type of application:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSTANCE NUMBER:

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT*(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	*Ending Date*

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELIQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Manual Release 151
Replaces all preceding manual releases

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

   --"New" means a new assistance award.

   --"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

   --"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal Agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include deliquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED 88/12/01	Applicant Identifier LAWCON 200
3. DATE RECEIVED BY STATE	State Application Identifier OR 860528-062-2
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier 4100200.1

1. TYPE OF ASSISTANCE — Application: [X] Construction [ ] Non-Construction; Preapplication: [ ] Construction [ ] Non-Construction

5. APPLICANT INFORMATION

Legal Name: Oregon

Organizational Unit: State Parks Department

Address (give city, county, state, and zip code): 525 Trade St.,S.E. Salem (1810), OR (41) 97310 Marion Co. (047)

Name and telephone number of the person to be contacted on matters involving this application (give area code): Mr. Ted Green (503) 378-0000

6. EMPLOYER IDENTIFICATION NUMBER NO.(EIN): 0 0 — 0 0 0 0 0 0 0

7. TYPE OF APPLICANT: (enter appropriate letter in box) [A]

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (specify): _____

8. Type of application: [ ] New [ ] Continuation [X] Revision

If Revision, enter appropriate letter(s) in box(es): [A] [C]

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: Department of the Interior (1443) National Park Service, Pacific Northwest Region

10. CATALOG OF FEDERAL DOMESTIC ASSTANCE NUMBER: 1 5 . 9 1 6

TITLE: Outdoor Recreation Acq. Dev. & Planning

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: State Parks 86-88 Rehab. Rehabilitation of 17 existing State Parks. Amendment to increase costs and extend expiration.

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Oregon 41*****

13. PROPOSED PROJECT: Start Date 86/03/20; Ending Date 90/12/30

14. CONGRESSIONAL DISTRICTS OF: a. Applicant 05; b. Project See Attached

15. ESTIMATED FUNDING

a. Federal	$ 20,000	.00
b. Applicant	$ 20,000	.00
c. State	$	.00
d. Local	$ 10,000	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$ 50,000	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES, THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE 85/06/01

b. NO. [ ] PROGRAM IS NOT COVERED BY E.O. 12372

[ ] OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELIQUENT ON ANY FEDERAL DEBT? [ ] Yes If "Yes," attach an explanation [X] No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Mr. Big Park	b. Title: SLO	c. Telephone number: (503) 378-0000
d. Signature of Authorized Representative: Big Park		e. Date Signed: 12/1/88

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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SF 424 Additional Information

11. State Parks 86-88 Rehab.

Rehabilitation of 17 existing State Parks in 3 counties. This is an amendment to extend the date of the original project one year, and to increase the Federal share by $20,000. The three counties are also contributing a local combined share of $10,000 for this amendment.

Congressional districts of project:

14b. 05
03
02
10
07

OMB Approved No. 0348-0041

BUDGET INFORMATION — Construction Programs

Note: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Column a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. *Project inspection fees*	$ .00	$ .00	$ .00
7. Site Work	$ .00	$ .00	$ .00
8. Demolition and removal	$ .00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ .00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. SUBTOTAL (lines 1-11)	$ .00	$ .00	$ .00
13. *Contingencies*	$ .00	$ .00	$ .00
14. SUBTOTAL	$ .00	$ .00	$ .00
15. Project (program) Income	$ .00	$ .00	$ .00
16. TOTAL PROJECT COSTS (subtract #15 from #14)	$ .00	$ .00	$ .00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: Enter eligible costs from line 16c Multiply X _____ % (Consult Federal agency for Federal Percentage share). Enter the resulting Federal share.			$ .00

Standard Form 424C (4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF-424XC

This sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal government's financial obligations or contingent liability from an existing obligation). if there is no change in the award amount there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions please contact the Federal agency.

Column a. -- If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATIONS."

If this application entails a change to an existing award, enter the eligible amounts *approved under the previous award* for the items under "COST CLASSIFICATION."

Column b. -- If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is *not* allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) reflected in this application.

Column c. -- This is the net of lines 1 through 16 in columns "a." and "b."

Line 1 -- Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchase of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2 -- Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3 -- Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line 4 -- Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5 -- enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6 -- Enter estimated engineering inspection costs.

Line 7 -- Enter estimated costs of site preparation and restoration which are not included in the basic constuction contract.

Line 9 -- Enter estimated cost of the construction contract.

Line 10 -- Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11 -- Enter estimated miscellaneous costs.

Line 12 -- Total of items 1 through 11.

Line 13 -- Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14 -- enter the total of lines 12 and 1`3.

Line 15 -- Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16 -- Subtract line 15 from line 14.

Line 17 -- This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; cousult Federal agency for Federal percentage share) and enter the product on line 17.

SF 424C (4-88) Back

ASSURANCES – NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrinminatilon on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention,k Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 etb seq.), as amended, relating to nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made: and (j) the requirements of anyu other nondiscrimination statute(s) which may apply to the applicatgion.

7. Will comply, or has already complied, with the requirements of Titles II snd III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for the fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in the purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §§ 874) , and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102a of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of the environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties, and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42d U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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ASSURANCES – CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructionsfrom the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency of State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under ton to the noneteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42d U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrinminatilon on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 etb seq.), as amended, relating to nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made: and (j) the requirements of anyu other nondiscrimination statute(s) which may apply to the application.

Standard Form 424D (4-88)
Prescribed by OMB Circular A-102

11. Will comply, or has already complied, with the requirements of Titles II snd III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for the fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in the purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §§ 874) , and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

14. Will comply, if applicable, with flood insurance purchase requirements of Section 102a of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase

flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of the environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties, and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424D (4-88) Back

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Land and Water Conservation Fund Project Agreement
(OMB No. 10 24-0033, 09/80/84)

State _____ Project Number _____

Project Title _____

Project Period _____ Project Stage Covered by this Agreement _____

Project Scope (Description of Project)

Project Cost		The following are hereby incorporated into this agreement:
Total Cost	$_____	1. General Provisions (LWCF Manual)
Fund Support not to exceed 50% Fund Amount	$_____	2. Project Application and Attachments
Cost of this Stage	$_____	3._____
Assistance this Stage	$_____	4._____

C01263

The United States of America, represented by the Director, National Park Service, United States Department of the Interior, and the State named above (hereinafter referred to as the State), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), the provisions and conditions of the Land and Water Conservation Fund Grants Manual, and with the terms, promises,

the Land and Water Conservation Fund Grants Manual, and with the terms, promises, proposals, maps, and assurances attached hereto or retained by the State and hereby made a part hereof.

The United States hereby promises, in consideration of the promises made by the State herein, to obligate to the State the amount of money referred to above, and to tender to the State that portion of the obligation which is required to pay the United State's share of the costs of the above project stage, based upon the above percentage of assistance. The State hereby promises, in consideration of the promises made by the United States herein, to execute the project described above in accordance with the terms of this agreement

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

The United States of America

By:_____
(signature)

National Park Service
United States Department of the Interior

Date:_____

State

By:_____
(signature)

(Name)
(Title)

Date:_____

NPS 10-902
(7-81)

Manual Release 151
Replaces all preceding manual releases

LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT

General Provisions

Part I - Definitions

A. The term "NPS" as used herein means the National Park Service, United States Department of the Interior.

B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.

C. The term "Manual" as used herein means the Land and Water Conservation Fund Manual.

D. The term "project" as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the project agreement.

E. The term "State" as used herein means the State or Territory which is a party to the project agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State.

F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

Part II - Continuing Assurances

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund assistance project creates an obligation to maintain the property described in the project agreement consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use moneys granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation. It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.

B. The State agrees that the property described in the project agreement and the dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. This replacement land becomes subject to Section 6(f)(3) protection. The approval of conversion shall be at the sole discretion of the Secretary, or his designee. Prior to the completion of this project, the State and the Director may mutually alter the area described in the project agreement and the signed and dated project boundary map (see Section 660.2.6.b) to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property subject to reversionary interests with full knowledge of those reversionary interests, conversion of said property to other than public outdoor recreation uses as a result of such reversionary interest being exercised is approved. In receipt of this approval, the State agrees to notify the Service of the conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions. The State further agrees to effectuate such replacement within a reasonable period of time, acceptable to the Service, after the conversion of property takes place. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests

that may result in a conversion when known and agreed to by the Service.

C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement. The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement.

D. The State agrees to comply with the policies and procedures set forth in the Land and Water Conservation Fund Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.

E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements.

F. The State agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.

G. Nondiscrimination

1. The State shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Department of Interior Regulation (43 CFR 17) issued pursuant to that Title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any property or facility acquired or developed pursuant to the project agreement. The State shall immediately take any measures necessary to effectuate this

provision. This assurance shall be binding on the State or any political subdivision or other appropriate public agency to which Fund assistance or property acquired or developed with Fund assistance has been transferred for public recreation purposes.

2. The State shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

3. The State shall comply with the regulations and guidelines promulgated pursuant to the Civil Rights Act of 1964 by the Secretary of the Interior and the National Park Service.

4. The provisions of the first three paragraphs apply to any part of the recreation system within which the assisted facility or property exists.

5. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual.

Part III - Project Assurances

A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements including 43 CFR Part 12.41 - 12.92 (Administrative Requirements and Cost Principles for Assistance Programs), A-87 (Cost Principles for State and Local Governments), and A-128 (Audits of State and Local Government) as they relate to the application, acceptance and use of Federal funds for this federally assisted project.

B. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.

2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and

assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

3. The State has the ability and intention to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

C. Project Execution

1. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner in which event the project shall end on the date of completion or termination. For project elements added to a consolidated grant, the project period will begin on the date the project element is approved.

2. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover administrative expenses.

3. The State will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.

4. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

5. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.

6. In the event the project covered by the project agreement, including future stages of the project, cannot be completed in accordance with the plans and specifications for the project; the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.

7. The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.

8. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.

9. The State will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement or water pollution, and Executive Order 11990 relating to the protection of wetlands.

10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. The State will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities, pursuant to 40 CFR, Part 15.20 and that it will notify the NPS of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA. The State agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. The State further agrees to insert this clause into any contract or subcontract in excess of $100,000.

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12. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. The State will comply with Executive Order 12432, "Minority Business Enterprise Development as followss

1. Place minority budiness firms on bidder's mailing lists.

2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.

3. Where feasible, divide total requirements into smaller needs, and set delivery schedules what will encourage participation by these firms.

4. For any project involving $500,000 or more in grant assistance (except for projects involving acquisition only) the State or recipient shall submit, prior to the commencement of construction and every fiscal year quarter thereafter until project completion, reports documenting the efforts to hire minority business firms. These reports, SF 334, will be submitted one month following the end of each fiscal quarter (i.e., January 31, April 30, July 31, and October 31) to the appropriate National Park Service Regional Office.

5. The Department of the Interior is committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

The National Park Service Regional Offices will work closely with the States to ensure full compliance and that grant recipients take affirmative action in placing a fair share of purchases with minority business firms.

D. Construction Contracted for by the State Shall Meet the Following Requirements:

1. Contracts for construction shall comply with the provisions of 43 CFR part 12.41 - 12.92, Uniform Administrative Requirements for Grants and Cooperative Agrements to State and Local Governments.

2. No grant or contract may be awarded by any grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549.

E. Retention and Custodial Requirements for Records

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained in accordance with 43 CFR part 12.41-12.92 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.

2. The retention period starts from the date of the final expenditure report for the project or the consolidated project element.

3. State and local governments are authorized to substitute microfilm copies in lieu of original records.

4. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, exerpts and transcripts.

F. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.

2. The State may unilaterally terminate the project or consolidated project element at any time prior to the first payment on the project or consolidated project element. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.

3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the

determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

4. The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.

5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

G. Lobbying with Appropriated Funds

The State must certify that no Federally appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding, extension, continuation, renewal, amendment, or modification of this grant. In compliance with Section 1352, title 31, U.S. Code, the State, for each grant, certifies, as follows:

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The above certification must be included with every L&WCF grant application. This requirement may be fulfilled by the completion and signing of Department of the Interior Form DI-1963, available from the National Park Service Regional Office.

H. Provision of a Drug-Free Workplace

In compliance with the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D), the State, for each grant, certifies, as follows:

The grantee certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of a grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The above certification, along with a specification of the site(s) for the performance of work to be done in connection with the specific grant, must be included with every L&WCF grant application. This requirement may be fulfilled by the completion and signing of Department of the Interior Form DI-1955, available from the National Park Service Regional Office.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

STATE _____

Project Amendment No.

AMENDMENT TO PROJECT AGREEMENT
(OMB No. 1024-0033, 09/30/84)

THIS AMENDMENT To Project Agreement No. is hereby made and agreed upon by the United States of America, acting through the Director of the National Park Service and by the State of pursuant to the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).

The State and the United States, in mutual consideration of the promises made herein and in the agreement of which this is an amendment, do promise as follows:

That the above mentioned agreement is amended by adding the following:

In all other respects the agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this amendment as of the date entered below.

THE UNITED STATES OF AMERICA

By _____
(Signature)

_____
(Title)

National Park Service
United States Department of
the Interior

Date _____

STATE

_____
(State)

By _____
(Signature)

_____
(Name)

_____
(Title)

NPS 10-902a
(7-81)

Manual Release 151
Replaces all preceding manual releases

Attachment 660.3D

DESCRIPTION AND NOTIFICATION FORM INSTRUCTIONS

New, Amend, Corr - Circle one which indicates action being taken. Correction refers to a data change not associated with an amendment.

1. **State/Project** - Enter the appropriate State and project number. Enter the appropriate two digit number for the State and a five digit number for the project number. Annex zeros to the left of the project number such as 00005.

   Element - The elements of a consolidated grant will be identified with a capital letter. Enter appropriate capital letter beginning with "A" (Do not use the letter "O"). If there are more than 25 projects continue numbering with A1, B1, etc. Leave element box blank on the consolidated grant cover sheet. Single projects will be identified with three capital letters in the element box, such as "XXX."

2. **Project Name** - Enter the project name (up to 36 characters). This will be completed for single projects and for consolidated grants on the consolidated grant cover sheet.

3. **Received** - Enter the date on which the project is received in the Regional Office. This will be completed for single projects and for consolidated grants on the consolidated grant cover sheet. Leave blank for consolidated project element.

4. **Approved** - Enter the date on which the project is approved. This will be completed for single projects and for consolidated grants on the consolidated grant cover sheet. Leave blank for consolidated project elements.

5. **Expiration** - Enter the expiration date from the project agreement. This will be completed for single projects and for consolidated grants on the consolidated grant cover sheet. Leave blank for consolidated project elements.

6. **Targets** - The State will enter the planned stop date for completion of work on single projects and consolidated project elements. The NPS Regional Office will enter the date (start) the single project or consolidated project was approved as the start date. In the event that a waiver of retroactivity is granted for a single project, the State will enter the waiver date as the start date.

7. **Type** - Circle the appropriate code(s) in the project type code list (acquisition, new development, renovation development, combination,

planning). The combination project identification should only be circled when both acquisition and development are to be part of the funded project.

8. **Element Name** - For consolidated project elements only enter the element name (up to 36 characters). Leave blank for single projects.

9. **Sponsor** - Circle one appropriate code in the sponsor code list (local, State, county).

10. **Sponsor Name** - Enter the project sponsor name (up to 36 characters) for single projects and consolidated project elements.

Address - Enter the address only for consolidated project elements.

11, 12, 13. **Source of Other** - Indicate with an "X" the non-L&WCF share of project cost. Community Development and Revenue Sharing funds will be considered "Federal" for data entry purposes as will supplemental funds provided by Regional Commissions. Note that the application of an indirect cost rate requires a State contribution and must be so identified.

CONSOLIDATED PROJECT ELEMENT INFORMATION - Unnumbered entries on the Description and Notification Form relate only to Consolidated Project Elements. The information will set forth the legally binding scope of work for individual elements and will supplement the SF 424 on an element specific basis. The following guidelines will be followed:

- Scope Narrative - Specify the scope of work to be undertaken through that element. For development projects, redevelopment projects, and combination projects, the Primary Facility Codes and subcodes shall be referenced (see 660.2.7A)

- Financial Data Estimates - Specify the total estimated costs for the element including applicable indirect administrative costs. Project "contingencies" (660.1.3C) are not to be apportioned to element costs. Also enter the appropriate amount of Fund assistance being requested for that element.

- Clearinghouse Data - Enter the State clearinghouse control number if one has been assigned to the proposal. Also specify other A-95 clearinghouse agencies as appropriate. Place an "X" in the corresponding space under Response if the clearinghouse has provided comments on the proposal.

- Note - Although the unnumbered entries on the DNF do not relate to single projects, the States or NPS regional offices may take the option to enter information in the unnumbered spaces which maybe useful for reference.

14. **County and City** - Enter the appropriate code from the GSA's Worldwide Geographical Location Codes consisting of the three-digit county code and four-digit city code. For projects not within a county/city and for projects without a GSA Worldwide Geographical Location code enter the three-digit code 000/four-digit code 0000. The code 000/0000 (county/city) will also be used for projects which span two or more counties and cities. Planning projects will be coded XXX/XXXX (county/city).

15. **Census Tract** - A four-digit Census Tract figure will be entered before a decimal point. If there is a Census Tract split or subdivision, a two-digit code will be entered after the decimal point. Census Tract information is only available for SMSA's and some adjacent towns and counties (leave blank if no entry). The code 0000 will be used for two or more Census Tract and a code 00 will be used for two or more Census Tract splits or subdivisions. Planning projects will be coded XXXX.

16. **Congressional District** - Enter the appropriate two-digit congressional district code. The code 00 will be used for projects in two or more Congressional districts. Planning projects will be coded XX. Projects located in States with an "at large" Congressman and projects located in an area with no Congressman will be coded 01.

17. **Acreage Acquired** - Enter to the nearest tenth of an acre the total number of acres being purchased and/or donated under the single project or consolidated project element.

18. **Donated acres** - Indicate to the nearest tenth of an acre that acreage being donated under the single project or consolidated project element. Where a partial donation (i.e. bargain sale, undivided interest) is involved enter the prorated acreage attributable to the donation.

19. **Acquisition Assistance** - For single project and consolidated project elements, enter the Fund assistance provided to cover actual cash outlays for real property purchased, including project administration and relocation costs. For combination project types, administration costs will be prorated between development and acquisition.

    For data Entries: If the total acres acquired and the donated acres acquired are equal, acquisition assistance is not to be entered. If the total acres acquired is larger than the donated acres acquired, acquisition assistance is to be entered.

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20. **Special Indices** - These indices reflect special/unusual features of a proposal. Circle the appropriate code(s) in the code list. Up to four indices may be selected as appropriate.

21. **Facility Codes** - Circle as many numerical facility codes (primary codes plus subcodes) as necessary to describe the specific facilities being developed. In the case of acquisition projects, circle only the primary codes (e.g., A00, B00, etc.) which represent the planned use of the site. For new development, renovation development and combination projects, circle the primary codes plus the subcodes (e.g., A00, A01, C00, C01 etc.).

DATA ENTRY:

New Projects

-Consolidated Grant Cover Sheet. Before the Regional Office submits to WASO the approved consolidated grant, it will complete a separate Description and Notification Form (consolidated project cover sheet) for the consolidated grant as a whole. Only item #1 (State and project no.), #2 (name of consolidated project), #3, #4, and #5 will be completed.

-Consolidated Project Element. The State will complete at a minimum, items 1, 6, and 7 through 21 and the scope narrative, financial data estimates and clearinghouse data. Other required items will be completed by the NPS Regional Office.

-Single Project. The State will complete at a minimum items 2, 6, 7, 9, 15, and 17 through 21. Other required items will be completed by the NPS Regional Office.

Project Amendments

-Changes to Approved Single Projects and Consolidated Project Elements. The Description and Notification Form will be completed by the NPS Regional Office for amendments. The Region will obtain from the State information on facilities being developed under newly added primary facility codes as well as information on changes in special indices and type, i.e. acquisition to combination project, for amendments. The form will be used for ADP purposes only unless more than one project element of a consolidated project is being amended under the same amendment in which case the form will be used for both ADP and notification purposes (660.2.9).

-Amending the Consolidated Project. The Description and Notification Form (Consolidated Project Cover Sheet) will be completed by the NPS

Regional Office for amending item 1 (Project Name) and item 5 (Expiration Date).

-Addition of Elements to the Consolidated Grant. The Description and Notification Form will be completed by the NPS Regional Office. In such cases, circle the action code AMEND for ADP purposes. Where only one element is added the DNF need not include clearinghouse data since it will be contained on the SF 424. A consolidated grant cover sheet is not needed for additional elements.

Data Revision

-Special Indices and Facility Codes. When changes in the data are necessary, the entire field must be re-entered, reflecting the change.

-Complete Removal of Data. Only data entered for items 11, 12, 13, 17, 18, 19, and 20 can be deleted entirely from the system. In such cases, enter "Remove" in the appropriate box.

Project Termination and Conversion

If there is a change in the scope narrative or in any of the data items, a revised Description and Notification Form will be submitted by the State upon completion or termination of the single project or consolidated project element (see 675.8.9). For conversions the Region will complete a DNF (See 675.9.4). Circle CORR at the top of the form.

Withdrawal of a Single Project or Consolidated Project Element

For Single Projects:

The Regions must submit to the WASO Finance Division the original letter from the State requesting the withdrawal of a project, and one copy of that letter and a DNF must be sent to the WASO Recreation Grants Division.

For Consolidated Projects:

The Regions must submit to the WASO Finance Division the original letter from the State requesting the withdrawal of an element of a consolidated project and a DNF. A copy of that letter and a DNF must also be sent to the WASO Recreation Grants Division.

The Regions will complete a DNF to withdraw an approved single project or consolidated project element as follows:

Circle CORR at the top of the form; complete item 1 including element number, as appropriate; and insert the statement "Remove" in item 2.

Special Instructions

1. Do not reduce the DNF form. Facilities and Special Indices are difficult to read when the DNF form is reduced.

2. Submit an original DNF for Automated Data Processing (ADP) purposes. The quality of reproduction from the Regional Office varies too much for uniform use as the ADP input source document.

3. Make decimal points larger and darker for items 15, 17, 18, and 19.

4. For consolidated project elements, the form will be typed. For single projects and amendments, the required information may be printed.

DNF Distribution

For each consolidated project element and its consolidated grant cover sheet, the following copies must be submitted to the WASO Office:

1 Original for ADP
1 Finance
1 WASO case files
2 Senators
1 Copy by Congressional Districts
1 Office of Public Affairs

For Amendments on an existing consolidated element the following copy must be submitted to the WASO office:

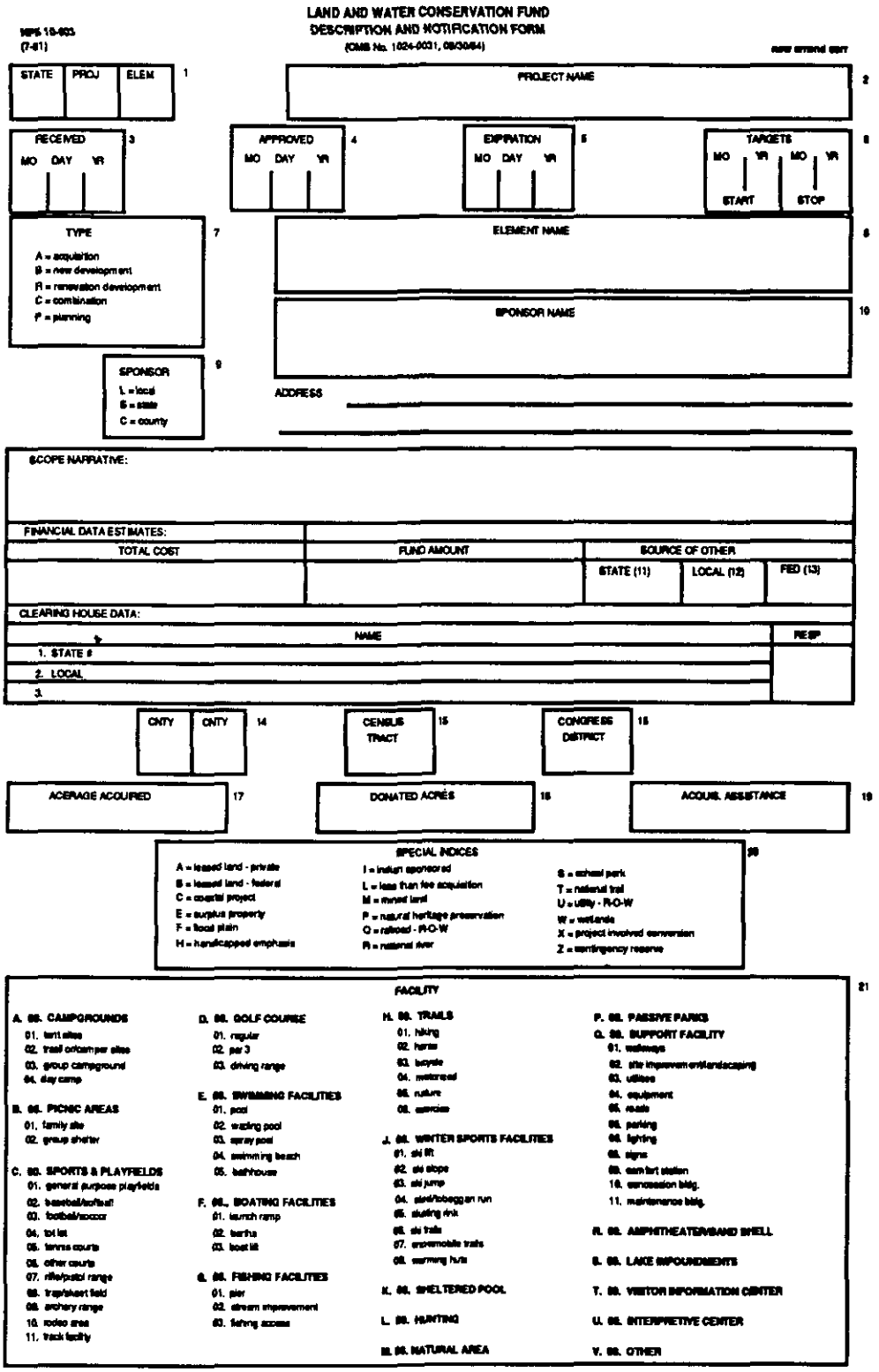
1 Original for ADP

For single projects the following copies must be submitted to the WASO Office:

1 Original for ADP
1 WASO case files

For Amendment on an existing single project the following copy must be submitted to the WASO Office:

1 Original for ADP



LAND AND WATER CONSERVATION FUND
DESCRIPTION AND NOTIFICATION FORM

NPS 10-903
(7-81)

(OMB No. 1024-0031, 09/30/84)

new amend dlet

STATE | PROJ | ELEM 1

PROJECT NAME 2

RECEIVED 3
MO DAY YR

APPROVED 4
MO DAY YR

EXPIRATION 5
MO DAY YR

TARGETS 6
MO YR MO YR
START STOP

TYPE 7
A = acquisition
D = new development
R = renovation development
C = combination
P = planning

ELEMENT NAME 8

SPONSOR NAME 10

SPONSOR 9
L = local
S = state
C = county

ADDRESS

SCOPE NARRATIVE:

FINANCIAL DATA ESTIMATES:

TOTAL COST	FUND AMOUNT	SOURCE OF OTHER		
		STATE (11)	LOCAL (12)	FED (13)

CLEARING HOUSE DATA:

NAME	RESP
1. STATE #	
2. LOCAL	
3.	

CNTY | CNTY 14

CENSUS TRACT 15

CONGRESS DISTRICT 16

ACERAGE ACQUIRED 17

DONATED ACRES 18

ACQUIS. ASSISTANCE 19

SPECIAL INDICES 20

A = leased land - private
B = leased land - federal
C = coastal project
E = surplus property
F = flood plain
H = handicapped emphasis
I = indian sponsored
L = less than fee acquisition
M = mined land
P = natural heritage preservation
O = railroad - R-O-W
R = national river
S = school park
T = national trail
U = utility - R-O-W
W = wetlands
X = project involved conversion
Z = contingency reserve

FACILITY 21

A. 88. CAMPGROUNDS
01. tent sites
02. trail or/camper sites
03. group campground
04. day camp

B. 88. PICNIC AREAS
01. family site
02. group shelter

C. 88. SPORTS & PLAYFIELDS
01. general purpose playfields
02. baseball/softball
03. football/soccer
04. tot lot
05. tennis courts
06. other courts
07. rifle/pistol range
08. trap/skeet field
09. archery range
10. rodeo area
11. track facility

D. 88. GOLF COURSE
01. regular
02. par 3
03. driving range

E. 88. SWIMMING FACILITIES
01. pool
02. wading pool
03. spray pool
04. swimming beach
05. bathhouse

F. 88. BOATING FACILITIES
01. launch ramp
02. berths
03. boat lift

G. 88. FISHING FACILITIES
01. pier
02. stream improvement
03. fishing access

H. 88. TRAILS
01. hiking
02. horse
03. bicycle
04. motorcycle
05. nature
06. exercise

J. 88. WINTER SPORTS FACILITIES
01. ski lift
02. ski slope
03. ski jump
04. sled/toboggan run
05. skating rink
06. ski trails
07. snowmobile trails
08. warming huts

K. 88. SHELTERED POOL

L. 88. HUNTING

M. 88. NATURAL AREA

P. 88. PASSIVE PARKS

Q. 88. SUPPORT FACILITY
01. walkways
02. site improvement/landscaping
03. utilities
04. equipment
05. roads
06. parking
07. lighting
08. signs
09. comfort station
10. concession bldg.
11. maintenance bldg.

R. 88. AMPHITHEATER/BAND SHELL

S. 88. LAKE IMPOUNDMENTS

T. 88. VISITOR INFORMATION CENTER

U. 88. INTERPRETIVE CENTER

V. 88. OTHER

Manual Release 151
Replaces all preceding manual releases

Documentation Sent to Washington Office from Regional Office

L&WCF grant documentation sent for WASO action after Regional approval is to be submitted in the following order: --

Grants and Amendments of $25,000 and Over:

1. Processing Control Sheet (Blue)
2. Processing Control Sheet (White)
3. Grant Agreement (1 Original)
4. Grant Agreements (2 Duplicate)
5. Standard Form DI-1961 FAADS data entry (see 660.3. Attachment F) (1 copy)
6. Standard Form 424 (5 copies, plus one additional copy for each extra Congressman listed on blue Processing Control Sheet) (the 5 copies already include 2 for Senators and 1 for 1 Congressman.
7. D.N.F. (1 Original)
8. D.N.F. (1 Duplicate)

For Consolidated grants there are to be a total of 5 duplicate copies of the D.N.F. which are collated into sets - (F.Y.I.-each Senator and appropriate Representative(s) involved in an element receives a set of the D.N.F. in the formal Congressional Notification).

9. Press Release (in DRAFT) for grants of $1 million or more.

Amendments for Scope Changes Under $25,000:

1. Processing Control Sheet (Blue)
2. Grant Agreement (1 Original)
3. Grant Agreements (2 Duplicate)
4. Standard Form 424 (3 Copies)
5. D.N.F. (1 Original)
6. D.N.F. (1 Duplicate)
7. Standard Form DI-1961 for FAADS is needed only for money changes; i.e., additions, reductions, or withdrawals. (1 Copy)

DEPARTMENT OF THE INTERIOR
FEDERAL ASSISTANCE AWARD DATA SYSTEM
FY 1991 REPORTING REQUIREMENTS

In accordance with the Office of Management and Budget's (OMB) FY 1990 Federal Assistance Award Data System (FAADS) Reporting Instructions, bureaus are required to submit quarterly information on all Federal domestic financial assistance actions.

Data submission from the bureau representative to the Acquisition and Assistance Division should occur at least once per quarter (preferably more frequently for large volume programs). Bureau representatives should complete the Agency Reporting Compliance Sheet to reflect all transactions for the most recent quarter and forward it to the Acquisition and Assistance Division along with the last submission of DI - Forms to the Acquisition and Assistance Division by the 24th calendar day after the end of the quarter.

NOTE: IF A DUE DATE FALLS ON A SATURDAY THE SUBMISSION IS DUE ON THE DAY BEFORE (FRIDAY), AND IF A DUE DATE FALLS ON A SUNDAY THE SUBMISSION IS DUE ON THE DAY AFTER (MONDAY).

The following is a list of the reportable data elements, along with instructions for verifying the data, for FAADS. (See Attachment 2 for reporting form.)

1.	CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER	Enter the 6 character number from the Catalog of Federal Domestic Assistance for the grant or program under which financial assistance is being provided. If a CFDA number is not assigned, a pseudo code should be used. The first 2 positions should be 15, the numeric agency prefix in the CFDA. The third position should be a decimal. The fourth, fifth, and sixth positions should be upper case alpha characters in sequence for each assistance award. The following alpha characters are assigned to the bureaus and offices:

A. National Park Service

B. Bureau of Reclamation

C. Bureau of Indian Affairs

D. Bureau of Land Management

E. Geological Survey

F. U.S. Fish and Wildlife Service

G. Office of Surface Mining Reclamation and Enforcement

H. Bureau of Mines

I. Office of the Secretary of the Interior

J. Minerals Management Service

For example, the proper sequence for assigning a pseudo code for an award made by the Bureau of Land Management would be: 15.DD, 15.DDE, 15.DDF, 15.DDG... in sequence for each program or activity.

The same pseudo code should be used when reporting from quarter to quarter on a specific award.

For each pseudo code, the bureau must provide a program title and description as an attachment to the Agency Reporting Compliance Sheet.

2. STATE APPLICATION IDENTIFIER

Enter the number assigned by a state clearinghouse. OMB has established a standard 13 character format for voluntary use in assigning SAI numbers. See the FAADS Reporting Instructions.

The entry should be left justified, space filled. SAI numbers must be reported for all awards under programs that the Department has determined are covered by Executive Order (E.O.) 12372. For awards under covered programs for which no SAI number was supplied to the Federal agency, "SAI NOT AVAILABLE" should be entered.

For awards under programs not covered by the Department's E.O. 12372 compliance, an SAI number should still be reported if supplied by the State review agency. Otherwise, the entry in this field should be "SAI EXEMPT".

3. RECIPIENT NAME

Enter the name of the organization receiving the award of financial assistance. The name should identify the specific organizational element (sub-division) as well as the parent organization. Only these two organizational elements should be used, even though other organizational elements may exist in the intervening hierarchical structure of the organization.

The first word of a recipient name should <u>never</u> be abbreviated. Abbreviations should be used only

when the recipient name exceeds the field length, which is 45. When abbreviations are necessary, the following guidelines should be used:

a. Abbreviate from the right side of the name.

b. Abbreviate only one word, if possible.

c. Abbreviate the most commonly used word.

See the FAADS Reporting Instructions for additional guidance.

4. RECIPIENT CITY CODE — Enter the appropriate code for the city or township in which the recipient is located. The code used should be the 4 character numeric GSA code.

5. RECIPIENT CITY NAME — Enter the specific name of the city or township in which the recipient is located.

6. RECIPIENT COUNTY CODE — Enter the appropriate code for the county in which the recipient is located. The 3 character numeric FIPS code should be used.

7. RECIPIENT COUNTY NAME — Enter the specific name of the county in which the recipient is located.

8. RECIPIENT STATE CODE — Enter the appropriate 2 character numeric FIPS code for the state in

		in which the recipient is located. If the recipient is in the District of Columbia or a U.S. possession or territory, the appropriate code should also be entered here.
9.	RECIPIENT ZIP CODE	Enter the 5 character numeric code from the U.S. Postal Service manual.
10.	PROJECT DESCRIPTION	THIS DATA ELEMENT IS VERY IMPORTANT. Provide a brief description of the particular project being funded by the assistance award. Only using the CFDA title is not adequate since it does not allow the user to distinguish among other awards being made from the same CFDA program. Only the first 145 characters of the description will be recorded. Threrfore, begin the description with the most relevant information and eliminate all information beyond 145 characters.

11. TYPE OF RECIPIENT

Enter the numeric 2 character code which depicts the recipient or borrower. For specific definitions and guidance, see the FAADS Reporting Instructions.

Government codes

00 = state
01 = county government
02 = municipal or township government
04 = special district government
05 = independent school district
06 = state controlled institutions of higher education

Nongovernment codes

11 = Indian tribe
12 = nonprofit agency
20 = private higher education institution
21 = individual
22 = profit organization
23 = small business
25 = all other

12. TYPE OF ACTION

Enter the apropriate character representing the nature of the award transaction:

A = new assistance award

B = continuation (funding in a succeeding budget period which stemmed from a prior agreement to fund)

C = revision (any change in the Federal Government's financial obligation or contingent liability from an existing obligation)

D = funding adjustment to completed project.

13. RECIPIENT CONGRESSIONAL DISTRICT

Enter the 2 position numeric code for the congressional district of the recipient. For a congressional district at large, enter a "00." For jurisdictions with a nonvoting delegate, enter a "98." For jurisdictions with no representative, enter a "99."

If a look-up table is being used to generate the congressional districts, and more than one district falls within the boundaries of the city, a code "90" should be used. See the FAADS Reporting Instructions additional guidance.

14. FEDERAL AGENCY

For the 4-character FIPS code enter,"1443 ."

15. FEDERAL AWARD IDENTIFIER NUMBER	Enter the bureau's/offices's internal award number which uniquely identifies the grant or award transaction. The entry should omit hyphens and other special characters. The number cannot exceed 16 characters.
A. CORE NUMBER	Only the core number for each award should be entered in this field, in accordance with each agency's internal code format.
B. MODIFICATION NUMBER	Enter the agency's internal number which represents each modification to a grant or award of financial assistance as applicable. The entry cannot exceed 4 characters in length.
16. FEDERAL FUNDING SIGN	If funding amount is positive, no entry is necessary. If funding amount is negative (such as for a decrease in the obligation), enter a minus (-) sign.
17. FEDERAL FUNDING AMOUNT	Enter the dollar amount of the Federal Government's total obligation or liability for each assistance award in whole dollars. See the FAADS Reporting Instructions for additional guidance.
18. NONFEDERAL FUNDING SIGN	If funding amount is positive, no entry is necessary. If funding amount is negative (such as for a decrease in the obligation) enter a minus (-) sign.

19.	NONFEDERAL FUNDING AMOUNT	Enter the total dollar amount of the funds supplied by the recipient or recipient's parent government, in order to meet the total cost of the project being funded. The numeric extry should be in whole dollars. This amount should reflect total amount of nonfederal funds.
20.	ACTION/OBLIGATION DATE	Enter the date, year, month, and day funds were obligated or committed for this action. The numeric entry should be in the form of yymmdd. For county aggregate records action date must be the last day of the quarter.
21.	STARTING DATE	Enter the year, month, and day that funds will become/became available for actual beginning of the project. The numeric entry should be in yymmdd.
22.	ENDING DATE	Provide the year, month, and day of scheduled completion date of the project or activity related to the action. The numeric entry should be in the form of yymmdd.

23. TYPE OF ASSISTANCE

Enter the appropriate 2 digit code depicting the type of grant or financial assistance. The letter in parenthesis is the CFDA assistance type.

01 = revenue sharing (A)
02 = block grant (A)
03 = formula grant (A)
04 = project grant (B)
05 = cooperative agreement (B)
06 = direct payment for specified use, such as a subsidy or other nonreimbursable direct financial assistance (C)
07 = direct loan (E)
08 = guaranteed/insured loan (F)
09 = insurance (G)
10 = direct payment with unrestricted use (retirement pension, veterans benefits, etc.) (D)
11 = other reimbursable, contingent, intangible or indirect financial assistance.

24. RECORD TYPE

enter a numeric "1" for county aggregate reporting, or a numeric "2" for individual action reporting.

25. CORRECTION OR LATE INDICATOR

Enter the appropriate code indicating that the award transaction being reported is either a correction or (alpha character C), or a late record which was omitted from a previous quarter's submission (alpha character L). For a current financial assistance award, this field must be blank.

C = correction to award transaction reported in previous quarter's submission

L = late reporting of a record which was omitted from a previous quarter's submission

Leave Blank = current financial assistance award

26. FISCAL YEAR AND QUARTER OF CORRECTED OR LATE RECORD

Enter the appropriate numeric designation of the federal fiscal year and quarter to which the correction applies, or in which the record should have been submitted. The entry should be in the format yyq with yy representing the abbreviated federal fiscal year ('92, '93 etc.) and q the quarter (1-4) of the fiscal year. Do not report late/corrected records that are more than 2 years old.

27. PRINCIPAL PLACE OF PERFORMANCE

Enter the location of the project being funded. Beneath the name, provide a 7 character code as follows:

a. The state, District of Columbia, or territory should be entered in the first 2 positions. The 2 character numeric FIPS code should be used. For multistate projects, a "00" should be entered, in which case the remaining positions should contain astericks (*).

b. If the principal place of performance is in a particular city, township, or place, the 5 character including Indian reservations, numeric FIPS code should be entered in positions three through seven. (The GSA place code should not be used here).

c. If the principal place of performance is a particular county (or in more than one county), enter the 3 character numeric FIPS code for the county (or county of principal performance in positions five, six, and seven, preceded by 2 astericks (*) in positions three and four.

d. For pass-through grants or other statewide projects, the state should be designated in the first two positions, with the remainder of the field containing astericks (*).

e. For awards to domestic recipients where the final place of performance isn in a foreign country, the place of performance will be two zeros followed by FORGN (FORGN). An example of the use of this code is an educational grant to a U.S. student who will be studying/researching at a foreign university.

Awards to recipients located outside of the country (such as grants to foreign governments) continue to be excluded from FAADS coverage.

28. Reserve

This field should be left blank, unless otherwise directed for an agency by the Census Bureau.

NOTE: IF OCCASIONS ARISE WHERE AFTER THE ENDING DATE AN AUDIT IS CONDUCTED AND A CHANGE IN THE DOLLAR AMOUNT RESULTS, THE ENDING AND ACTION DATE SHOULD BOTH BE CHANGED TO REFLECT THE DAY THE CHANGE WAS MADE.

IN ADDITION, ITEM #12 SHOULD INDICATE THAT THE DOLLAR CHANGE IS BECAUSE OF THE FINDINGS OF THE PROGRAM AUDIT CONDUCTED.

DEPARTMENT OF THE INTERIOR

FEDERAL ASSISTANCE AWARD DATA SYSTEM REPORTING FORM

1. CFDA NUMBER OR PSEUDO CODE 15.916		2. STATE APPLICATION IDENTIFIER	
3. RECIPIENT NAME			4. RECIPIENT CITY CODE
5. RECIPIENT CITY NAME	6. RECIPIENT COUNTY CODE		7. RECIPIENT COUNTY NAME
8. RECIPIENT STATE CODE		9. ECIPIENT ZIP CODE	
10. PROJECT DESCRIPTION			

11. TYPE OF RECIPIENT CONGRESSIONAL			12. TYPE OF ACTION	13. RECIPIENT DISTRICT
14. FEDERAL AGENCY 1413			15. FEDERAL AWARD IDENTIFIER NUMBER A. CORE NUMBER B. MODIFICATION NUMBER	
16. FEDERAL FUNDING SIGN	17. FEDERAL FUNDING AMOUNT	18. NON-FEDERAL FUNDING SIGN	19. ON-FEDERAL FUNDING AMOUNT	20. ACTION / OBLIGATION DATE
16. STARTING DATE	22. ENDING DATE	23. TYPE OF ASSISTANCE		24. RECORD TYPE
25. CORRECTION OR LATE INDICATOR	26. FISCAL YEAR AND QUARTER OF CORRECTED OR LATE RECORD	27.PRINCIPAL PLACE OF PERFORMANCE		28. RESERVE

FORM DI-1961
(OCTOBER, 1989)

OPEN PROJECT SELECTION PROCESS

1. **Purpose.** The purpose of this chapter is to establish requirements for State open project selection processes which will better assure equal opportunity for all eligible project sponsors and all sectors of the general public to participate in the benefits of the Land and Water Conservation Fund (L&WCF) State Assistance Program and to enable the States to affirmatively address and meet priority recreation needs. Open project selection processes will perform two essential functions:

   A. Establishment of public notification, application assistance and review systems that assure equitable opportunities for participation in grant funding by all potentially eligible applicants.

   B. Provision of objective criteria and standards for grant selection that are explicitly based on each State's priority needs for parkland acquisition and outdoor recreation development as identified in Statewide Comprehensive Outdoor Recreation Plans (SCORP Policy Plans and Action Programs). While it is recognized that the SCORP process covers policy, legislative, management and other matters that go beyond priorities for capital funding, the open project selection process supplies the most visible connection between a State's planning efforts and its use of L&WCF grants to meet some of the high priority needs identified through its SCORP program.

2 Goals. The open project selection process developed by each State shall be designed to accomplish the following goals:

   A. Provide for public knowledge of and participation in the formulation and application of the project selection process utilized by the State in allocating Land and Water Conservation Fund (L&WCF) assistance.

   B. Ensure that all potential State and local applicants are aware of the availability of and process for obtaining L&WCF assistance, and provide opportunities for all eligible agencies to submit project applications and have them considered on an equitable basis.

   C. Provide a measurable link, through published selection criteria, to the specific outdoor recreation needs and priorities identified in SCORP policies and implementation programs.

   D. Assure that the distribution of Land and Water Conservation Fund assistance is accomplished in a non-discriminatory manner, especially with regard to minority populations, the elderly and the

disabled, and ensure a fair and equitable evaluation of all applications for L&WCF assistance.

3. Requirements for an Open Project Selection Process. Each State shall, as a condition of eligibility to receive assistance under the Fund program, implement an open project selection process which has the following components.

A. Priority Rating System. Each State shall develop a priority rating system for selecting projects that ensures the fair and equitable evaluation of all projects and at a minimum:

(1) Places the strongest possible emphasis on project selection criteria that conform directly to priority needs identified by the SCORP process. Because compatibility of projects funded with SCORP priorities is the primary measure of responsive planning and selection processes, SCORP-related criteria should be heavily-weighted to ensure that a) the rank-ordering of projects closely reflects their response to plan-identified needs, and b) no project without measurable links to SCORP-identified priorities will be funded.

(2) Encourages public participation in the formulation of grant proposals at the project sponsor level.

(3) Recognizes the need for accessibility of proposed projects, to the greatest extent practicable, to all segments of the public including minority populations (defined as including Blacks, Hispanics, Native Americans and Asian Americans), the elderly, and the handicapped.

(4) Requires conformance of the project to eligibility and evaluation criteria outlined in Parts 640 and 660 of this Manual.

B. Project Selection Process. Each State shall develop a project selection process which evaluates and selects projects on the basis of quality and conformance with its priority rating system. The practice of dividing a State's apportionment between State and local projects may continue at the State's option. In this case, the State's project selection process may involve a single competition among all State and local projects or distinct processes and competitions for each of the two categories (i.e., State projects and local projects.) The distribution of a State's apportionment strictly on the basis of geography or location of political subdivisions is prohibited.

(1) Staged Projects. Acquisition and development projects may be accomplished in stages. The purpose of staging is to defer

obligation from the Fund for other projects by scheduling 'logical units of accomplishment'. Because funding and approval of subsequent stages is not assured, a staged project must be self-sustaining without reliance upon 1) adjoining or additional areas not identified in the project scope or 2) acquisition or development which might be scheduled at a later date. Since each stage is viewed as a separate, identifiable project, approval of subsequent stages must be treated as separate projects, and compete on an equal basis with other projects in the appropriate funding cycle. If the entire staged project is included in the initial competition, subsequent stages need not compete under the OPSP if submitted for funding during the same funding cycle in which it was initially ranked.

(2) Overruns. A State may honor requests to increase the Federal share of a State or locally sponsored project without further OPSP competition only if the State has proposed, and the Service approved, guidelines which are incorporated in the OPSP to cover this contingency. If no procedure is established, cost overrun projects must undergo OPSP competition for additional funding.

C. Recurring Funding Cycle. Each State shall institute a recurring funding cycle to regularize the timing for receiving, evaluating and selecting project proposals. The funding cycle may recur quarterly, semi-annually, annually or at any other regular interval within the fiscal year as determined by the State. All L&WCF-funded projects submitted to NPS must have competed in such a funding cycle, and documentation of a project's ranking in such regular competitions must be available in State files.

D. Public Notification. Each State shall inform all potential project sponsors about the availability of program program funding at least once every two years. This may be accomplished through direct contact with all potential sponsors or indirectly through State and local organizations. The information supplied shall include the types of areas and facilities eligible for funding, a statement of the State's overall objectives for use of funds under the L&WCF grants program, guidance on how to apply for L&WCF assistance and an explanation of how the State's open project selection process works. Each State should also have available, for review by project sponsors, a list of the criteria it will use in selecting projects for priority funding during the current funding cycle.

E. Program Assistance. Each State shall, to the extent practicable, provide assistance to any potential project sponsor who requests

assistance with project formulation, proposal preparation in obtaining the non-federal matching share, and other matters necessary for participation with the program.

F. Affirmative Action. Each State shall take affirmative action to assure that good faith efforts are made to encourage projects which directly benefit minority populations in the State. This may be accomplished through the SCORP planning process, and shall, at a minimum, reflect efforts to encourage applications from communities with significant minority populations. Since social conditions vary from State to State, the design of the approach may be determined by each State.

G. Advisory Boards. The use of Advisory Boards, Commissions or Committees to assist States in the selection of proposals to receive the available L&WCF monies is encouraged but not required. If Advisory Boards, Commissions or Committees are utilized by a State, they must include in their membership representation of minorities to the extent that such representation reasonably reflects the ratio of the non-minority

4. **Public Participation.** Public participation programs developed by each State in accordance with SCORP requirements (Part 630.1) shall include provisions for insuring that the preparation and revision of project selection processes and priority rating systems are subject to public review and comment (including minority participation in this process) prior to their implementation. Use of public meetings and review by special interest groups, advisory committees, and Park/Recreation Boards, Commissions, or Committees to assist in development of selection processes are encouraged.

5. **NPS Approval.** States must utilize current and approved open project selection processes for selection of all applications proposed for funding through L&WCF grant monies appropriated by Congress after Fiscal Year 1982. New or revised open project selection processes must be submitted to the National Park Service for review and evaluation and approved by the appropriate NPS Regional Director before their use in State grant competitions.

6. **Process Review and Updating.** To ensure continuing close ties between a State's SCORP program and its open project selection process, States must review project selection criteria being used each time that a new set of SCORP priorities is approved by the National Park Service. States must then submit to NPS a revised set of OPSP criteria that conform to any changes in SCORP priorities or submit an appropriate certification that no such revisions are necessary. Regional Directors will evaluate such revised submissions or certifications in the same manner as original submissions, and will ensure accurate conformity to the SCORP

and to the objectivity and public participation objectives of this chapter before approving their use for L&WCF project selection.

State implementation of open project selection processes will also be reviewed at least once in every two years, as part of the Service's periodic State program review process (cf., Part 600.8), to determine that each State is effectively meeting the goals and requirements of this chapter. Failure by any State to keep its selection process active and up-to-date in relation to changing needs or conditions identified through its SCORP program may result in that State's loss of eligibility for participation in the Land and Water Conservation Fund program (see Parts 630.1.6 & 630.1.7).

EVALUATION CRITERIA

1. **Purpose of Evaluation.** Proposals for acquisition and/or development will be evaluated on the basis of how they help accomplish the purposes and meet the requirements of the L&WCF Act and the L&WCF Manual requirements. This evaluation includes a consideration of the project's technical adequacy, its financial soundness, and its relationship to the needs and priorities identified in the Statewide Comprehensive Outdoor Recreation Plan.

   Planning proposals will be reviewed to assure that they contribute to the development or maintenance of the SCORP.

2. **Responsibilities.** All projects submitted to the Service are evaluated to the extent that information may be available to the Service which specifically relates to the standards outlined in this chapter and other applicable program requirements. The extent of the Service review will depend on the type of application submitted (see Chapter 660.1) and the certification made by the State Liaison Officer.

   A. Under the Streamlined Single Project and the Consolidated Grant application types, it is the responsibility of the State to evaluate and assure the proposal's conformance with the standards outlined in this chapter and other applicable program requirements. In these cases, the Service will consult with and assist the State prior to the submission of the proposal. The Service's review upon receipt of the project will be limited to the adequacy and completeness of the documents submitted. Prior consultation with the State should minimize review time. The Service will also evaluate the State procedures for complying with Manual requirements when conducting a program review.

   B. Under the Complete Single Project application type, the Service will conduct a more detailed review to evaluate and assure conformance with the standards outlined in this chapter, and other applicable program requirements.

   C. In all cases, the Service will specifically review and determine that:

      (1) The environmental impact of the proposal does not warrant further evaluation nor the preparation of an Environmental Impact Statement.

      (2) The project area is adequately described in the dated project boundary map and represents an acceptable area to be covered by the provisions of Section 6(f)(3) of the Land and Water Conservation Fund Act (see Section 660.2.6). The Service will

also review those known outstanding rights and interests held by others in the property which the State has indicated are not to be included under the conversion provisions of Section 6(f)(3). If the Service concurs with the State's recommendation that those rights or interests, if and when exercised, would not impact the viability of the area for continued public outdoor recreation use, future actions arising pursuant to those rights or interests will not be considered within the purview of Section 6(f)(3) of the Act. All other rights and interests will be subject to the guidelines contained in Section 640.1.8 and the General Provisions (see Attachment 660.3C).

(3) The proposal is in accord with the Statewide Comprehensive Outdoor Recreation Plan.

3. Project Evaluation Criteria. The following criteria shall be used by the States in selecting projects for submission to the Service (see Chapter 660.4) and by the Service in evaluating projects for approval.

A. SCORP. The extent to which projects would satisfy basic outdoor recreation needs and/or urgent needs identified in the State's planning program will be considered. This would include the amount and degree of use to be made of the project, the project location in terms of its service area, and the extent to which the project represents an increase in public outdoor recreation resources and is a long-term solution to meeting public outdoor recreation needs.

B. ELIGIBILITY. Projects will conform with the eligibility guidelines for acquisition, development, and planning projects (see Parts 630 and 640). This will include consideration for the extent to which the project's purpose is primarily for "public outdoor recreation", as distinguished from "historic", "economic development", "entertainment", "professional sports or athletics", or "indoor recreational" purposes.

C. COORDINATION. The extent to which the project is coordinated with and related to other public services and activities, and other planning and programing activities at the local, State and Federal levels will be considered. This will include compliance with the State's intergovernmental review procedures. (see Chapter 650.8)

D. ORIGINALITY. The degree to which the project shows originality of purpose or approach, or demonstrates a new idea or the new application of conventional ideas will be considered.

E. APPLICANT'S HISTORY. The past history of the applicant for 1) adequately completing or carrying out previous federally-assisted projects, 2) protecting existing recreation resources, 3) operating and maintaining areas to acceptable standards, and 4) guiding new developments and preserving lands for open space and outdoor recreation purposes through the use of zoning and other rules, regulations and authorities will be considered.

Grants may not be awarded to any applicant nor shall any grantee or sub-grantee make any award or permit (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

F. COMPETITION WITH THE PRIVATE SECTOR. The extent to which a development project conflicts with private facilities will be considered. Public projects which would create a competitive situation with private enterprises generally should not be considered for L&WCF assistance where the private sector is already providing similar facilities of the type and quality needed to meet identified recreation demands. However, the fact that a public facility may place competitive pressures on a private facility does not necessarily remove the responsibility of State and local governments to provide such facilities when the private sector cannot meet existing demands in terms of the quantity or quality of needed facilities.

In situations where privately managed facilities are providing identical or similar recreation opportunities to those proposed for public sponsorship and there is potential for competitive pressures on the private operations, the State Liaison Officer will prepare a written review which discusses the need for the proposed public investment in light of the private sector's presence in the market. The primary consideration which must be addressed is whether the private sector is providing a similar type of outdoor recreation activity or experience and in sufficient quantity and quality to satisfy identified outdoor recreation needs. The following questions should be addressed in making this determination:

(1) Does the Statewide Comprehensive Outdoor Recreation Plan identify a need for the facilities in the planning Region for which they are proposed? Is the need also identified in Regional or local plans?

(2) Are similar private facilities, that would be affected by the proposed public facilities, operating at or above their normal capacity?

(3) Are similar private facilities available at a reasonable fee and adequately maintained and managed so as to provide a quality outdoor recreation experience which will meet existing and projected demand?

(4) Do the proposed public facilities provide a different type of experience or service from that provided by similar private facilities? For example, destination or vacation facilities as opposed to overnight or day use facilities; basic or rustic as opposed to convenience or luxury facilities?

(5) Do existing physical factors (topographical, climatic, location, etc.) limit the potential for private investment in the type of facilities that the public sector intends to provide? Does the special nature of the resource dictate public ownership and development?

In addition, factors which would lend support to a conclusion that public facilities should be provided would include a history of such public involvement in the area affected; the existence of a State legislatively mandated program for the development of such facilities; and the existence of local zoning ordinances or other land use controls that would preclude or limit private investment.

The State will utilize its review to evaluate the need for proposed public facilities and the requested investment of L&WCF moneys. The Service reserves the right to request from the State the narrative statement for review if in its judgement one is considered necessary.

Marinas, ski facilities, campgrounds, and golf courses are among the types of competitive facilities to be considered under this criteria.

G. HANDICAPPED ACCESS. The extent to which buildings and other design features account for the needs of the physically handicapped (in accordance with the Architectural Barriers Act of 1968, Public Law 90-480) Section 504 of the Rehabilitation Act of 1973 will be considered. Facilities will include design features to accommodate the physically handicapped, including the use of ramps, extra wide doors, and special parking facilities. It will be the State's responsibility to insure that all L&WCF assisted development projects are in conformance with accepted handicapped design criteria as described in Chapter 640.3.3.

H. NEPA. The impact, both positive and negative, of the project on the environment will be considered. This information shall be

covered in the environmental information submitted by the State to the Service (see Chapter 650.2). On the basis of the environmental information and other information available to the Service, a determination will be made by the National Park Service whether or not to prepare an environmental impact statement on the project or the consolidated project element in accordance with the National Environmental Policy Act of 1969 (Public Law 91-190) and other pertinent regulations. The final environmental impact statement and the comments pertaining thereto shall be considered by the Service in deciding whether or not to approve a project which the Service believes is a major Federal action significantly affecting the environment.

I. PROJECT DESIGN. Structures should be designed with sensitivity to the natural surroundings and developed areas should be landscaped to harmonize with the natural environment. Roads, trails and parking areas should be designed to blend and harmonize with existing surroundings. Unsightly areas should be screened from view.

(1) Noise. Exterior sources of noise, such as highways, airports, railways, or factories, should be considered in the acquisition of land and in the design and location of facilities. Steps should be taken to minimize the disturbing effects of noise by means of vegetative screening and the placement of facilities. The location of facilities, such as trails for trail bikes and snowmobiles, shall take into account the effect of their noise on other recreation activities at the L&WCF assisted area. Operational noise should be taken into consideration in the purchase of apparatus and machinery.

(2) Utility Lines. Overhead utility lines constitute a major detraction from the natural quality of many outdoor recreation areas and must be eliminated where possible. States will, therefore, be expected to 1) take all reasonable steps to insure the burial, screening, or relocation of existing overhead lines at development or acquisition projects where such lines visibly intrude upon the site's character, and 2) insure that all new electric wires under 15 KV, and telephone wires be placed underground. In no case shall mass recreation use areas (swimming, picnicking, etc.) be located under electric wires.

If the State feels that existing overhead lines should not be removed, rerouted, or buried, it must indicate its reasoning in the application.

J. POLLUTION. The extent to which the project will affect the environment will be considered. The state agencies administering the L&WCF program, the Service and the project sponsors must set an example by maintaining high standards for the preservation and enhancement of the environment. This includes the elimination and prevention of air and water pollution, and the protection and enhancement of natural beauty.

The introduction of pollutants into the environment must be avoided. Particular attention should be given in project design to sewage effluents, contaminated water, burning dumps, garbage and solid waste disposal, and the siltation of waters.

Development shall be designed and managed to minimize erosion and siltation. Fill, borrow pits, cuts, and other raw soil surface areas must be protected from erosion during development to the maximum practicable extent, and all disturbed areas must be restored to an attractive condition at the conclusion of development.

Development must comply with applicable Federal, State, and/or local air and water quality standards, including The Clean Air Act, The Clean Water Act, and Executive Orders 11514 and 11288.

K. FLOODPLAINS AND WETLANDS. All proposals involving floodplains and wetlands shall preserve and enhance the natural and beneficial values of such lands in accordance with Executive Orders 11988 and 11990. (see Chapter 650.7). Proposed acquisition and development shall include all practical measures to minimize harm to floodplains and wetlands which may result from new construction or other uses of the properties. Practical alternatives to proposed actions which might adversely effect floodplains and wetlands shall be considered by the project sponsor as well as the impact of such alternatives on the use and quality of the recreation site. This shall be accomplished as part of the environmental review process (see Chapter 650.2) and in conformance with 44 CFR 6342 (see Chapter 650.7).

The State during its environmental evaluation of a proposal involving floodplains and wetlands, shall insure to the fullest practical extent that the public is given an early opportunity to review and comment on the project pursuant to the above Executive Orders.

L. PRIME OR UNIQUE FARMLANDS. In accord with Council on Environmental Quality memoranda on prime or unique farmlands, it is the policy of NPS not to participate in projects which

irrevocably remove prime or unique farmlands from production, where other practicable alternatives exist and where the proposed project does not fulfill a clearly demonstrated need. However, the Regional Director is not precluded from approving a project located on lands identified as prime and unique farmlands when the proposed use meets a clearly defined recreational need and/or does not result in an "irreversible conversion" to non-farm use. In defining "irreversible conversion", it should be noted that the imposition of Section 6(f) of the L&WCF Act of 1965, does not, in itself, constitute an irreversible conversion of farmlands to non-farm use, since the project site could be converted to agricultural use provided that suitable replacement land is made available.

M. ENDANGERED SPECIES. The extent to which the project will affect any species of fish, wildlife, or plant which is designated as endangered or threatened under the Endangered Species Act of 1973 will be considered. It will be the State's responsibility to obtain the information necessary for a review of the effect the proposed project has upon listed species or their habitat pursuant to 50 CFR 402.

N. RELOCATION. Acquisition projects shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (see Chapter 650.3).

O. PRESERVATION. All projects shall comply with the National Historic Preservation Act of 1966, the National Environmental Policy Act of 1969, as amended, as it pertains to cultural resources; Executive Order 11593; and the Archeological and Historic Preservation Act of 1974, as amended (see Chapter 650.4). It is necessary to determine whether L&WCF assisted projects affect properties listed in or eligible for listing in the National Register of Historic Places. Documentation of such affected property should be made.

P. EEO CONTRACT COMPLIANCE. All projects shall be in compliance with procedures required by Executive Order 11246, as amended, and by the Office of Contract Compliance Programs of the Department of Labor (41 CFR 60-4). States will actively cooperate with NPS in obtaining compliance of project sponsors, construction contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders. (see Chapter 650.5).

Q. FLOOD INSURANCE. The purchasing of flood insurance for all insurable acquisition or development projects located in flood hazard areas of communities participating in the National Flood Insurance Program as required by the Flood Disaster Act of 1973 will be considered (see Chapter 650.6).

R. DREDGE AND FILL. The effect of dredge and fill operations on marshes, wetlands, estuarine areas, and other areas of unique wildlife or marine habitat will be considered. Proposals involving dredge and fill operations must be reviewed and evaluated by the U.S. Fish and Wildlife Service for the effects on marine and wildlife habitat. A permit from the appropriate Federal agency (Corps of Engineers, Coast Guard, etc.) is required for development proposals involving any of the above activities in navigable waters prior to approval of a Land and Water Conservation Fund development project.

S. CONTROL AND TENURE. The degree of control and tenure over areas to be acquired or developed will be considered. Reasonable assurances must be provided that conversion under Section 6(f)(3) of the Act will not occur without Service approval (see Section 640.1.8).

T. PROFESSIONAL SERVICES. The quality of engineering and supervision on a project will be considered. States must provide all engineering services necessary for design and construction, provide internal technical review, and insure that construction plans and specifications meet applicable health and safety standards (see Chapter 675.3.).

U. COASTAL ZONE MANAGEMENT. All actions significantly effecting the coastal zone are subject to the Federal consistency requirements of the Coastal Zone Management Act of 1972, as amended. To fulfill the requirements of Federal consistency, applicants should complete the Intergovernmental Review System (E.O. 12372) process (see Chapter 650.8).

V. ENERGY CONSERVATION. All projects approved beginning in fiscal year 1981 shall be designed, constructed, operated and maintained in an energy efficient manner.

(1) Power systems for heating, cooling, lighting and operation shall minimize or eliminate the facility's use of petroleum and natural gas through solar, wind, wood, coal or other power systems, to the extent possible.

(2) All projects shall meet the thermal insulation standards of the American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc. Standard 90A-1980, Energy Conservation in New Building Design, or the "Cost Effective Energy Conservation Standards" of HUD, or other equivalent standards.

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(3) State project selection systems shall give priority to the most energy efficient projects, including but not limited to projects using energy efficient design methods and materials for the site and buildings; the use of alternative power systems to minimize the use of petroleum and natural gas; the adaptive reuse of existing structures over new construction where appropriate; projects that are located close to populated areas and are accessible by foot, bicycle or public transportation; the retrofitting to improve the energy efficiency of existing recreation facilities; projects resulting from an energy audit or energy efficiency plan; or projects which help minimize energy development impacts.

4. Development Project Criteria. In evaluating development project proposals, the State and the Service should give special attention to the degree to which the project is in keeping with the original intent of the L&WCF Act.

A. A development project is considered to be questionable, elaborate, or borderline with respect to the basic intent of the L&WCF Act if serious questions arise concerning some of the following eligibility issues and their interrelationships:

(1) PROJECT COST. Consideration should be given to the degree to which a significant portion of the State's annual apportionment is requested for one project, for one project sponsor or for one facility that does not serve the full range of the general public; or when the cost of a facility significantly exceeds the comparable price for similar facilities.

(2) LIMITED USE. Consideration should be given to the degree to which participation is limited by a facility's single purpose, short season, cost of equipment, fee for participation or its limited accessibility to the general public.

(3) LOW PRIORITY. Consideration should be given to a project's priority in the State's Comprehensive Outdoor Recreation Plan and Action Program, especially when the need for a particular facility in a certain planning region is not fully supported.

(4) COMPETITION WITH THE PRIVATE SECTOR. Consideration should be given to the degree to which the private sector is already providing similar facilities of the type and quality needed to meet identified recreation demands and the user fee is low enough to undercut private business,

or the income is sufficient to justify private investment, or the facility is located in a tourist market area.

(5) INELIGIBLE FACILITY TYPES. Consideration should be given to the degree to which the project involves questionable support, spectator or exhibit facilities or does not clearly comply with the other eligibility criteria outlined in Chapter 640.3.

B. In the situations where a proposal raises serious questions in regard to the above eligibility issues, the State Liaison Officer will review the project to determine if it meets the original intent of the Act. In this review, special consideration should be given to the following questions:

(1) Is the project's cost comparable to other facilities of its type and justifiable in terms of the quantity and quality of recreation the facility will provide?

(2) Does the project require only a reasonable portion of the State's L&WCF monies rather than a significant portion which precludes the funding of more urgent recreation needs?

(3) Will the project serve a reasonably large number of people in its service area? Will it provide close-to-home recreation and be accessible by public transportation?

(4) Will the project serve a wide range of recreation interests and abilities including the elderly and handicapped as well as the more active and highly skilled recreationists?

(5) Does the project establish a reasonable fee structure that allows for broad public participation perhaps by including free days or reduced rate days if necessary? Is project income to the sponsor being directed to recreational purposes? (see Section 675.1.8).

(6) Does the project meet priority recreation needs as defined in the Statewide Comprehensive Outdoor Recreation Plan and Annual Action Program?

(7) Can it be shown that the project does not compete unfairly with the private sector? (see Section 660.5.3F).

(8) Does the project involve only eligible outdoor recreation facilities? (see Chapter 640.3).

C. The above questions should be used as a general guide in evaluating a questionable, elaborate or borderline proposal in relation to the original intent of the Act. Essentially, to be eligible, one must be able to conclude that L&WCF funds are being used "in the public interest" and "in accord with the Statewide Comprehensive Outdoor Recreation Plan" for the development of "basic outdoor recreation facilities to serve the general public." The Service reserves the right to request from the State a written justification of eligibility based on the above, if in its judgement one in considered necessary.

5. Approval. Any project submitted to the Service for consideration and found to be in accord with the project evaluation criteria and other current requirements, may be considered for approval.

A. Approval. When a project has been judged adequate and the State desires funding, a project agreement is signed by an authorized National Park Service (NPS) representative, thereby approving the project. This approval, or funding, means that the amount of money stated on the agreement is obligated for expenditure from the Fund on this project, and will be paid to the State as acceptable billings are presented to NPS or as a request for payment on letter of credit is submitted to a Treasury Regional Disbursing Office.

B. Staged Projects. Acquisition and/or development projects may be accomplished in stages. The purpose of staging is to schedule logical units of accomplishment and to defer obligations from the Fund for other projects. When a staged project is submitted to the Service, funding may be requested for only one stage. The Service reviews all the stage of such projects as if for complete approval. If found adequate, an agreement is signed, thus approving the first stage and qualifying the remaining stages. When the project sponsor is ready to proceed with one or more of the subsequent qualified stages, approval is requested by means of an amendment to the project agreement. Staged projects will not be included in a Consolidated Grant application.

6. Certification. When utilizing the Consolidated Grant or the Streamlined Single Project applications, the State Liaison Officer by signing the project agreement certifies that the individual project or the project elements which are part of the consolidated grant are eligible for assistance under the Land and Water Conservation Fund Act of 1965, as amended; that they are in accord with the State's Comprehensive Statewide Outdoor Recreation Plan and the provisions of the current L&WCF Grants Manual; and that all required documentation is in the State's official case

file. These assurances are part of the consideration for the grant contract and the contract is made in reliance on the representation of the State.

Included in this certification is the State Liaison Officer's assurance that the project is not located on or near any site presently listed, or eligible for listing in the National Register of Historic Places (see Chapter 650.4). If the project is located on or near such a site, the State Liaison Officer assures that the State Historic Preservation Officer has determined that it will have "no effect" upon those resources. Projects or project elements located on or near such sites and which are viewed as having "no adverse effects" on nationally significant historic sites or proposals which receive "adverse effect" comments cannot be processed or included in a Consolidated Grant application until cleared by the Service.

7. Qualification. The State may wish to submit an acquisition or development project to the Service for qualification, that is to ascertain its eligibility and technical adequacy without having funds obligated. Upon request, the Service will conduct such a review and notify the State concerning the project's eligibility for funding. If eligible, the project may be processed for approval upon receipt of a funding request from the State.

8. Service Action During Periods of State Ineligibility. During a period of State ineligibility, the following apply:

   A. Requests for project approval received by the Service but not acted upon prior to the State's loss of eligibility will be returned to the State as inactionable. The State may not submit projects to the Service during a period of ineligibility.

   B. Only requests for time extensions, deobligations, reimbursements, changes in scope, and project completions will be acted upon during a States period of ineligibility.

   C. Waivers of retroactivity will not be granted.

   D. Amendments to increase funds and to add or delete elements of a consolidated project will not be acted upon during a period of ineligibility.

GENERAL COST PRINCIPLES

1. **Basic Concept.** Office of Management and Budget (OMB) Circulars A-102 and A-87 (formerly Federal Management Circular 74-4) will be followed in determining the allowability and allocability of costs. Project costs will be matched project by project. Each project represents a separate transaction for purposes of determining the amount of the L&WCF assistance.

2. **Relationship of Costs to Project Period.** To be eligible for matching assistance, costs must have been incurred within the project period except for preagreement planning costs (see Section 670.1.3C). The project period is the span of time stipulated on the agreement during which all work to be accomplished under the terms of the agreement must be completed (with the exceptions described in 670.1.3). The L&WCF does not reimburse obligations, regardless of when they are assumed; it reimburses costs incurred during the project period.

   A. Development costs are first incurred at the start of actual physical work on the project site (such as the clearing of ground, the beginning of construction of a building, or the delivery of material to the site), and continue through the period the work is being done. Costs are not incurred at some earlier time when contracts are signed, funds obligated, or purchase orders issued, or at a later time when the ensuing bills are paid.

   B. Since the transfer of ownership in real property can be a protracted process which differs under various State laws and procedures, the relationship of acquisition costs to project period is separated into two elements: the date when the acquisition cost is incurred and the date when the cost is eligible for reimbursement.

      (1) Acquisition costs are incurred on the date when the earliest of any of the following transactions take place:

         (a) The project sponsor accepts deed, lease or other appropriate conveyance;

         (b) The project sponsor makes full payment for the property;

         (c) The project sponsor makes first payment in a series of spaced or time payments;

         (d) The project sponsor makes the first or full payment as stipulated in an option agreement; (The cost of the option, if included as part of the purchase price, is allowed as a retroactive cost.)

(e) The project sponsor makes first partial or full payment to an escrow agent.

(2) The transactions in (1) above will be used to determine whether an acquisition cost is incurred within the project period. Eligible acquisition costs (and retroactive option costs as appropriate) will be reimbursed only after the project sponsor has made payment and received satisfactory title to the property.

3. Retroactivity. It is the intent of the Service that L&WCF assistance be awarded to assist work not yet undertaken, rather than to help pay for work already begun or completed. This applies to entire projects and to each stage of a multi-stage project.

A. Policy. Retroactive costs are those costs incurred prior to approval of a project or project stage by the Service. They include costs incurred for subsequent stages before the stages are approved. With the specific exceptions stated below, retroactive costs are not eligible for matching funds.

In some cases, the project sponsor will have begun some parts of the work, and thereby incurred costs before the project is acted upon. If such a project is approved, none of the costs incurred prior to approval will be matched, except as indicated in sections B and C below.

If, during the conduct of a project, it becomes apparent that completion will not be possible within the project period, the State will submit an amendment to extend the project period. This should be submitted at least 30 days prior to the expiration date. A period of one year shall be considered as the minimum time extension of a project period when amending a project. Requests for project period extension submitted after the expiration date will not normally be approved, and costs incurred after the expiration date will not be eligible for assistance.

B. Waiver of Retroactivity. Retroactive costs will not be matched under ordinary circumstances. Exceptions will be made only when immediate action is necessary and the time necessary to process an application would result in a significant opportunity being lost. The State will notify the Service in writing of the necessity for action prior to taking such action and will give justification for the proposed action. Such notification must include appropriate environmental information as outlined in Chapter 650.2.

A finding by the Service that an environmental impact statement might be required will preclude the granting of a waiver. If the Regional Office grants an exception, the retroactive costs will be eligible for assistance if the agreement is later approved. Granting an exception is only an acknowledgement of the need for immediate action; it does not imply a qualitative approval of the project. The retroactive costs are incurred at the applicant's risk, since the granting of the waiver does not in any way insure approval of the project. Under no conditions will a waiver of retroactivity be granted during a period of State ineligibility.

Project proposals should be submitted for funding as soon as possible after the granting of a waiver of retroactivity. In all cases, however, projects for which a waiver has been granted will be submitted within one fiscal year following the fiscal year in which the waiver was granted.

C. Preagreement Planning Costs. It is recognized that some costs must be incurred before a proposed project can be submitted to the Service with the required descriptive and cost data.

Therefore, for development projects, the costs of site investigation and selection, site planning, feasibility studies, preliminary design, environmental assessment, preparation of cost estimates, construction drawings and specifications, and similar items necessary for project preparation may be eligible for assistance, although incurred prior to project approval. Similar costs may be allowable for acquisition proposals except those relating to appraisals, surveys, and other incidental costs to the purchaser.

For planning projects, the development of work programs, cost estimates and budgets, workflow charts, and such other items needed to develop a sound planning program project by outside consultants, university personnel, or by appropriate State personnel may be allowable costs, although incurred prior to project approval.

All such pre-agreement planning costs incurred within three years prior to project submission to the Service are allowable. Eligible planning costs incurred beyond three years may be allowable provided the earliest date from which they are incurred is identified in the project agreement. The State must have on file and available for review sufficient information to justify the amounts of such pre-agreement costs, to indicate the periods during which they were incurred and to justify their applicability to the particular project.

D. Donation Project. Waiver requests involving real property donations will, where possible, identify the additional acquisition or

development to be accomplished under the proposed project or projects. In any event, a project agreement specifying the use of the donated value must be entered into prior to the expiration of the waiver. Such requests must include the appropriate environmental information as outlined in Chapter 650.2.

E. Staged Project. When a project is staged, each stage will be treated separately, and must be approved before costs are incurred. Any cost incurred prior to approval will be funded only on the exceptional basis outline for retroactive projects in Section B above, or as preagreement planning costs identified in Section C above.

4. **Cost Overruns and Amendments of Scope.** During the execution of a project there may be unforeseen delays, changes in specifications, or rising costs of labor and supplies which cause the cost of the stage or project to be greater than the approved support ceiling. Or, as work progresses, it may be necessary or desirable to alter the scope of the project by adding, deleting or modifying some of its parts.

Where such changes fall outside the allowed scope flexibility, the State is required to notify the Service of such changes and to submit an amendment as soon as possible to cover the modification. It is recognized, however, that it will not always be possible for the Service to act in advance of the change, and any costs thus incurred prior to their approval are done so at the project sponsor's risk.

Proposed amendments decreasing the scope or approving a cost overrun will be considered after the project period, if an earlier submission is not possible, but only those costs incurred within the project period will be eligible. No proposed amendments to increase the scope will be considered after the project period has expired. An amendment to add or substitute scope items will not be approved if the period of availability for obligation of funds obligated under the project has expired. An amendment can be approved during the project period if the current apportionment is obligated to fund the scope change. (see Section 660.2.9).

5. **Federal Matching and Supplemental Programs.** Section 6(f) of the L&WCF Act prohibits the use of other Federal financial assistance to pay the State or local matching share of a L&WCF grant. However, in those instances where the statutory provisions of a subsequent Federal grant-in-aid program explicitly allow recipients to use such assistance to match other Federal funds, Section 6(f)(1) of the L&WCF Act is superseded and a matching arrangement is permissible.

State and local recipients may use the following Federal grant-in-aid programs to match or supplement L&WCF assistance and shall indicate

in the project application the specific type of matching or supplemental assistance used:

A. Housing and Community Development Act of 1974 (P.L. 91-609), as amended. Section 105(a)(9) (i.e. Community Development Block Grants).

B. Housing and Urban Development Act of 1970 (P.L. 91-609), as amended (also known as the Urban Growth and New Communities Development Act of 1970). Supplemental grants under this program may not exceed 10 percent of the cost of the project.

C. Public Works and Economic Development Act of 1965 (P.L. 89-136), as amended by P.L. 91-123 and P.L. 94-487. (i.e. Regional Commission Supplemental Grants).

D. Emergency Jobs and Unemployment Assistance Act of 1974 (P.L. 93-567), as amended (i.e. Title X of the Public Works and Economic Development Act of 1965).

E. Appalachian Regional Development Act of 1965 (P.L. 89-4) as amended by P.L. 92-65 (Section 214(a)).

F. Trident Community Impact Programs (P.L. 93-552).

G. Indian Self Determination and Education Assistance Act (P.L. 93-638).

H. Local Public Works Capital Development and Investment Act of 1976 (Section 104).

I. Power Plant and Industrial Fuel Use Act of 1978 (Section 601 Energy Impact Assistance). The Agriculture Department grants frequently supplement other grant assistance to acquire and develop sites for public facilities. These funds are not available for capital construction.

J. State and Local Fiscal Assistance Act of 1972 (P.L. 95-512), as amended. (i.e., revenue sharing funds).

K. Agricultural Credit Act of 1978 (P.L. 95-334) (i.e., Section 347 of the Consolidated Farms and Rural Development Act). Participation is allowable only if the Farmers Home Administration Loan is secured by a means other than land, i.e., chattel, general obligation bonds or general taxes.

SPONSOR'S FINANCIAL OBLIGATIONS

1. **Matching Share.** L&WCF assistance shall not exceed 50% of the total eligible costs (except as provided for the Insular Areas in Section 600.4.7) and is provided primarily on a reimbursement basis. In most cases the project sponsor will initially pay in full all costs accrued during the project period. Reimbursement for the federal share is made through the State Liaison Officer in accord with procedures outlined in Chapter 675.6.

   When the sponsor lacks the financial resources to initially finance approved projects in a timely manner, the sponsor may request an advance of monies to cover the Federal share of anticipated costs. An advance of funds can be requested through the use of OMB SF-183, Request for Advance, or through the SMARTLINK payment Management System. In no case shall both methods be used. (see Chapter 675.6). All advances are subject to prior approval of the Washington Office of NPS.

   When an advance is requested, the State shall include a financial plan which outlines the reason for the request and a schedule of disbursements by months or other payment intervals. All advances received must be expended within a thirty day period in accord with Department of Treasury requirements.

2. **Applicability of Donations.** The Service encourages the donation of cash and in-kind contributions including real property to project sponsors by private parties. The value of the in-kind contributions may be used as all or part of the project sponsor's share of the project cost. The method of valuation and charges for volunteer services, material, and equipment must be documented and approved by the State prior to the donations being applied to reimbursement requests in order for such contributions to be considered as part of the sponsor's matching share. Specific procedures for placing the value on in-kind contributions from private organizations and individuals in accord with OMB Circular A-102, 43 CFR 12.24, are set forth below:

   A. Valuation of Volunteer Services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of volunteered service may be counted as matching share if the service is an integral and necessary part of an approved project. Records of in-kind contributions of personnel shall include time sheets containing the signatures of the person whose time is contributed and of the supervisor verifying that the record is accurate.

(1) Rates for Volunteer Services. Rates for volunteers should be consistent with those regular rates paid for similar work in other activities of the State. In cases where the kinds of skills required for the federally-assisted activities are not found in the other activities of the grantee, rates used should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved. The time of a person donating services will be valued at the rate paid as a general laborer unless the person is professionally skilled in the work being performed on the project (i.e., plumber doing work on pipes, mason doing work on a brick building). When this is the case, the wage rate this individual is normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the city or cities in the immediate area pay their city employees for performing similar duties.

(2) Volunteers Employed by Other Organizations. When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

B. Valuation of Materials. Prices assessed to donated materials included in the matching share should be reasonable and should not exceed current market prices at the time they are charged to the project. Records of in-kind contributions of material shall indicate the fair market value by listing the comparable prices and vendors.

C. Valuation of Donated Real Property. The value of donated real property shall be established by an independent appraiser in accord with commonly accepted appraisal practices (see also 675.2.6E). Upon completion of the appraisal, at the project sponsor's expense, it will be submitted to the Service, through the State, for final review and approval. The State will be expected to review the appraisal before it is submitted to the Service. In extreme cases or to resolve disputes as to the fair market value, the applicable Regional Office will contract for necessary appraisals with another Federal agency or a private appraiser.

The Regional Director may authorize the State Liaison Officer to review and approve donation appraisals when the value of the property to be donated is $100,000 or less. For donation appraisals over $100,000, the Service takes final action on the appraisal. In

such cases, the State may choose to submit the appraisal after project approval, but prior to the first billing for that project or element.

D. Valuation of Donated Equipment. The hourly rate for donated equipment used on a project shall not exceed its fair-rental value. Hourly rates in the annual edition of Rental Compilation or Rental Rate Guide or similar publications which provide the national or regional average rates for construction equipment may be used. Such publications are usually available from contractor associations. Records of in-kind contributions of equipment shall include schedules showing the hours and dates of use and the signature of the operator of the equipment.

E. Valuation of Other Charges. Other necessary charges such as equipment use charges incurred specifically for an indirect benefit to the project on behalf of the sponsor may be accepted as matching share provided that they are adequately supported and permissible under the law. Such charges must be reasonable and properly justifiable.

F. Documentation. The basis for determining the charges for donated personal services, material, equipment and land must be documented and must be approved by the State prior to the billing or letter of credit draw down which includes the value of the donation.

G. Limits of the Valuation. In-kind contributions are eligible in a project only to the extent that there are additional acquisition and/or development costs to be met by the Federal assistance requested for that project, which must be fully described and explained in the proposal.

Example: Land valued at $10,000 is donated to the project sponsor who proceeds to develop the property for recreational use. Development costs come to $6,000. The total project cost is therefore $16,000 and the matching share would normally be $8,000. But because only $6,000 was actually spent, and since a grant in excess of that would constitute a profit to the sponsor, the Federal share is reduced accordingly.

Sponsor's share (amount of the $10,000 donation applied to the project).....	$ 6,000
L&WCF Assistance.....	6,000
	$12,000

The amount of donation that is matchable is the value of the donation or the amount of cash spent by the sponsor for additional acquisition or development, whichever is less. Any portion of the value of a donation not utilized by the project sponsor for matching in the project ($4,000 in the above example) may be made available to subsequent projects if approved by NPS and only for the fiscal year in which the donation is made plus one additional fiscal year. (see Section 670.1.3D).

H. Multi-Site Land Donations. To be eligible for matching assistance, in-kind contributions shall be applicable to a single project site. However, a multi-site project involving land donations may be considered to the extent that such is logical, reasonable, and more advantageous than the application of the donation to a single site.

ALLOWABLE COSTS

1. **Determining Amounts of Costs.**

   A. General. Subject to the guidelines given in this chapter and in OMB Circular A-87 (formerly Federal Management Circular 74-4), the rates, practices, rules, and policies of the project sponsor, as consistently applied, shall generally determine the amount of costs of each item charged to a project. In instances where the sponsor has no such basis, that of the State shall apply.

   B. Ceiling on Amount of Cost Items. The amount of each item of cost that may be matched from the L&WCF shall not exceed the sponsor's actual cash outlay for that item, or the fair market value of the item, whichever is less. An exception could be land acquired at a price in excess of appraised value and supported by an adequate statement on difference of value.

2. **Ceiling on Total Matching Share From the Fund.** The total matching amount made available for an approved project shall not exceed the approved support ceiling.

3. **Guidelines for Determining Allowable Costs.** The basic statement regarding the principles and standards for determining costs applicable to this grants program is found in OMB Circular A-87. The remainder of this chapter is based upon that source, which will be the authoritative guide on the subject.

   A. To be allowable for L&WCF assistance, costs must meet the following criteria:

      (1) Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto, and, except as specifically provided in these guidelines, not be a general expense required to carry out the overall responsibilities of State or local government.

      (2) Be authorized or not prohibited under State or local laws or regulations.

      (3) Conform to the limitations of OMB Circular A-87, Federal law, or other governing limitations in the agreement as to types or amounts of cost items.

      (4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally-assisted and non-federally-

assisted activities of the unit of government of which the project sponsor is a part.

(5) Be treated consistently through the application of generally accepted accounting principles appropriate to the circumstances.

(6) Not be allocable to or charged to any other federally-financed program.

(7) Be net of all applicable credits.

B. Allocable Costs.

(1) A cost is allocable to the grant to the extent of benefits received.

(2) Any cost allocable to a particular project may not be shifted to another project or another Federal grant program to overcome fund deficiencies, avoid restrictions imposed by law or project agreements, or for other reasons.

(3) When an allocation of joint costs will result in charges to this program, an allocation plan will be required (see OMB Circular A87, Section J).

C. Applicable Credits. Credits are receipts or reductions of expenditure-type transactions which offset or reduce allocable costs. Examples are discounts, rebates, recoveries on losses, sale of items, and adjustment of overpayments.

D. Total Costs. The total cost of a project is comprised of the allowable direct cost plus its share of allowable indirect costs, less applicable credits.

E. Classification of Costs.

(1) Direct Costs. Direct costs are those identified specifically with and charged directly to a particular project. Typical direct costs are employee compensation for time and effort devoted to a specific project, costs of materials, costs of equipment and other capital expenditures, or the acquisition of land.

(2) Indirect Costs. In order to make use of the L&WCF for increasing outdoor recreation opportunities, States are urged to absorb administrative and other overhead expenses to the maximum extent possible through the use of normal State funds and resources. However, where a State cannot

effectively administer the L&WCF program with its own resources, Federal funds may be used to pay a portion of the costs incurred by the State. Indirect costs are those incurred for a common or joint purpose benefiting more than one project, and are not readily assignable to the individual projects. All indirect costs of the office of the State Liaison Officer are eligible for allocation to projects provided they meet the conditions of OMB Circular A-87.

F. Costs Incurred by Other Agencies. The cost of service provided by other agencies may only include allowable direct costs of the service plus a prorata share of allowable supporting costs (costs of such auxiliary functions as procurement, payroll accounting, etc.) and supervision directly required in performing the service. In lieu of determining actual supporting (indirect) costs related to a particular service furnished by another agency, either of the following alternative methods may be used.

(1) Standard indirect rate, equal to 10% of direct labor cost in providing the service, or

(2) Predetermined fixed rate, for indirect cost of the agency providing the service.

G. Cost Allocation Plan. A plan for the allocation of cost will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records. (See OMB Circular A-87, Section J).

4. Allowable Costs. The following are allowable type costs, and apply irrespective of whether a particular item is treated as a direct or indirect cost. The allowability of these items is subject to the general principles outlined in Chapter 670.1 and elaborated in OMB Circular A-87. Allowable costs include, but are not limited to:

A. Personal Service. Assistance may be provided for the personal services of those employees and supervisors directly engaged in the execution of a project. Assistance will be provided according to the proportion of time spent on a project.

The cost of such compensation is allowable to the extent it is 1) reasonable for the services rendered, 2) follows an appointment made in accord with applicable State, local, and Federal requirements, and 3) is determined and supported by generally accepted payroll practices and time and attendance or equivalent records.

Salaries and wages for persons working on L&WCF assisted projects shall not be higher than for similar persons on similar jobs.

B. Fringe Benefits. Fringe benefits, such as vacations, holidays, and sick, court, and military leave which are incurred during authorized absences from the job, and insurance, retirement plans, social security contributions, etc., which are regularly provided to employees by the project sponsor are legitimate personal service costs and are eligible for L&WCF assistance. Fringe benefit costs to a project should be computed in proportion to the time spent on a project.

Vacations and leave should not be taken or charged in excess of the amount earned while working on L&WCF assisted projects.

C. Consultant Service. In those cases where the special assistance of a specially qualified consultant is required for a project, a share of the cost may be borne by L&WCF moneys. Consultants should be paid by the customary method of the project sponsor whether by per diem, salary, fee for service, etc. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used. Consultants may, if it is the policy of the project sponsor, be reimbursed for travel and other expenses.

No consultant fee may be paid to any Federal, State or project sponsor's employee unless such a payment is specifically agreed to by the Service.

D. Equipment. Subject to determination on a case by case basis, L&WCF assistance will be made available for:

(1) Equipment Used in the Conduct of a Project. Costs of purchasing, leasing, or renting equipment utilized in the execution of a project are generally eligible for L&WCF assistance.

(a) The purchase price of individual items of equipment costing less than $1,000 is eligible, and the specific items need not be listed nor justified in the proposal.

Items costing $1,000 or more may be eligible provided the sponsor clearly shows that it is more economical to purchase the item than to lease or rent it. They must be listed, with estimated costs, on the proposal. At project completion, any residual value of purchased items of equipment must be credited to the project.

(b) Reimbursement for use of equipment owned by State and local agencies on L&WCF projects will be based upon rates developed by the various State and local agencies. The following guidelines may be useful in developing the equipment use rates:

i. Overall Use Rate--In general, the use rate for any specific item of equipment will include an allowance for depreciation and a use charge for operation and maintenance (O&M) expenses. Depreciation and O&M costs may be combined to arrive at the total amount to be recovered through an overall use rate. This total maybe distributed on a rate per mile, per hour, per day, or any other standard unit. Depreciation and O&M also may be segregated to arrive at a rate to recover each cost factor through its own rate. For example, an automobile may have a rate per day to recover depreciation and a rate per mile to recover O&M. Though the initial rate may be derived from estimated costs, these estimates must ultimately be adjusted to actual costs.

ii. Depreciation--Depreciation is a means for recovering the initial acquisition cost of an asset over its expected useful life. Any generally accepted method of computing depreciation may be used. The methods used, however, must be consistently applied for any specific items of equipment or class of equipment and must result in equitable charges. In lieu of depreciation, an annual use allowance may be used, computed at an annual rate not exceeding 6 2/3 percent of acquisition costs of the equipment. Acquisition costs may also include such items as rehabilitation or modification which increases the value of the equipment. The computation of depreciation, or the application of the use allowance, will be based on acquisition cost plus other costs which increase its value less estimated salvage value. Where actual cost records have not been maintained, a reasonable estimate of the original cost may be used in the computation. Depreciation schedules may be based on experience factors such as estimated useful life, replacement schedule, hours or months of use or miles driven.

iii. No depreciation may be included in the rate for a piece of equipment which was acquired at no cost or which has been fully depreciated. For example, equipment acquired at no cost from another State agency may not be depreciated. An exception could be made for the cost of transportation of the equipment and fix-up or modification costs. Those costs would be recovered through the depreciation schedule. Also, if a three-year depreciation schedule is used for a vehicle, no depreciation may be included in the rate computation after the third year. The entire cost of the vehicle has been recovered in the first three years. An exception is if the vehicle is rehabilitated; those costs may then be recovered through depreciation.

iv. Operation and maintenance--All normal costs for operating equipment and keeping it operational are recovered in this portion of the overall use rate. The recovery of operation and maintenance expenses will be based on actual costs and may include gas, oil, grease, repairs, tires, insurance, etc., and may also include costs of operating a maintenance facility. Use rates covering operation and maintenance may be established by classes of vehicles and equipment.

Example: sedans, panels, carryalls, pick-ups, etc., may be computed at one rate for each class if cost records show comparability. The cost for an operator may be part of this factor or the operator may be direct costed to the user on an hourly rate based on actual costs. This same principle could be applied to such items as gasoline and oil consumed on that job. If these costs are charged directly to a project they may not be included in the computation of a use rate. Operation and maintenance costs incurred and recorded for an item or class of equipment are generally recovered in the succeeding year (if the rate is established on annual basis). To establish the initial rate, O&M costs may be estimated for the first year and adjusted to actual during the next year.

v. Charges must be substantiated by records of payments and/or payments and/or records of hours, days, etc., when equipment was used.

vi. Local units of government that lack the accounting procedures necessary to adequately document

operation and maintenance expenses on force account equipment may utilize State highway rates (with adjustments) unless accounting records show that materially lower rates can be developed.

(c) Lease or rental charges on equipment are allowable when it is determined that such an arrangement is most efficient and economical. Equipment that is rented to the sponsor by other State agencies or by private contractors may be charged to the L&WCF program on a cost basis--provided, however, that these rates are equal to those charged to any other users. Adequate cost records must be maintained to support these billings.

(2) Purchase Price of Equipment Required to Make A Facility Initially Operational. Such equipment includes pumps, sprinkling systems, or tows, standby power plants, etc., necessary to provide for the recreation uses for which the proposal is approved. As a general rule equipment to be used for maintenance is not eligible for assistance (640.3.7G). However, certain smaller items of equipment (but not operational and maintenance supplies, i.e., cleaning compounds, chlorine, paper supplies, brooms) sometimes of an expendable nature, which may be required to make a facility initially operational may be allowable as part of the project cost. Generally, this will be confined to those equipment items specifically required under State Health Department regulations. For such items, the Regional Director will make a judgement as to allowability. It would be impossible for the Service to establish a complete list of every conceivable item that might be required to make a facility operational initially, and a ruling will be made on a case-by-case basis.

E. Supplies and Material. Supplies and materials may be purchased for a specific project or may be drawn from a central stock. The former should be charged to a project at their actual price, less discounts, rebates, etc., and the latter should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

F. Travel. The cost of transportation, lodging, subsistence, and related items is allowable when incurred by employees who are in travel status on official business incident to a project. Such costs may be on an actual basis, or a per diem or mileage basis, or a combination of the two (provided the method used is applied to an entire trip,

and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities).

G. Information and Interpretation Costs. L&WCF assistance may share the cost of information related to a project, as distinguished from publicity (see also Chapter 660.3 Attachment B Part III K. General Provisions, and OMB Circular A-122). These costs may include information and direction signs at the entrances of recreation areas and other necessary places throughout the area, display boards, dioramas, or other interpretive facilities for the explanation of items of interest and other facilities required to explain the area and bring it to public attention.

H. Construction. Allowable construction costs include all necessary construction activities from site preparation (including demolition, excavation, grading, etc.) to the completion of a structure. Construction may be carried out through a contract with a private firm, or by use of the project sponsor's own personnel and facilities (force account).

I. Administrative and Supporting Expenses. L&WCF assistance will be available for a wide range of administrative and supporting expenses incurred directly or indirectly on behalf of a project, consistent with the standards stated in OMB Circular A-87. Where cost items benefit the L&WCF assisted project in addition to other non-Fund assisted activities, the cost will be allowable to the extent they are allocable to the project. Allowable items include, but are not limited to:

(1) Accounting

(2) Auditing

(3) Bonding

(4) Budgeting

(5) Central stores

(6) Communication expenses

(7) Disbursing services

(8) Motor pools

(9) Payroll preparation

(10) Personnel administration

(11) Procurement services

(12) Taxes

J. Costs of Purchase of Real Property and of Interests in Real Property. Federal assistance may be used to pay a share of the fair market value of real properties and of interests in real property purchased by the project sponsor when determined by the Service to be capital costs. Incidental costs of acquisition may not be matched. However, interest expenses awarded by the court as part of just compensation for acquisition in eminent domain situations may be matched. Also, costs allowed under Section 211, P.L. 91-646, of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, may be matched. (see Chapter 650.3).

The value of such properties or interests should be proposed by the State. Steps shall be taken to assure that actions in identifying property for acquisition do not cause inflation of property values, and thereby increase the cost of the project.

Although a project sponsor may pay a greater amount, L&WCF assistance will generally be computed on the fair market value. As determined by an acceptable appraisal. However, when a State feels that the amount paid in excess of the fair market value is justifiable, it should prepare, and submit to the Service, a detailed and well documented statement, including comparable sales and other market data as necessary justifying the difference. If found adequate, L&WCF assistance may be computed on the full purchase price.

Where court award in condemnation cases exceeds the support ceiling approved by the Service, the Service will not be obligated to pay on the higher amount. The State may, however, submit an amendment for Service consideration to increase the support ceiling to the amount of the court award.

Capital expenditures for acquisition of leases, easements, and other rights and interests in real property are eligible for L&WCF assistance.

K. Cost of Real Property Purchased from Other Public Agencies. The actual cost to the project sponsor of land purchased from another public agency may be eligible for matching assistance, subject to the following conditions:

(1) The land was not originally acquired by the other agency for recreation.

(2) The land has not been managed for recreational purposes while in public ownership.

(3) No Federal assistance was provided in the original acquisition by the other agency to facilitate the basic project being funded by L&WCF assistance, unless the Federal assistance was provided by the supplemental programs allowed in Section 670.1.5.

(4) The selling agency is required by law to receive payment for land transferred to another public agency. Examples would be public school land that can be used for non-school purposes only through payment to the school agency, or excess State prison lands that can be transferred to local government use only on a purchase basis. The support ceiling will be based on the price paid by the project sponsor for the property or the fair market value, whichever is less. In some instances the selling agency may be permitted a choice between various State laws which would set the selling price at different levels depending upon which law is chosen by the agency. For example, various laws may be in force which would allow the agency to transfer the real property to another public agency for fair market value, for reimbursement of unpaid taxes, as a donation, or for other consideration. L&WCF assistance will be limited to the minimum amount for which the property could be transferred legally and only in those instances for which there is an attorney general's opinion or established case law.

(5) The requirement of appraisal, history of conveyances, and evidence of title are the same as normal purchases.

(6) If the selling agency is Federal, fair market value is paid (see Section 670.3.5M).

L. Costs of Real Property Acquired through Exchanges. Land owned and administered by the project sponsor may be exchanged for more valuable land administered by another public agency or for land owned by a private party. The support ceiling will be based on the amount of cash, if any, that must be paid by the project sponsor in addition to the land conveyed, subject to appraisal requirements. Both parcels must be adequately appraised.

If the other party is a public agency, items (1) - (6) under Section 670.3.4K apply.

Example: The project sponsor exchanges a property appraised at $10,000 for a privately owned property appraised at $12,000, and pays the difference of $2,000 cash. The amount to be reimbursed is 50% of $2,000.

M. Real Property Acquired by Donation. The value of real property donated to the project sponsor by private organizations or individuals will be eligible for matching as defined in Section 670.2.2, as determined by an appraisal. Donations required by law or regulation are ineligible as the project sponsor's matching share. The land acquired cannot be subject to any restrictions that might limit its intended public recreation use.

N. Master Planning. Master planning of a recreation area in whole or in part will be matchable as part of a development project, subject to the following conditions:

(1) If it is a single stage project, it must include actual development of at least equal cost to that of the master plan.

(2) If it is a multi-stage project in which the master planning occurs in the first stage, the first stage must also include an amount of development at least equal to the amount of the master plan.

O. Miscellaneous Allowable Costs

(1) Payment of premiums on hazard and liability insurance to cover personnel and property directly connected with the project is allowable.

(2) Costs to the project sponsor for work performed by another public department or agency is allowable. This includes the costs of services provided by central service type agencies to the sponsor's departments and need not be supported by a transfer of funds between the departments involved.

(3) Costs of printing and distributing the Statewide Comprehensive Outdoor Recreation Plan, including a popular summary version and other project related printing or reproduction costs are allowable.

(4) The costs of space in privately owned buildings used for the benefit of the project is allowable subject to the conditions stated in OMB Circular A-87 (see also the requirements of

OMB Circular A-122, Cost Principles for Nonprofit Organizations). Also, project sponsors may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. (See OMB Circular A-87, Attachment B Section 11).

5. Non-Allowable Expenditures. These expenditures shall not be included in the base for determining financial assistance:

A. Ceremonial or entertainment expenses.

B. Expenses for publicity.

C. Bonus payments of any kind.

D. Charges for contingency reserves or other similar reserves.

E. Charges in excess of the lowest responsive bid, when competitive bidding is required by the Service or the sponsor, unless the Service agrees in advance to the higher cost.

F. Charges for deficits or overdrafts.

G. Taxes for which the organization involved would not have been liable to pay.

H. Interest expenses, except those awarded by the court as part of just compensation for acquisition in eminent domain situations. (see 670.3.4J)

I. Charges incurred contrary to the policies and practices of the organization involved.

J. Consequential damage judgements arising out of acquisition, construction, or equipping of a facility, whether determined by judicial decision, arbitration, or otherwise. Consequential damages are damages, to adjoining property owned by other persons, which are caused by noise, lights, vibration etc.

K. Incidental costs relating to acquisition of real property and of interests in real property, unless allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646.

L. Operation and maintenance costs of outdoor recreation areas and facilities.

M. The value of, or expenditures for, lands acquired from the United States at less than fair market value.

N. Cost of discounts not taken.

O. Equipment to be used for the maintenance of outdoor recreation areas and facilities, including, but not limited to, automotive equipment, tractors, mowers, other machinery, and tools.

P. Employee facilities, including residences, appliances, office equipment, furniture, and utensils.

Q. Donations or contributions made by the sponsor, such as to a charitable organization.

R. Salaries and expenses of the Office of the Governor, or of the chief executive of a political subdivision, or of the State legislature, or of other similar local governmental bodies.

S. Fines and penalties.

T. Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

U. Any losses arising from uncollectable accounts and other claims, and related costs.

V. Legal and professional fees paid in connection with raising funds.

W. Payments for lobbying in connection with the awarding, extension, continuation, renewal, amendment, or modification of a L&WCF grants. (see 660.3 Attach. B., Part III.G.)

GENERAL ADMINISTRATION REQUIREMENTS

1. **General Responsibility.** It is the prerogative and responsibility of the State, and the project sponsor to which the State delegates responsibilities, to prosecute a project under the general guides and rules established by the State, governed in general by the concepts, rules and guides set forth in this Manual. The primary role of the Service in project administration is to be concerned with results, leaving to the States the determination of means to achieve these results. Thus, the rules established in this Part are minimal, being limited to those considered necessary for the Service to fulfill its obligations.

2. **Arrangements with Sponsors.** It is the responsibility of the State to make suitable and adequate arrangements with other public agencies to insure the successful performance of projects and the continued operation and maintenance of aided facilities and properties for public outdoor recreational use. The State shall be held responsible for all the actions of project sponsors relating to the execution of projects.

3. **Consideration of Federal Acts.** During preparation of an application and conduct of a project, the sponsor shall comply with applicable Federal laws and regulations relating to the acquisition and development of public properties.

4. **Duration of Project.** A project will continue in force until all work under a grant is completed or until the project period of the approved project agreement and all amendments thereto have expired.

5. **Prosecution of Project Work.** The State shall be responsible for insuring that all projects receiving financial assistance pursuant to the Act are carried through to stages of completion acceptable to the Director with reasonable promptness. Failure to maintain satisfactory progress or failure to complete the project to the satisfaction of the Director may be cause for the Director to withhold further payments on any or all projects of a State or qualification of new projects until the project provisions are satisfactorily met. L&WCF assistance may be terminated upon determination by the Director that satisfactory progress has not been maintained.

   In the event that L&WCF assistance should be terminated, the State shall be required to bring the project to a state of usefulness so funds invested shall not be lost. If the State cannot complete the project with its own funds, it should submit a plan to the Director for bringing the incomplete project to a point where it is useful. The Director will not require that all parts of a project be completed in such a case if a stage of reasonable usefulness can be achieved short of completion.

Manual Release 151
Replaces all preceding manual releases

6. On-Site Inspections by the State.

A. Responsibilities. It is the responsibility of the State to administer a regular and continuing program of on-site inspections of projects. The scope, timing and selectivity of these inspections will be covered in an agreement to be negotiated by the Regional Director and the State. This agreement will provide the basis for the conduct of pre-award, progress and final on-site inspections as well as the associated reporting formats (reporting authority approved by OMB No. 1024-0034, 09/30/84). Post-completion inspection requirements are contained in Chapter 675.9.7. Properties and facilities acquired or developed with L&WCF assistance shall be available for inspection by the Service at such intervals as the Director shall require. Generally, Service inspections will be conducted on a spot check basis in conjunction with the State Program Review.

B. Reports. On-site inspection reports will be prepared on all inspections conducted and will be included in the official project files maintained by the State. The State is responsible for the preparation of these reports except when joint-inspections are conducted with the Service.

Submission of inspection reports to the Service will be made on the following basis:

(1) Pre-award reports in accord with the on-site inspection agreement will be included with the Complete Single Project application type.

(2) Progress reports may be combined with the annual performance report on March 31 or submitted to the Service with the project billings or drawdown (see Section 675.5.5).

(3) Final inspection reports must be submitted to the Region within 90 days after the date of completing a project or consolidated project element.

(4) Post-completion reports must be submitted to the Region within five years after the final billing and every five years, thereafter.

7. Changes in Project Scope. See Section 660.2.7A for discussion of changes in project scope.

8. Income from Properties Acquired or Developed with L&WCF Assistance.

A. During Project Period. In accord with OMB Circular A-102 Common Rule-43 CFR 12, income earned by the project sponsor during the project period from sources other than the intended recreational use of the project shall be dispersed in one of the following ways:

(1) Added to the funds committed to the project and used to further eligible program objectives at the project site. In this case a plan for the use of such monies shall be forwarded to the Service for concurrence.

(2) Deducted from the total project costs for the purpose of determining the net cost on which the Federal share of the costs will be based. In this instance, requests for payments must include identification of accrued amounts as credits to the project.

Examples of income that shall be dispersed in the above manners include the rental of structures, the sale of timber and the lease or rental of land.

Income earned by the project sponsor during the project period from the intended recreational use of the project, such as entrance or used fees and concessionaire operations may be disposed of at the sponsor's discretion. The sponsor however, is encouraged to use such income to further recreation objectives related to the sponsor's public outdoor recreation program.

B. After the Project Period. Income earned by the project sponsors after the project period, including that from recreational use and that from land management proctices, may be disposed of at the sponsor's discretion. However, the sponsor is encouraged to use such income to further recreation objectives related to the facility when State and local laws allow. Exceptions include those identified under paragraphs D and E below.

C. Land Management Practices. Land management practices such as the rental of structures, the sale of timber and the lease or rental of land occurring during or after the project period must be compatible with the outdoor recreational use of the ares as described to the Service. Any proctice that alters the use or purpose of the area is prohibited except as provided in Section 675.9.3. Income from such land management proctices must be dispersed in accord with paragraphs A and B above.

D. Sale of Improvements or Structures. Income derived from the sale of improvements or structures acquired with L&WCF assistance shall be used to reduce the cost of other L&WCF-assisted projects of the project sponsor regardless of whether the sale occurs during of after the project period. If the sponsor has no plans for further L&WCF-assisted facilities then the income must be used to further outdoor recreation development or acquisition at the site, at another L&WCF-assisted site, or at another outdoor recreation site operated by the project sponsor. In this case, a letter indicating the intended use of the funds shall be sent to the Service for approval.

E. Non-destructive Mineral Extraction. Extraction of oil and gas from L&WCF-assisted projects involving the purchase of subsurface rights is allowable and will not constitute a conversion under Section 6(f)(3) of the L&WCF Act provided the following conditions are met:

(1) The extraction process does not reduce the recreation opportunities at the site, nor detract from the recreation experiences.

(2) All income derived from the mineral extraction by the project sponsor is used as follows:

(a) to further outdoor recreation development of acquisition at the project site or to reduce the total cost of other active L&WCF-assisted projects at the site (to be given priority); or

(b) to reduce the total cost of other active L&WCF-assisted projects; or

(c) for outdoor recreation acquisition, development, or planning at other State facilities or granted to local communities for such purposes; or

(d) for any use that is consistent with an outdoor recreation program, including operation and maintenance costs and any related service or support facilities.

(e) Such income may not be used strictly for the development of facilities which do not meet the eligibility guidelines for L&WCF assistance (see Chapter 640.3).

(3) The method of allocating income and the uses to which it will be put shall be approved by the Service through a formal agreement with the State.

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9. Title to Properties Acquired or Developed with L&WCF Assistance. Pursuant to 43 CFR Part 12.31, the Federal Government will not obtain a legal right or title to any area or facility acquired or developed with financial assistance received under the provisions of the Act.

10. Safety and Accident Prevention. In the performance of each project the State and other participating organizations shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation. The State and other participating organizations shall be responsible for assuring that all reasonable safeguards, safety devices, and protective equipment are provided, and will take other needed actions reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of work on the project.

11. Issuance of Rules and Instructions. The Director may issue additional or modified rules, instructions, interpretations, and guides from time to time as is necessary for the effective conduct of assistance activities. Such changes will apply to all projects for which agreements are signed after the effective date of the changes. Whenever possible, sufficient lead time will be given between the announcement and the effective date to avoid application to projects already in process at the time of the announcement.

12. Failure to Comply with Federal Laws and Regulations. When the Director determines that a State has violated or failed to comply with applicable Federal law, or the regulations governing this program with respect to a project, he/she may withhold payment to the State of Federal funds on account of such project, withhold funds for other projects of the State, withhold approval of further projects of the State, and take such other action deemed appropriate under the circumstances until compliance or remedial action has been accomplished by the State to the satisfaction of the Director.

13. Appeals. Disagreements with any decision or action concerning comprehensive plans, project proposals, valuations of properties and personal services, and audit exceptions, which have not been resolved to the satisfaction of the project sponsor may be appealed in the following sequence:

A. Local Project Sponsors. Disagreements between local project sponsors and the State Liaison Officer or State agreements not represented by the State Liaison Officer may be appealed to the Regional Director and if not resolved to the satisfaction of the sponsor, may be appealed to the Director and ultimately to the Secretary if necessary.

B. State Liaison Officer. Disagreements between the State Liaison Officer and the Regional Director may be appealed to the Director and if not resolved satisfactorily at that level, may be appealed to the Secretary.

14. **Nonprocurement Debarment and Suspension.** In accordance with 43 CFR 12.100-.510 (see 675.1, Attachment A) no grant or contract may be awarded by a grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549.

Part 12.100 - .510 - Governmentwide Debarment and Suspension (Nonprocurement)

Subpart A - General

Subpart B - Effect of Action

Subpart C - Debarment

Subpart D - Suspension

Subpart E - Responsibilities of GSA, Agency and Participants

Authority: Executive Order 12549 of February 18, 1988; 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-128; OMB Circular A-102.

Subpart A - General

§12.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in §12.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility,or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§12.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or,* a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The debarring official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venture of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities

consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators. n1

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(3) The suspending official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *Exception official.* The official authorized to grant exceptions under §12.215 for the Department of the Interior is the Director, Office of Acquisition and Property Management.

(x) *Findings of fact official.* The official authorized to conduct and prepare findings of fact, if required under §12.314(b)(2) or §12.413(b)(2), is the Director, Office of Hearings and Appeals, or designee.

§12.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(viii) Transactions entered into pursuant to Pub. L. 93-638.

(3) *Department of the Interior covered transaction.* These Department of the Interior regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: Grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type of (including subtier awards under awards which are statutory entitlement or mandatory awards).

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," §12.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §12.110(a). Sections 12.325, "Scope of debarment," and 12.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§12.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B - Effect of Action

§12.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to §12.215.

(b) Lower *tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see §12.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(8) Transactions entered into pursuant to Pub. L. 93-638.

§12.205 Ineligible persons.

Persons who are ineligible, as defined in §12.105(i), are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§12.210 Voluntary exclusion.

Persons who accept voluntary exclusions under §12.315 are excluded in accordance with the terms of their settlements. The Department of the Interior shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§12.215 Exception provision.

The Department of the Interior may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §12.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §12.505(a).

§12.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in §12.215.

§12.225 Failure to adhere to restrictions.

Except as permitted under §12.215 or §12.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the Burden of proof that such participant did knowingly do business with such a person.

Subpart C - Debarment

§12.300 General.

The debarring official may debar a person for any of the causes in §12.305, using procedures established in §§12.310 through 12.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§12.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§12.300 through 12.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in §12.215 or §12.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §12.315 or of any settlement of a debarment or suspension action; or

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

(5) Violation of any requirement of the drug-free workplace requirements for grants, relating to providing a drug-free workplace, as set forth in §12.615 of this part.

§12.310 Procedures.

The Department of the Interior shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§12.311 through 12.314.

§12.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration,the debarring official may issue a notice of proposed debarment.

§12.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s)upon which it is based;

(c) Of the cause(s) relied upon under §12.305 for proposing debarment;

(d) Of the provisions of §§12.311 through 12.314, and any other Department of the Interior procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§12.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§12.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §12.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§12.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, the Department of the Interior may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§512.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of the drug-free workplace requirements for grants of this subpart generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of the drug-free workplace requirements for grants of this subpart (*see* §12.305(c)(5)), the period of debarment shall not exceed five years.

§12.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§12.311 through 12.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer,director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these

participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D - Suspension

§12.400 General.

(a) The suspending official may suspend a person for any of the causes in §12.405 using procedures established in §12.410 through §12.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §12.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§12.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§12.400 through 12.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §12.305(a); or

(2) That a cause for debarment under §12.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§12.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* The Department of the Interior shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§12.411 through 12.413.

§12.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §12.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§12.411 through 12.413 and any other Department of the Interior procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§12.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made,on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§12.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see §12.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: Based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§12.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§12.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see §12.325), except that the procedures of §§12.410 through 12.413 shall be used in imposing a suspension.

Subpart E - Responsibilities of GSA, Department of the Interior and Participants

§12.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;
(3) The cause for the action;
(4) The scope of the action;
(5) Any termination date for each listing; and
(6) The agency and name and telephone number of the agency point of contact for the action.

§12.505 Department of the Interior responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which the Department of the Interior has granted exceptions under §12.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in §12.500(b) and of the exceptions granted under §12.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§12.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition,each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #): Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to the Department of the Interior if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A - Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. the inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department of agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the perspective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transactions," " participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department of agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended. declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, is a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen;

(c) Are not presently indicted for or otherwise criminally of civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transactions," " participant," "person," "primary covered transaction," "principal," "proposed," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction

originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Department, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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ACQUISITION METHODS AND APPRAISALS

1. **Methods of Acquisition.** Acquisition of land and water, or interests therein, may be accomplished through purchase, eminent domain, transfer, gift, or other means. (see Chapter 670.3 for matching costs.) All acquisitions must conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended (see Chapter 650.3). The Service encourages public policies and procedures for the acquisition of real property that are fair and consistent, and directed toward giving the property owner the full measure of compensation authorized by law, promptly, with a minimum of inconvenience, and without prolonged negotiation or costly litigation.

   A. Every reasonable effort should be made to acquire real property by negotiated purchase.

   B. Real property must be appraised before the initiation of negotiations, in accordance with Subpart B of Attachment 650.3A, and the property owner given a statement of just compensation for the property. In no event can the amount established as just compensation be less than the amount of the approved appraisal. (see Section 675.2.5). Property owners shall be afforded an opportunity to accompany the appraiser during the inspection of the property. No policy or practice will be permitted that would penalize the uninformed owner as compared with the property owner who is more knowledgeable about real estate values.

   C. Condemnation should not be advanced or delayed in order to induce an agreement on price. If an agreement does not appear possible after a reasonable period of negotiation, the project sponsor may, if authorized by law, institute condemnation proceedings.

   D. If a partial taking would leave the owner with an uneconomic remnant, the sponsor shall offer to acquire the entire property.

   E. In determining the boundaries of a project, the sponsor should take into account human considerations, including the economic and social effects of the acquisition and subsequent development on owners and tenants in the adjacent area, in addition to engineering and other factors.

2. **Basis For Assistance.** Generally, the market value standard will be used as the basic measure of L&WCF assistance on acquisitions. L&WCF assistance shall be based upon evidence of this value. When determined by the Service to be capital costs and when other pertinent conditions are met, any degree of long term interest in real property can be considered for matching aid, whether purchased by or donated to the project

sponsor. Properly documented costs of severance damage may be matched. Severance damage is the diminution in value of the remaining land due to the particular land taken and is considered to be an inherent part of just compensation. Incidental costs of acquisition may not be matched except for those allowed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended.

Payments may be made after the Project Agreement has been executed for the project involved. When advance payments are made, the level of Federal participation will later be determined as the amount which is adequately supported. If necessary, adjustments will be made in the final settlement of the project.

3. **Summary of Documentation Requirements.** Unless waived, the documentation listed in Section 650.3.5C is needed for each acquisition.

4. **Service Action on Acquisition Documents.** The Service will spot check appraisal reports approved by the SLO for adequacy and consistency. Other documents may also be spot checked to determine whether they adequately serve the purposes intended for them. Additional information including new appraisals may be required when circumstances so warrant.

5. **Waiver of Requirements.** The Service may waive any of its documentation or payment requirements upon request or upon its own initiative, when in the opinion of the Service a requirement is not necessitated by law and does not reduce any protections provided by P.L. 91-646. When such a waiver is given, the Service reserves the right to establish suitable and reasonable conditions under which the waiver may be operative.

   When a waiver is needed, it should be requested by the State Liaison Officer. The request should include a justification for the waiver and a statement of how a proposed substitute report or system would meet the need of the Service to justify payments from the L&WCF program.

6. **Appraisals.** The project sponsor should secure at least one appraisal of the appropriate type by a qualified person for each parcel to be taken. Standards for appraisals used shall be consistent, to the extent appropriate, with the current Uniform Appraisal Standards for Federal Land Acquisition published by the Land Acquisition Conference. (see Section 650.3.9A). Except for written Findings of Value (C, below), the appraisal should be an analytical narrative report following current professional appraisal practices involving the application of standard techniques, such as comparative or market cost less depreciation, and income approaches to value. Other portions of the report, such as introductory and supporting data, limiting conditions and certifications

should also meet these standards.

The formality and detail of required documentation will be determined, as described below, by the value of the real property involved in each instance. Depending on value, the Service will require detailed appraisal reports, abbreviated appraisal reports, or written findings of value. The appraisal will not be submitted to the Service for review unless otherwise noted or requested. A detailed appraisal is required for all projects involving the donation of real property or interests therein with the exception as provided in Section 675.2.6E.

A. Detailed Appraisal Report. If an acquisition will cost $25,000 or more ($12,500 or more L&WCF assistance), the project sponsor will apply these appraisal requirements.

The report on any individual property may vary depending upon the type of property under appraisal. Additional data may be required in the case of highly specialized properties. Items may be deleted as in the case of land valuation only. Generally, however, all items must be considered by the appraiser and included in the report unless otherwise requested and agreed to by the Service and omissions must be explained by narrative.

The Appraisal Report should cover the following:

(1) Qualifications. Statement of qualifications of all appraisers and/or technicians, contributing to the report.

(2) Statement of Limiting Conditions. The appraiser should provide clear concise statements of all assumptions including the following specifics:

(a) that the title to the property is marketable,

(b) that the appraiser assumes no responsibility for legal matters, and

(c) that all data furnished by others are presumed correct.

(3) Purpose of the Appraisal. This shall include a definition of all values required and appraised.

(4) Identification of Property. Legal description of the whole tract and that to be acquired.

(5) City and Area Data. This data (mostly social and economic) should be kept to a minimum and include only such

information as directly affects the property being appraised.

(6) Property Data.

(a) Site. Describe soil, topography, mineral deposits, easements, etc. If there is an indication that mineral deposits have more than a nominal commercial value, this fact shall be clearly stated.

(b) Improvements. This shall be by narrative description, including dimensions of principal buildings and/or improvements.

(c) Equipment. This shall be by narrative description including the condition of equipment.

(d) Condition. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised and, whenever applicable, the repair or replacement requirements to bring the property to usable condition.

(e) Assessed Value and Annual Tax Load. Include the current assessment and dollar amount of real estate taxes. If the property is not taxed, the appraiser shall estimate the assessment in case it is placed upon the tax roll, state the rate, and give the dollar amount of the tax estimate.

(f) Zoning. Describe the zoning for the subject and comparable properties and if rezoning is imminent, discuss under item (7).

(7) Analysis of Highest and Best Use. The report shall state the highest and best market use that can be made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use. In no case shall the land be appraised for one highest and best use and the value of the improvements added when they do not contribute to the fair market value of the land under the highest and best use. Such special purpose appraisals are not allowable.

(8) Land Value. The appraiser's opinion of the value of the land shall be based upon its highest and best use, regardless of any existing structures and shall be supported by confirmed current factual data (sales and offerings) of comparable, or nearly comparable, lands having like optimum uses. Differences shall be weighed and explained to show how they

indicate the value of the land being appraised.

(9) Value Estimate by Cost Approach. This section shall be in the form of computational data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional and economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.

(10) Value Estimate by Income Approach. This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross rent or income; (b) an itemized estimate of total expenses including reserves for replacements.

Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

(11) Value Estimate by Comparative (Market) Approach. All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions of sale. Each comparable sale shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

(12) Interpretation and Correlation of Estimates. The appraiser shall interpret the foregoing estimates and shall state the reasons why one or more of the conclusions reached in items (9),(10), and (11) are indicative of the market value.

(13) Tabulation of History of Conveyance (property sales and transfers). Include parties to the transactions, dates of purchase, and amounts of consideration for at least 5 years prior to appraisal.

(14) Certification of Appraiser.

(a) He/she has personally inspected the property.

(b) He/she has no present or contemplated interest in the property.

(c) That in his/her opinion the market value of the taking as of _____ is $_____
(Valuation date)

_____ _____
(Signature) (Date report submitted)

(15) Exhibits and Addenda. (Note: All maps and plans may be bound as facing pages opposite the description, tabulation, or discussions they concern).

(a) Location Map. (Within the city or area)

(b) Comparative Map Data. (Show geographic location of the appraised property and the comparative parcels analyzed.)

(c) Detail of the Comparative Data. (Narrative)

(d) Plot Plan.

(e) Floor Plans. (when needed to explain the value estimate)

(f) Photographs. Pictures shall show at least the front elevation of the major improvements, plus any unusual features. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as pages facing the discussion or description to which the photographs pertain. All graphic material shall include captions.

(g) Other Pertinent Exhibits.

B. Abbreviated Appraisal Report. An abbreviated appraisal report, compiled by a qualified appraiser and adequately related to comparable sales, is acceptable for a parcel with value estimate between $5,000 and $25,000. The abbreviated report should include:

(1) A brief description of the subject property to include physical characteristics, present use, zoning, public utilities associated with the land, deed restrictions, and any other pertinent information.

(2) A legal description of the real property to be acquired and a plat.

(3) At least a 5 year history of conveyances (sales and transfers), including parties to the transactions, dates of purchase, and amounts of consideration.

(4) An analysis and statement of the property's highest and best use.

(5) Supporting data, including two or three comparable real property sales, a brief analysis of those sales, and a map showing their locations relative to the land acquired.

(6) The appraiser's certification and signature.

(7) The date the value estimate applies.

(8) A statement of the appraiser's experience and qualifications.

C. Finding of Value. Where a parcel has a value of less than $5,000 and the expense of an appraisal would be disproportionate to its benefit, a written finding of value by a qualified appraiser will be acceptable for approval. This finding of value can be based on the individual's knowledge of land values, but should include a statement of the appraiser's experience and qualification, including a short description of the factors considered and the means by which a conclusion was reached. These statements should be sufficiently detailed so as to enable the State Liaison Officer to judge their respective merits.

D. Appraisals. When lands are acquired through judicial proceedings, the price determined by the court will be accepted by NPS in lieu of any previous Service or State approved appraised value. The Service, however, will not be obligated to match an amount higher than the approved support ceiling of the project.

E. Acquisition by Donation. An appropriate appraisal report is administratively required for all projects involving the donation of real property or interests therein (see also 670.2.2.C.) for determination of matching share. Prior to project approval or the first reimbursement request:

(1) The State Liaison Officer shall ensure that the project sponsor secures adequate appraisal services.

(2) The project sponsor will then, at its own expense, have an appraisal made in accord with commonly accepted appraisal

practices and Section 675.2.6. The cost of the appraisal is not reimbursable.

(3) Upon completion of the appraisal, it shall be submitted to the State for review and the Service for approval. The Regional Director may authorize the State Liaison Officer to review and approve donation appraisals where the value of the property to be donated is $100,000 or less.

(4) If the appraisal is approved, the estimated fair market value will be the basis for L&WCF assistance.

In order to resolve disputes as to the fair market value, the Service, through the Regional Office, may provide an additional appraisal with the cost to be borne by the Service.

7. **Statement on Differences in Value.** An appraisal, if competently compiled by a qualified person, should be an acceptable estimate of property value; it cannot be assumed, however, to be an absolute statement of value. The approved appraisal value is the basis for establishing the amount of just compensation offered to the owner (seller) at the initiation of negotiations. The negotiation between a willing seller and a willing buyer will often set a price that is higher than the appraisal, and this market place value must be considered with the appraised value in establishing the reasonable limits of L&WCF assistance. (See Section 24.102(i)of Attachment 650.3A).

When the State believes that the administrative settlement is an adequate indication of market value, yet it is higher than the approved appraised value, a detailed and well documented statement on this difference with all pertinent appraisal documents must be submitted before reimbursement is requested. This statement should explain why the appraisal may not reflect the market value and what steps the project sponsor took to establish the value, and include adequate market data to substantiate the value conclusion. If the Service agrees that the administrative settlement represents a reasonable estimate of the property, that amount will be eligible for assistance.

The requirements pertaining to acquisitions at less than the approved appraised value are found in Chapter 650.3.10. (Acquisition at less than Just Compensation).

8. **Reservations and Outstanding Rights.** In an effort to stretch the dollars spent, the project sponsor might wish to purchase less than fee simple title. This would be permissible when fee simple title is excessively expensive, and a lesser control of the area will not detract from the

recreation use of the land and not have significant impact on the environment.

9. The Federal Government will not obtain a legal right or title to any area or facility acquired with L&WCF assistance. The State must have on file satisfactory evidence of the purchase price and a description of the character and nature of the title received by the project sponsor before requesting reimbursement from the Service.

   Evidence of title, such as a written statement by the State Attorney General, title insurance, or other means considered reasonable and adequate, must also be available to the SLO before requesting reimbursement from the Service.

   Requests for payment certified by the SLO will be acceptable evidence of the purchase price and that the State has on file all the required documents, including those required by P.L. 91-646. (see Chapter 650.3.5.).

   A survey may be required by the Service when there is reasonable doubt about the exact location of the boundary or of the size of the tract being acquired.

10. **Responsibility for Quieting Title or for Replacement of Properties Acquired with Defective Title.** The State is responsible for quieting claims against title and for replacing property found to have defective title with other properties of equivalent value, usefulness and location acceptable to the Director.

11. **Acquisition of Interest in Real Property.** The acquisition of easements, rights-of-way, etc., will be viewed in the same light as full takings. Documentation of value by appraisals will be the same. The project proposal should adequately explain why lesser interests are to be acquired.

PROCUREMENT STANDARDS

1. **Project Performance by Contract.** Projects or portions thereof may be undertaken through contracts in accord with the procurement standards and guidelines set forth in Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 43 CFR Part 12.1 - .52 (see 675.3 Attachment A). This includes the procurement of supplies, equipment, construction and services. Equal Employment Opportunity Contract Compliance Requirements are set forth in Chapter 650.5.

2. **Procurement Standards.**

   A. Procedures. Grantees and subgrantees will use their own procedures which reflect applicable State and local laws provided that the procurements conform to the requirements of 43 CFR Part 12.1 - .52 (see 675.3 Attachment A).

   B. Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms (see also Chapter 650.10.)

      (1) Affirmative steps must be taken by the project sponsor to assure that small and minority businesses and women's business enterprises are utilized when possible. Affirmative steps shall include:

         (a) Including qualified small and minority businesses on solicitation lists.

         (b) Assuring that small and minority businesses are solicited whenever they are potential sources.

         (c) When economically feasible dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

         (d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

         (e) Using the services and of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(f) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraph (a) through (e) above.

(2) Project sponsors are encouraged to procure goods and services from labor surplus areas.

C. Contract Provisions. Contract provisions contained within 675.3, Attachment A apply as stated, except that the provisions of 43 CFR Part 12.36(i)(5), concerning the Davis-Bacon Act to not apply to the L&WCF program.

A-102 UNIFORM RULE

Text of the Common rule

The text of the common rule as adopted by the agencies in this document appears below.

43 CFR PART 12.10 - 12.52. -Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

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Subpart E - Entitlements (Reserved)

Subpart A - General

§ ___.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ ___.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ ___.3 Definitions.

As used in this part:

`"*Accrued expenditures* " mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

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

"*Acquisition cost* " of an item of purchased equipment means 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 acquired. Other charges such as the cost

of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative* " requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from ``programmatic'' requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency* " means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

`"*Cash contributions* " means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract* " means (except as used in the definitions for ``grant'' and "subgrant" in this section and except where qualified by ``Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching* " means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

`"Cost-type contract "means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"E*quipment* " means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 ``Outlay Report and Request for Reimbursement'' (or other equivalent report).

"*Federally recognized Indian tribal government* " means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government* " means a State or local government or a federally recognized Indian tribal government.

`"*Grant* " means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee* " means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government* ":means a county, municipality, city, town, township, local public authority(including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations* " means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

`"*OMB* " means the U.S. Office of Management and Budget.

"*Outlays* " (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method* " refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

``"*Prior approval* " means documentation evidencing consent prior to incurring specific cost.

"*Real property* " means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share* ", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted - not the value of third-party in-kind contributions.

``"*State* " means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant "means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of ``grant" in this part.

"Subgrantee " means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

``"*Supplies* " means all tangible personal property other than ``equipment" as defined in this part.

"*Suspension* " means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

``"*Termination* " means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ``Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

``*Terms of a grant or subgrant* " mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

``*Third party in-kind contributions* " mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a

cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ ___.4 Applicability.

(a) *General.* Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §12.46, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V,Subtitle D, Chapter 2, Section 583 - the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind,and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section.

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits.

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §12.44(a) (3) through (8) are subject to Subpart E.

§ ___.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §12.46.

§ ___.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the **Federal Register**.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B - Pre-Award Requirements

§ ___.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 face sheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ ___.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ ___.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ``high risk'' if an awarding agency determines that a grantee or subgrantee:
(1) Has a history of unsatisfactory performance, or
(2) Is not financially stable, or
(3) Has a management system which does not meet the management standards set forth in this part, or
(4) Has not conformed to terms and conditions of previous awards, or
(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
(b) Special conditions or restrictions may include:
(1) Payment on a reimbursement basis;
(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
(3) Requiring additional, more detailed financial reports;
(4) Additional project monitoring;
(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
(6) Establishing additional prior approvals.
(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing,of:
(1) The nature of the special conditions/restrictions;
(2) The reason(s) for imposing them;
(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and
(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C - Post-Award Requirements

Financial Administration

§ ___.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to_
(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
(b) The financial management systems of other grantees and subgrantees must meet the following standards:
(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted

amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ ___.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit

recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless-

(i) The grantee or subgrantee has failed to comply with grant award conditions, or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §___.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C.450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ ___.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a -	Use the principles in -
State, local or Indian tribal government	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) (organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions..	OMB Circular A-21
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ ___.23 Period of availability of funds.

(a) *General.* Where a funding period is specified,a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a

program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ ___.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions* - (1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in §12.65, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §12.65(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not

treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services* - (1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work,paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in , in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ ___.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §12.74.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §12.71 and §12.72.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period(i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ ___.26 Non-Federal audit.

(a)*Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements

of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews)if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, §12.36 shall be followed.

Changes, Property, and Subawards

§ ___.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 12.62) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

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

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

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

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

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

(2) Need to extend the period of availability of funds.

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

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a

third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §12.76 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §12.62) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ ___.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3)*Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ ___.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal

funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §12.65(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment,the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §12.72(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ ___.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ ___.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ ___.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ``Debarment and Suspension.''

§ ___.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding

agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only-

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §12.76. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, excepting those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services,geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features *which unduly restrict competition.* The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §12.76(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation forbids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts,

transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g.,under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §12.62). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [delete ``,''] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a ``brand name'' product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent lowbidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as

being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ``bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ``performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ``payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work,and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.(All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled ``Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback'' Act (18U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order

11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ ___.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §12.82 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section §12.50;

(2) Section §12.51;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in §12.61; and

(4) Section §12.90.

Reports, Records Retention, and Enforcement

§ ___.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and

explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.*T For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ ___.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report* - (1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with §12.81(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report* - (1)*Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ``Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement* - (1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270,Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in §12.81(b)(3).

(e) *Outlay report and request for reimbursement for construction programs* - (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in 12.81(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in §12.81(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by §12.81(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in §12.81(d).

(iii) The Federal agency may substitute the Financial Status Report specified in §12.81(b) for the Outlay Report and Request

for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by §12.81(b)(2).

§ ___.42 Retention and access requirements for records.

(a)*Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see §12.76(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate record keeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period* - (1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report.If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar

methods may be substituted for the original records.

(e) *Access to records* - (1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of bright of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ ___.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3)Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

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

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §12.75).

§ ___.44 Termination for convenience.

Except as provided in §12.83 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §12.83 or paragraph (a) of this section.

Subpart D - After-The-Grant Requirements

§ ___.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant,the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this time frame. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with §12.72(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ ___.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in §12.82;

(d) Property management requirements in §12.71 and §12.72; and

(e) Audit requirements in §12.66.

§ ___.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

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

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

L&WCF PROJECT SIGN STANDARD

1. **Acknowledgement of L&WCF Assistance.** Suitable permanent public acknowledgement of L&WCF assistance at all project sites is required by the Service. When significant acquisition or development projects over $500,000 are initiated, appropriate standardized temporary signing shall be located on or near the affected site, to the extent feasible, so as to indicate that the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the percentum and dollar amounts financed by Federal and non-Federal funds and that the source of the Federal funding includes moneys derived from Outer Continental Shelf receipts.

   Upon termination of temporary signing, permanent signing shall be installed. Such acknowledgement will represent a Federal-State-local partnership role in creating new high quality outdoor recreation areas and facilities. Temporary signing is not required for acquisition projects if permanent signing immediately follows the purchasing of the site.

2. **Guidelines for Temporary Signing.** Temporary signs are required for all development projects with a total cost of $500,000 or more, and for all combination projects with a development phase of $500,000 or more in total costs. In the case of combination projects, temporary signing will commence at the time development is initiated with the sign acknowledging both acquisition and development. Development projects will be signed at the time construction action is initiated. In both cases the sign will remain until completion of the development.

   Publicizing an acquisition project by the installation of signs prior to the completion of the acquisition, particularly those involving the acquisition of several parcels, could seriously affect the negotiations for the properties to be acquired. Therefore, signing of acquisition projects should be delayed until the acquisition of all parcels is completed and all relocations have occurred. Also, the display of dollar amounts for acquisition projects is optional where such display may be detrimental to the project or future acquisitions.

3. **Use of Symbol.** Use of the L&WCF symbol on project signs is optional. (see Attachment 675.4A). However, we encourage its use as a part of the acknowledgement of L&WCF assistance at entrances to outdoor recreation sites, at other appropriate on-site locations, and in folders and park literature. While the symbol format may not be altered, such considerations as color combinations, method of sign construction, size, and placement are matters for determination by the State. The acknowledgement of Land and Water Conservation Fund assistance will be checked during compliance inspections.

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Replaces all preceding manual releases

4. **Standards for Temporary Signs.** Unless precluded by local sign ordinances, temporary signs shall be no less than 2 feet by 3 feet. The size of lettering should be based on the amount of information placed on the sign. The selection of colors will be at the discretion of the State, however, there should be sufficient contrast between the background and the lettering to make the sign readily visible without being intrusive. The sign should include the source, percent, and dollar amount of all Federal, State and/or local funds. The second line on the temporary sign will indicate whether the project is acquisition, development, or both. In addition to the Service, the administrative acknowledgement may include the State agency responsible for the L&WCF program. Although optional, symbols for the L&WCF and/or the project sponsor may be used. Here is a suggested format:

THE CITY OF XXXXXX
Public Outdoor Recreation Site Development
Aided by
THE LAND AND WATER CONSERVATION FUND
Administered by the
National Park Service
U.S. Department of Interior
Funding

L&WCF	50%	$250,000
State of XXXXX	25%	$125,000
City of XXXXX	25%	$125,000
Total Project		$500,000

Optional: L&WCF Revenue from Outer Continental Shelf Receipts, Motorboat Fuel Tax and Sale of Surplus Federal Properties

5. **Allowable Cost.** Costs related to project acknowledgement are allowable costs as part of initial capital investment, and may be shared by L&WCF assistance. Replacement costs as a part of project operation and maintenance are not allowable

Manual Release 151
Replaces all preceding manual releases

FINANCIAL MANAGEMENT AND REPORTING

1. **Purpose.** This chapter generally covers accounting, records, and reporting requirements.

2. **Financial Responsibility.** The State shall be responsible for the financial management of approved projects. Appropriate internal controls must, therefore, be adopted and installed to insure that the project is accomplished in the most efficient and economical manner.

3. **Pre-award Surveys.** The Director may conduct pre-award surveys before qualifying a project proposal to determine the adequacy of financial and administrative management practices and procedures as they may relate to the execution of the proposed project. Periodic surveys may also be undertaken during the project period to assure the continued effectiveness of the financial and administrative management and to provide assistance where necessary or requested. The scope of such surveys shall include the review of the internal systems of financial and administrative controls, planning techniques and procedures.

4. **Standards for Grantee Financial Management Systems.** State and local government systems for the financial management of L&WCF assisted activities shall be in accordance with 42 CFR 12.1 - .52 (see 675.3, Attachment A), and provide for:

   A. Accurate, current, and complete disclosure of the financial results of each project grant.

   B. Records which identify adequately the source and application of funds for grant-supported activites. 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 funds, property, and other assets. The grantee shall adequately safe-guard all such assets and shall assure that they are used solely for authorized purposes.

   D. 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.

   E. Procedures for determining the allowability and allocability of costs in accordance with the provisions of OMB Circular A-87 and this Manual.

F. Accounting records which are supported by source documentation. Separate project accounts shall be established and identified by the number assigned to the project by the Service.

G. Audits to be made by the State in accordance with OMB Circular A-128 to determine, at a minimum, the fiscal integrity of financial transactions and reports, and compliance with laws, regulations, and administrative requirements. The State will schedule such audits with the required frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity. (see Chapter 675.7).

H. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The State shall require all project sponsors to adopt all the standards in paragraph 4 above.

5. **Monitoring and Reporting of Program Performance.** In accordance with 43 CFR 12.1 - .52, the following sets forth the procedures for monitoring and reporting program performance (reporting authority approved by OMB No. 1024-0032 09/30/84):

A. States shall constantly monitor the performance of approved projects to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. (see Chapter 675.1)

B. Performance reports shall be submitted with each project billing or drawdown unless a report had been submitted within the previous three months. Performance reports shall be submitted annually on March 31 for all active projects approved more than one year previously but for which no billings or drawdowns have been submitted during the past year.

C. States have the option of submitting an annual (calendar year) consolidated performance report for all active projects and project elements approved more than one year previously. The Service will provide each State with a listing of active projects that fall within this category.

Sufficient space will be provided on the listing of projects for the State to briefly report project status. The list will include, for each project or consolidated project element, the amount expended to date and the target dates. The State report must be submitted to the Service by March 31 for the previous calendar year.

D. Regardless of the approach used, the report will present the following information:

(1) The status of the work required under the project scope including the percent of work completed and percentage of costs billed and whether the project will meet established target dates for completion.

(2) Other pertinent information including when appropriate analysis and explanation of cost overruns, time schedule delays and other similar problems encountered and their expected impact on the project, etc.

E. If any performance review conducted by the State discloses the need for change in the Project Agreement, the State shall submit a request for an amendment in sufficient time to be processed before expiration of the project period.

F. The Service shall make site visits as frequently as practicable on a spot check basis to:

(1) review project accomplishments and management control systems, and

(2) provide technical assistance as may be required.

6. **Report of Federal Cash Transactions.** When Funds are advanced through the use of OMB Standard Form 270, the State shall submit a Report of Federal Cash Transactions (OMB Standard Form 272) (see Attachments 675.6D and F). The Service shall use this report to monitor cash advanced to the State. States shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter.

7. **Relocation Report.** The head of each agency having responsibilities for federally assisted programs that come within the purview of P.L. 91-646 is required to prepare and submit a report to the President once every three years. (see Attachment 650.3A). In order to accumulate the required statistical data, for each billing draw down against the Letter of Credit, which includes payments and expenses under Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the State shall tabulate and retain the statistical data as shown on the following form beginning October 1, of each year and retain the data for relocation report. (See 650.3.11.)

A. GSA-2997 Annual Report on Relocation and Real Property Acquisition Activities. (see Attachment 650.3A).

At the end of each Federal fiscal year each State shall consolidate and tabulate the statistics collected during the fiscal year into one set of the above forms. One copy of the consolidated report will be forwarded to the NPS Regional Office by November 1, and one copy will be retained in the State files.

No later than November 15 of each year each Regional Office shall consolidate the State reports into a Regional report. Two copies of the Regional report should be prepared with one copy provided to the NPS Washington office responsible for the L&WCF program, and one copy retained in the Regional files. The Washington office will consolidate the Regional reports into a Service report and provide the necessary copies to the Department.

8. **Retention and Custodial Requirements for Records.** In accordance with 43 CFR Part 12.42, the following policies will apply to records maintenance:

A. Financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of three years after final payment on a project or element. The records shall be retained beyond the 3 year period if audit findings have not been resolved.

B. The retention period starts from the date of the submission of the final expenditure report.

C. State and local governments are authorized to substitute microfilm copies in lieu of original records.

D. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audits, examinations, excerpts and transcripts.

E. The Service shall submit, after project closeout and microfilming, all copies of significant maps and records (particularly oversize items) to the Federal Archives Records Center for retention into perpetuity and for compliance with Section 6(f)(3) of the L&WCF Act. Plans and specifications requested by the Service for project review purposes will be returned to the States for retention (see also 675.3.4.).

PAYMENTS

1. General. Grant payments will be made to States in a manner that minimizes the time elapsing between the disbursement by the State and the transfer of funds from the U.S. Treasury, whether such disbursement occurs prior to or subsequent to the transfer of funds. Grant payments are made through electronic fund transfer via the SMARTLINK Payment Management System, reimbursement by Treasury check in accord with the guidelines of 43 CFR 12.1 - .52 and U.S. Treasury Circular No. 1075, or advance by SMARTLINK or via Treasury check. States, whether on the SMARTLINK or reimbursement by Treasury check method of payment, must obtain NPS approval of the required billing progress report prior to drawdowns on planning grants. (See 630.2.15-.16).

2. Qualifications. Electronic Fund Transfer via SMARTLINK is the preferred method of payment for States which meet the following conditions:

   A. The State requests authorization for use from NPS;

   B. The State has established or demonstrated to NPS the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement;

   C. The State's financial management system meets the standards for fund control and accountability prescribed in 43 CFR 12.1 - .52; and

   D. The Service has reviewed the State's financial practices and found them to be adequate based on the State's past experience, responsiveness to audit exceptions, and internal audit procedures.

3. Reimbursement by SMARTLINK Payment Management System.

   A. Applicable States/Grants. All States will use the SMARTLINK payment system with the exception of those which are either: 1) mandated by NPS to use the direct reimbursement method of payment; or, 2) which lack the technical capability to use a computer-based system (in other words, State offices without access to appropriate computer equipment). Once the State has adopted SMARTLINK for reimbursement purposes, it must utilize only this method unless rescinded by the Service. For planning grants, NPS approval of the required billing progress report must be received in advance of drawdowns via SMARTLINK. (See 630.2.15-.16).

B. Getting Started.

(1) Equipment Needed: 1) A personal computer (PC); 2) A modem; 3) Tele-communications software (NOTE: KERMIT is provided and recommended by HHS but others may work).

(2) Communication Parameters: 1) Baud rate = 1200; 2) Data bits = 7: 3) Stopbits = 1; 4) Parity = Even; 5) Emulation = VT100; 6) Duplex = Half.

(3) Initiation Steps:

(a) The SLO should notify, in writing, the appropriate NPS Regional Office, that the State is prepared to begin utilization of SMARTLINK. Included with this notification should be the grantee name and address, grantee point of contact name (SLO or designate), title and telephone number and a completed **Direct Deposit Sign-Up Form** (SF-1199A, see attachment 675.6A) which is to be obtained from the bank which maintains the State's account. This information will be forwarded by the NPS Regional Office to NPS - Accounting Operations Division (with copies to the Recreation Grants Division, WASO).

(b) NPS-AOD will certify in writing to HHS that the State is eligible to be on SMARTLINK for L&WCF drawdowns. This certification will involve the transmission, **by NPS-AOD**, of appropriate grantee payment authorization data (i.e., grantee name and address, grantee point of contact name (SLO or designate), title and telephone number, project numbers, total amounts authorized/unpaid balances, and the completed SF-1199A) to HHS. Subsequent to the original initiation phase, data on new grants and dollar amendments on old grants will be forwarded to HHS by NPS-AOD upon posting of the applicable grant agreements or amendments.

(c) Following completion of the above steps, the State will be provided, by HHS, with the following:

(i) The telephone number used to access SMARTLINK.

(ii) A unique password permitting connection with the SMARTLINK greeting screen. (NOTE: Lost passwords may only be replaced by contacting HHS).

(iii) A Payment Management System (PMS) account number.

(iv) An "Old Identification Number" which must be changed on the first use of SMARTLINK and at least every 60 days (since last use) thereafter.

(v) "User's" and "Technical" Guides for detailed reference.

C. Making Drawdowns.

(1) Dial into SMARTLINK using the phone number provided.

(2) When the screen displays "Connect," press the enter/return key twice.

(3) At the "Enter Translator Number" command, type "5" and press enter/return.

(4) When the "Computer Center" and "Logon Commands" appear, type your **Password** and press enter/return.

(5) A "Welcome" screen will appear. Press enter/return. (If you receive a "System Not Available At This Time" message, disconnect and try later).

(6) The security screen will be displayed (the line at the bottom of the screen can either be ignored or deleted by holding down the Control key and pressing the letter "O"). Type:

(a) Your Account Number; and,

(b) Your Old Identification Number; and,

(c) If changing the I.D. number: Your New Identification Number.

(NOTE: You will be permitted three attempts to enter the correct security data. Failure on the third try will result in disconnection.).

(d) Press Enter/Return.

(7) The "Payment Request" screen will now be displayed with the Identification and Account numbers already filled in. If,

once you are connected, you must log off/disconnect without completing a transaction, type a question mark in one of the other fields at the top of the screen (not a "Sub-Account" field) and press Enter/Return. A blank security screen will then appear. Type "End" in the Account Number field and press Enter/Return.

Use your Tab or Backspace key to move from field to field (refer to the HHS User's Guide section on cursor movement if these keys don't work). Enter the Payment Due Date ("YYMMDD") which should reflect today's date, **TOTAL** amount requested, Federal Cash Balance on Hand (always "0" unless an advance has been approved by the NPS Washington Office), and Expected Disbursement Amount (which should equal the total amount requested unless an advance has been authorized).

(8) Remaining on the "Payment Request" screen, enter your "Sub-Account" data (for L&WCF purposes, a sub-account is simply a specific individual grant on which a payment is now being requested). Use the tab and backspace keys (or other keys as appropriate) to move from field to field. **Do not press the Enter/Return key until all data has been entered correctly.**

For each grant involved, up to a maximum of eight per screen, enter the full eight-character **L&WCF Project Number** (two-digit State prefix, hyphen, five trailing digits) and the **Amount** (no dollar signs or commas and with or without the decimal point and cents) of this drawdown. The total amount requested (sum of the amounts requested for the eight or fewer drawdowns on this screen) must equal the "Total Amount Requested" entered in the top section of the screen.

(9) If making a drawdown on a consolidated project, the project number must be entered as instructed in step 8, above (no element letter as part of the project no.). The project number, with the appropriate element(s), should be reported on the "Classification of Amount Requested" form described in 675.6.3C(16).

(10) Do not make entries in the "+/-" fields unless the entry for this project corrects an overdraw on a prior billing or payment on a Bill for Collection. In these instances, the amount (no "-" or "+" sign) should be entered in the "Amount" field and a "-" sign in the "+/-" field. The negative amount should be reported on the "Classification of

Amount Requested" form described in 675.6.3C(16) with an explanation in the "Remarks" section of that form.

(11) Check your entries/figures carefully and make any necessary corrections before pressing Enter/Return.

(See attachment 675.6B for a sample of a completed SMARTLINK Payment Request Screen).

(12) As a result of your entry, the SMARTLINK system will display either an error message(s) or a message that your request was successfully submitted. If an error message is received, make the required corrections.

(13) When successfully completed with the above steps, enter either "**A**" ("Another Payment Request" which returns you to the Security Screen to make another request for up to eight additional projects), "**E**" ("End" which logs you off of SMARTLINK), or "**M**" (which retains the Payment Request screen and allows the entry of more requests, subject to the eight-payment-requests-per-screen limitation). **Failure to sign off by typing the appropriate End code may result in your incurring long-distance phone charges through the end of the work day when HHS turns SMARTLINK off.**

(14) Upon successful completion of steps 1-13 above, various computer edits established by HHS will be performed. Additional edits may be established by NPS. The HHS edits consist of validation matches of project numbers, payment dates, fund balances, and account numbers. Requests passing all edits are posted to the recipient's account. Requests failing the edits are held in holding files for review by the HHS accountant(s) assigned to NPS who will take action as appropriate including contacting NPS to resolve problems or obtain authorization to proceed.

(15) Payment files are transmitted to the Federal Reserve Bank in Richmond, Virginia for further processing (grantee payment). The recipient's bank will receive the requested funds within 24 hours (or less) of the request.

(16) Upon completion of all payment requests on a given date, the State must submit, WITHIN 24 HOURS, a completed "Classification of Amount Requested" form to the NPS Accounting Operations Division (Grants Section, P.O. Box 4800, Reston, VA 22090) with a copy to be forwarded at the same time to the applicable NPS Regional Office. Failure to

adhere to this requirement will result in removal from SMARTLINK and placement on direct reimbursement. (See attachment 675.6C for a sample of the Classification form, along with completion constructions).

4. Reimbursement by Treasury Check. The State shall use the following forms in requesting reimbursement by Treasury Check:

   A. For planning projects the "Request for Advance or Reimbursement" (OMB 80-R0183, SF-270) (see attachment 675.6D).

   B. For acquisition and development projects "The Outlay Report and Request for Reimbursement for Construction Programs" (OMB 80-R0181, SF-271) (see attachment 675.6E).

   The State shall submit to the Service one (1) original and two (2) copies of the appropriate form when requesting reimbursement by Treasury Check. Such request may be submitted as necessary for reimbursements.

5. Advanced Payment. An advance is a payment made to a State upon its request before cash outlays are made to the project sponsor or through the use of predetermined payment schedules before such payments are made to the project sponsor. Advances may be made by use of SMARTLINK or through the Treasury check method, subject to the conditions outlined below.

   Due to the speed with which SMARTLINK allows for payment, NPS has determined that advances are generally prohibited. However, NPS will consider the payment of advances on development projects where the matching share is non-cash, and on acquisition projects where funds must be available "up front" in order to prevent the loss of an available site to other interested buyers. Such advances must receive prior approval of the NPS Washington Office. The request should be submitted by the State to the Regional Office to initiate processing. Abuse of this policy will result in revocation of a State's authority to use SMARTLINK and placement on the direct reimbursement method of payment.

   The timing of advances and the procedures to be observed to assure that cash withdrawals occur only as and when essential to meet the needs of the State for its actual disbursements in accord with Treasury Circular No. 1075 are described below:

   A. Advances to a State shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements of the State in carrying out the purpose of the approved project.

B. Advances made by a State to a project sponsor shall conform substantially to the same standards of timing as indicated in 675.6.5A.

C. The State shall make such reviews of the financial practices of project sponsors as are necessary to insure against excessive withdrawals of cash from the Treasury and shall institute such remedial measures as may be necessary in the event of excessive withdrawals.

D. Any moneys advanced to the State are "public moneys" (owned by the Federal Government) and must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure, in accord with 43 CFR 12.1 - .52.

E. Advance Via SMARTLINK.

(1) Advances under SMARTLINK must be requested via a letter from the SLO with a Classification of Amount Requested form (see attachment 675.6C) attached, separate from reimbursement requests.

(2) For each advance, on the Classification form, leave a space after the project or element number and type "(ADV)".

(3) When all or a portion of the advance is disbursed, this amount must be applied to reduce the advance and make charges to the appropriate project. When a sum is being applied to an advance, indicate such in the remarks section at the bottom of the Classification form. Also, indicate the project number and/or element number and amount and type "(APPL)".

F. Advance by Treasury Check. In requesting an advance by Treasury check the States shall submit to the Service a "Request for Advance or Reimbursement" (OMB 80-RO183, SF-270) (see attachment 675.6D).

One month after the advance has been received the State shall submit another "Request for Advance or Reimbursement" indicating expenditures made the previous month from the funds advanced. This form shall be used by the Service as a basis for liquidating obligations, reducing the advance account and making charges to the appropriate cost account.

No later than 15 working days after the end of each quarter, the State shall submit to the Service one (1) original and two (2) copies of the "Report of Federal Cash Transactions" (OMB 80-R0182, SF-

272) (see attachment 675.6F). This report shall be used by the Service to monitor cash advanced and to obtain disbursement or outlay information for each project.

6. Review of Drawdowns. At least monthly, NPS shall review each State's drawdowns and disbursements for reasonableness of cash balances on hand and the timing of drawdowns. The review shall also cover other financial practices of each State to ensure against excessive withdrawals of Federal funds.

In the event the Service determines a State is making excessive withdrawals of cash, remedial measures such as placement on the direct reimbursement method of payment, or requesting immediate refund of excessive funds to the Service shall be taken to ensure proper use of Federal funds. The only exceptions to the requirement that funds be promptly refunded are when the funds involved 1) will be disbursed by the State within seven calendar days, or 2) are less than $10,000 and will be disbursed within 30 calendar days.

FOR SALE BY THE SUPERINTENDENTOF DOCUMENTS US GOVERNMENT PRINTING OFFICE
WASHINGTON DC 20402 STOCK NO 048-000-00383-0

Standard Form 1199A
(Rev. June 1987)
Prescribed by Treasury Department
Treasury Dept Cir. 1076

OMB No. 1510-0007

DIRECT DEPOSIT SIGN - UP FORM

DIRECTIONS

- To sign up for Direct Deposit, the payee is to read the back of this form and fill in the information requested in Sections 1 and 2. Then take or mail this form to the financial institution. The financial institution will verify the information in Sections 1 and 2, and will complete Section 3. The completed form will be returned to the Government agency identified below.
- A separate form must be completed for each type of payment to be sent by Direct deposit.
- The claim number and type of payment are printed on Government checks. (See the sample check on the back of this form.) This information is also stated on beneficiary/annuitant award letters and other documents from the Government agency.
- Payees must keep the Government agency informed of any address changes in order to receive important information about benefits and to remain qualified for payments.

SECTION 1 *(TO BE COMPLETED BY PAYEE)*

A NAME OF PAYEE *(last, first, middle initial)*

ADDRESS *(street, route, P.O. Box, APO/FPO)*

CITY | STATE | ZIP CODE

TELEPHONE NUMBER
AREA CODE

B NAME OF PERSON(S) ENTITLED TO PAYMENT

C CLAIM OR PAYROLL ID NUMBER
Prefix | Suffix

D TYPE OF DEPOSITOR ACCOUNT ☐ CHECKING ☐ SAVINGS

E DEPOSITOR ACCOUNT NUMBER

F TYPE OF PAYMENT *(Check only one)*

- ☐ Social Security
- ☐ Supplemental Security Income
- ☐ Railroad Retirement
- ☐ Civil Service Retirement (OPM)
- ☐ VA Compensation or Pension
- ☐ Fed Salary/Mil. Civilian Pay
- ☐ Mil. Active _____
- ☐ Mil. Retire _____
- ☐ Mil. Survivor _____
- ☐ Other _____ *(Specify)*

G THIS BOX FOR ALLOTMENT OF PAYMENT ONLY *(if applicable)*

TYPE | AMOUNT

PAYEE / JOINT PAYEE CERTIFICATION

I certify that I am entitled to the payment identified above, and that I have read and understood the back of this form. In signing this form, I authorize my payment to be sent to the financial institution named below to be deposited to the designated account.

SIGNATURE	DATE
SIGNATURE	DATE

JOINT ACCOUNT HOLDERS' CERTIFICATION *(Optional)*

I certify that I have read and understood the back of this form, including the SPECIAL NOTICE TO JOINT ACCOUNT HOLDERS.

SIGNATURE	DATE
SIGNATURE	DATE

SECTION 2 *(TO BE COMPLETED BY PAYEE OR FINANCIAL INSTITUTION)*

GOVERNMENT AGENCY NAME	GOVERNMENT AGENCY ADDRESS

SECTION 3 *(TO BE COMPLETED BY FINANCIAL INSTITUTION)*

Name and address of financial institution

ROUTING NUMBER | CHECK DIGIT

DEPOSITOR ACCOUNT TITLE

FINANCIAL INSTITUTION CERTIFICATION

I confirm the identity of the above-named payee(s) and the account number and title. As representative of the above-named financial institution, I certify that the financial institution agrees to receive and deposit the payment identified above in accordance with 31 CFR Parts 240, 208, and 210.

PRINT OR TYPE REPRESENTATIVE'S NAME	SIGNATURE OF REPRESENTATIVE	TELEPHONE NUMBER	DATE

Financial institutions should refer to the GREEN BOOK for further instructions.

THE FINANCIAL INSTITUTION SHOULD MAIL THE COMPLETED FORM TO THE GOVERNMENT AGENCY IDENTIFIED

NSN 7540-01-058-0224

GOVERNMENT AGENCY COPY

1199-20

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Replaces all preceding manual releases

SAMPLE PAYMENT SCREEN

SMARTLINK II - PMS PAYMENT REQUEST

```
PIN:                                    XXXX   (A)NOTHER PMT REQ     (E)ND
ACCOUNT NUMBER:                         XXXXX  (M)ORE SUBACCTS FOR ACCT
PAYMENT DUE DATE (YYMMDD):              910102 ENTER "A", "E" OR "M"==>E
TOTAL AMT REQUESTED:                    55165.36
FEDERAL CASH BALANCE ON HAND:           0              +/-
EXPECTED DISBURSEMENT AMOUNT:           55165.36
```

	SUB-ACCT	AMOUNT	+/-		SUB-ACCT	AMOUNT	+/-
1.	00-00515	23000.00		2.	00-00569	14000.00	
3.	00-00572	6000.12		4.	00-00693	11156.00	
5.	00-00701	6509.24		6.	00-00719	3000.00	-
7.	00-00728	2500.00	-	8.			

MESSAGES:

YOUR REQUEST WAS RECEIVED.

SAMPLE

CLASSIFICATION OF AMOUNT REQUESTED

(NPS Supplement to the electronic SMARTLINK payment request system for the L&WCF Program)

STATE: _____ REQUEST NO. _____ DATE: _____

GRANT NO. (including element, if applicable)	AMOUNT	GRANT NO. (including element, if applicable)	AMOUNT
	$		$
TOTAL (must be same as total requested this date under SMARTLINK)		$	

REMARKS

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Replaces all preceding manual releases

SAMPLE

CLASSIFICATION OF AMOUNT REQUESTED

(NPS Supplement to the electronic SMARTLINK payment request system for the L&WCF Program)

STATE: Anystate REQUEST NO. 001 DATE: January 2, 1991

GRANT NO. (including element, if applicable)	AMOUNT	GRANT NO. (including element, if applicable)	AMOUNT
00-00515 (4F)	$ 23,000.00		$
00-00569 (1F)	14,000.00		
00-00572C (5P)	2,000.12		
00-00572E (3F)	3,000.00		
00-00572F (2F)	1,000.00		
00-00693 (1P)	11,156.00		
00-00701 (3P)	6,509.24		
00-00719 (APPL)	(3,000.00)		
00-00728 (ADJ)	(2,500.00)		
TOTAL (must be same as total requested this date under SMARTLINK)		$	55,165.36

REMARKS

00-00719 Apply to advance.

00-00728 Adjustment due to prior overdraw.

Instructions for Completion of
Classification of Amount Requested Form

The Classification of Amount Requested form serves as a supplement to the electronic SMARTLINK payment request. A copy must also be submitted to the applicable NPS Regional Office. Failure to adhere to this requirement will result in removal from SMARTLINK and placement on direct reimbursement. Information appearing on this form is for the benefit of NPS, providing a "hard" copy detailing the recipient's payment requests for a given date.

GENERAL INFORMATION

All amounts shown on this form represent the Federal share of project cost. This report must be submitted to the NPS Accounting Operations Division in Reston, Virginia within 24 hours of every SMARTLINK payment request. Although each SMARTLINK payment request will accommodate up to eight grant payments per screen, there is no overall limit on the number of grants for which payment is requested per day. Use the Classification form for as many grants as are applicable for a given date. Use additional form(s) if needed.

INSTRUCTIONS

STATE: Enter State.

REQUEST NO. Enter the consecutive number of the request (first request = "001;" fifteenth request = "015," for example).

DATE: Enter date of SMARTLINK request (should be same date entered on SMARTLINK screen). Do not include requests generated on a different date.

In the space provided, list each project (grant) identification number applicable to the request and the amount of the request that applies to each project. Following the grant number, enter (in parentheses) the appropriate sequential payment number for the grant and "P" (for "partial") for payments which leave an outstanding balance for the applicable project. When the final payment is requested for a particular project, enter the appropriate sequential payment number and "F" (for "final") after the grant number. (Examples: the first partial payment would be "1P" while the fifth and final payment would be "5F").

If, for grants previously paid in final, adjustments in the final amount are required, enter "ADJ" in parentheses following the grant number. If adjustments on prior payments for specific grants (as a result of overpayments and payments on Bills for Collection, for example) are being accomplished, the amount must be enclosed in parentheses and an explanation must appear in the "Remarks" section. For adjustments reflecting amounts due on Bills for Collection such as those issued to recover disallowed costs, the Bill number should be noted.

If the amount requested for a given project represents an adjustment due to an overpayment on a prior drawdown or to payment on a Bill for Collection, that amount is considered a negative which, on the SMARTLINK screen, is reflected by entering a minus sign in the appropriate "+/-" space. On the Classification form, the entry should be made as described above.

The total (net) of all amounts reflected on this form must equal the total amount requested via SMARTLINK on the applicable date. The form has space for itemizing up to 32 grants. For consolidated grants, itemize by element and include element letter with the grant number.

The Remarks section may be used for any appropriate comments which clarify the request. All adjustments, such as refunds of prior overpayments and payments on Bills for Collection issued for audit recoveries or other reasons, must be explained here (cite specific grant numbers which show amounts appearing in parentheses).

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

Approved by Office of Management and Budget, No. 80-R0183

PAGE ___ OF ___ PAGES

1. TYPE OF PAYMENT REQUESTED
   a. "X" one, or both boxes: ☐ ADVANCE ☐ REIMBURSEMENT
   b. "X" the applicable box: ☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST: ☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

8. PERIOD COVERED BY THIS REQUEST
   FROM (month, day, year)
   TO (month, day, year)

9. RECIPIENT ORGANIZATION
   Name :
   Number and Street :
   City, State and ZIP Code :

10. PAYEE (Where check is to be sent is different than item 9)
    Name :
    Number and Street :
    City, State and ZIP Code :

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS / ADVANCES REQUESTED

PROGRAMS / FUNCTIONS / ACTIVITIES ►	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (As of date)	$	$	$	$
b. Less: Cumulative program income				
c. Net program outlays (Line a minus line b)				
d. Estimated net cash outlays for advance period				
e. Total (Sum of lines c & d)				
f. Non - Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (Line g minus line h)				
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances — 1st month				
2nd month				
3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (line a minus line b)	

13. CERTIFICATION

I certify that to the best of my knowle and belief the data above are correct that all outlays were made in accordan with the grant conditions or other agr ment and that payment is due and has been previously requested.

SIGNATURE OF AUTHORIZED CERTIFYING OFF

DATE REQUEST SUBMITTED

TYPED OR PRINTED NAME AND T

TELEPHONE (AR CODE, NUMBER, EXTENSION)

This space for agency u

270-10

STANDARD FORM 270 (7-76)
Prescribed by Office of Management and Bu
Cir. No. A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are se;f-explanatory; specific instructions for other items are as follows:

Item	*Entry*
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement nmuber and the Federal share of outlays made against the grant or agreement.
6	enter the employer identification number assigtned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal Agency.
7	*This space is reserved for an account number or other* identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both and advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete iltems 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all progrms, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays tgo date (not of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an acrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicasble to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

(See instructions on back)

Approved by Office of Management and Budget, No. 80-R0181

Page of Pages

1. TYPE OF REQUEST ☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NO.

6. EMPLOYER IDENTIFIER NUMBER

7. RECIPIENT ACCOUNT OR OTHER IDENTIFYING NUMBER

PERIOD COVERED BY THIS REPORT

FROM (Month, day, year)

TO (Month, day, year)

8. RECIPIENT ORGANIZATION

Name

No. and Street

City, State and ZIP Code

10. PAYEE (Where check should be sent if different from item 8)

Name

No. and Street

City, State and ZIP Code

11. STATUS OF FUNDS

CLASSIFICATION	PROGRAMS (a)	FUNCTIONS (b)	ACTIVITIES (c)	TOTAL
a. Administrative expense	$	$	$	$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date (sum of lines a thru m)				
o. Deductions for program income				
p. Net cumulative to date (Line n minus line o)				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share (sum of lines q and r)				
t. Federal payments previously requested				
u. Amount requested for reimbursement	$	$	$	$
v. Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION

I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.

a. RECIPIENT

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (Area code, number and extension)

b. Representative certifying to line 11v.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

DATE SIGNED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE (Area code, number and extension)

270-101 *EXHIBIT 4*

STANDARD FORM 271 (7-76)
Prescribed by Office of Manage and Budget
CIRCULARS NO. A-102 AND A-110

Manual Release 151
Replaces all preceding manual releases

INSTRUCTIONS

Please thpe or print legibly. Items 3, 4, 5, 8, 9, 10, 11s, and 11v are self explanatory; specific instructions for other items are as follows:

Item	*Entry*
1.	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project
2.	Show whether amounts are computed on an accrued expenditure basis
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service [or FICE (institution) code if requested by the Federal agency].
7.	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
11.	The purpose of vertical columns (a) through (c) is to pro- vide space for separate cost breakdowns when a large project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of aa programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.
11a	Enter amounts expeneded for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.
11b	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction
11c	Enter all amounts directly associated with the acquisition of land ,existing structures, and related right-of-way.
11d	Enter basic fees for services of architectural engineers.
11e	Enter other architectural engineering services. Do not include any amounts shown on line d.
11f	Enter inspection and audit fees of construction and related programs.
11g	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with majhor construction should be excluded from this category and entered on line k.
11h	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line a.
11i	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.
11j	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account, thereby reflecting net amounts if required by the Federal agency.
11k	Enter those amounts associated with the actual construction or, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
111	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, builtin audio visual systems, movable desks, chairs , and laboratory equipment.
11m	Enter the amounts for all items not specifically mentioned above.
11n	Enter the total cumulative amount to date which should be the sum of lines a through m.
11o	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11p	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11q	Enter the Federal share of the amount shown on line p.
11r	Enter the amount of rehabilitatiojn grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11t	Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement.
11u	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
12a	To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
12b	To be completed by the official representative who is certifying to the percent of project com0pletion as provided for in the terms of the grant or agreement.

FEDERAL CASH TRANSACTIONS REPORT

(SEE INSTRUCTIONS ON THE BACK. IF REPORT IS FOR MORE THAN ONE GRANT OR ASSISTANCE AGREEMENT, ATTACH COMPLETED STANDARD FORM 272-A.)

Approved by the Office of Management and Budget, No. 80 - R0182

1. Federal sponsoring agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name

Number and Street

City, State and ZIP Code:

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received (whether or not deposited)

10. PERIOD COVERED BY THIS REPORT

3. FEDERAL EMPLOYER IDENTIFICATION NO. ▶

FROM *(month, day, year)*

TO *(month, day, year)*

11. STATUS OF FEDERAL CASH

(See specific instructions on the back)

a. Cash on hand beginning of reporting period	$
b. Letter of credit withdrawals	
c. Treasury check payments	
d. Total receipts (*Sum of lines b and C*)	
e. Total cash available (*Sum of lines a and d*)	
f. Gross disbursements	
g. Federal share of program income	
h. Net disbursements (*Line f minus line g*)	
i. Adjustments of prior periods	
j. Cash on hand end of period	$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING _____ DAYS

13. OTHER INFORMATION

a. Interest income	$
b. Advances to subgrantees or subcontractors	$

14. REMARKS (*Attach additional sheets of plain paper, if more space is required*)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement.

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE *(Area Code)* *(Number)* *(Extension)*

THIS SPACE FOR AGENCY USE

272 - 101

STANDARD FORM 272 (7-76)
Prescribed by Office of Management and Budget

Manual Release 151
Replaces all preceding manual releases

FEDERAL CASH TRANSACTIONS REPORT CONTINUATION *(This form is completed and attached to Standard Form 272 only when reporting more than one grant or assistance agreement .)*	Approved by Office of Management and Budget, No. 80 - R0182 1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED
2. RECIPIENT ORGANIZATION *(Give name only as shown in item 2, SF 272)*	3. PERIOD COMERED BY THIS REPORT *(As shown on SF 272)* FROM *(Month, day, year)* TO *(Month, day, year)*

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

FEDERAL GRANT OR OTHER IDENTIFICATION *(Show a subdivision by other identifying numbers if required by the Federal Sponsoring Agency)* (a)	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFYING NUMBER (b)	FEDERAL SHARE OF NET DISBURSEMENTS	
		NET DISBURSEMENTS *(gross disbursements less program income received)* FOR REPORTING PERIOD (c)	CUMULATIVE NET DISBURSEMENTS (d)
5. TOTALS *(Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences.)*		$	$

272 - 301

STANDARD FORM 272 - A (7 - 76)
Prescribed by Office of Management and Budget

AUDITS

1. Purpose. This Chapter establishes audit requirements in accord with the Single Audit Act of 1984 (P.L. 98-502), and OMB Circular A-128, "Audit Requirements for State and Local Governments". These requirements have been incorporated as a final rule into Department regulations, Chapter 43 CFR Part 12 "Administrative Requirements for Cost Principles for Assistance Programs", Subpart B - "Audit Requirements for State and Local Governments", effective July 18, 1985. The Single Audit Act requires the following:

   (a) State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made for that year.

   (b) State or local governments that receive between $25,000 and $100,000 a year have an audit made for that year, or in accordance with Federal laws and regulations governing the programs they participate in.

   (c) State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

   (d) Nothing exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102.

   The Act also provides requirements for 1) conducting entitywide audits under cognizant Federal agencies, 2) determining criteria for making charges to Federal programs for the cost of audits, and 3) providing procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits. Such audits are to determine whether:

   a. financial operations are conducted properly,

   b. financial statements are presented fairly,

   c. the organization has complied with laws and regulations affecting the expenditure of Federal funds,

   d. internal procedures have been established to meet the objectives of Federally assisted programs, and

e. financial reports contain accurate and reliable information.

2. Responsibilities.

A. State. The State shall use their own procedures to arrange for independent audits and to prescribe the scope of audits provided that the audits comply with the requirements set forth in this chapter and are in accord with the procurement standards prescribed OMB Circular A-102, "Uniform requirements for grants to State and local governments." (See Common Rule, 675.3, Attachment A.) The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g. audit services) these statutes will take precedence. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A-128 as incorporated into 43 CFR Part 12 Subpart B. All audit materials shall be available for review by the cognizant Federal agency or authorized representatives thereof having Federal audit responsibilities. All records essential to Federal audit purposes shall be retained by the State or local project sponsor for 3 years after final payment on the project by the Federal Government. The material shall be maintained beyond the required 3 year period if audit findings have not been resolved. The costs of providing such audits may be reimbursed to the State or project sponsor through its indirect cost rate.

B. Federal. Federal agencies are responsible for determining that Federal funds have been applied effectively and in a manner consistent with Federal laws, program objectives, and project agreements. The Single Audit Act provides that an audit made in accordance with the rule (43 CFR Part 12 Subpart B) shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

3. Standards.

A. Procedures. Audits shall be made in accord with the General Accounting Office's *"Standards for Audit of Government Organizations, Programs, Activities and Functions"* and the *"Compliance Supplement for Single Audits of State and Local Governments"* any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants. Audits usually will be made annually, but not less frequently than every two years.

B. Scope. Audits will include, at a minimum, an examination of the systems of internal control, the systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations.

Examinations shall be made to determine whether:

(1) There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A-102. (See 675.3, Attachment A.)

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(5) Charges made:

(a) Are necessary and reasonable for the proper administration of the program,

(b) Conform to any limitations or exclusions in the award,

(c) Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient,

(d) Were net of applicable credits,

(e) Did not include costs properly chargeable to other federally assisted programs,

(f) Were properly recorded (i.e. correct amount, date) and supported by source documentation,

(g) Were approved in advance, if subject to prior approval in accordance with OMB Circular A-87, "Cost principles for State and local governments",

(h) Were incurred in accordance with competitive purchasing procedures, if covered by of OMB Circular A-102, and

(i) Were allocated equitably to benefiting activities, including non-Federal activities.

C. Reports. The audit report shall include:

(1) Financial statements, including footnotes, of the recipient organization.

(2) The auditors' comments on the financial statements which should:

(a) Identify the statements examined, and the period covered,

(b) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(c) State that the audit was done in accordance with the standards in Section 675.7.3A, and

(d) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditors' comments on compliance and internal control which should:

(a) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses,

(b) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those

provisions of Federal law or regulations that could have a material effect on the financial statements and reports, and

(c) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

4. **Exceptions.** An audit exception is a determination by an appropriate authority that an item questioned by the auditor is not properly chargeable to the project agreement and should be disallowed. The Regional Director determines the allowance or disallowance of items questioned by the auditor. Each Regional Director will be responsible for the review of audit reports received from cognizant Federal agencies and/or the Office of the Inspector General (OIG) Department of the Interior pertaining to Land and Water Conservation Fund grants to States in their assigned Regions. Each Regional Director will be responsible for advising the States of the audit findings, together with recommendations and suggestions for overcoming the deficiencies disclosed by the audit, and also advise the State of the disallowance of any items.

The Departmental Manual [360 and 361 (June 1, 1984) DM 7.3] requires that the State formally respond to the OIG, through the Director of NPS, concerning audit exceptions within 90 days of the issuance of the audit report. It is hoped that this response will resolve most or all of the audit exceptions. At the least, this initial response should include:

1) Whether there is agreement with the audit findings and recommendations. If there is non-concurrence, the specific reasons must be stated.

2) Recommendations or support documentation for corrective action (resolution) of the audit exceptions.

All audit exceptions must be fully resolved within six (6) months of the issuance of the audit report. If resolution of an audit exception indicates the need for reimbursement of the Federal share, then such reimbursement must be made within 60 days after such resolution. After the six (6) month period from the date of issuance of the audit report, unresolved audit exceptions will be disallowed and reimbursement of the Federal share must be made within sixty (60) days. Reimbursement of the Federal share may be accomplished by a credit of payment to billings and letter of credit drawdowns.

PROJECT TERMINATION AND SETTLEMENT

1. This chapter prescribes project closeout procedures in accordance with 43 CFR Part 12.1-.52.

2. **Termination.** The termination of a project means the cancellation of Federal assistance, in whole or in part, under a project at any time prior to the date of completion.

3. **Suspension.** The suspension of a grant is an action by the Service which temporarily suspends Federal assistance under the project pending corrective action by the project sponsor or pending a decision to terminate the grant by the Service.

4. **Termination by State.** The State may unilaterally terminate the project or consolidated project element at any time prior to the first payment on the project or consolidated project element. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement of the State and the Service.

5. **Termination for Cause.** The Director may terminate any project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.

6. **Termination for Convenience.** The Service or State may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The project sponsor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Service may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the project sponsor prior to termination. An amendment to the project agreement is required for all terminations for convenience.

7. **Grant Closeout.** The closeout of a grant is the process by which the Service determines that all applicable administrative actions and all required work of the project or project element have been completed.

Manual Release 151
Replaces all preceding manual releases

8. **Date of Completion.** The date of completion is the date when all work under a project is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends, whichever comes first.

9. **Closeout procedures.** The following are minimum requirements of the Service's grant closeout procedures:

   A. Upon request, the Service will make prompt payments to the State for allowable reimbursable costs under the project being closed out.

   B. The State shall immediately refund to the Service any unencumbered balance of cash advanced to the State.

   C. The State shall provide the Service within 90 days after the date of completion of the project or element all financial performance and other reports required as a condition of the grant. The Service may grant extensions when requested by the State.

   D. Within 90 days after the date of completing the project or consolidated project element, a final performance report is due which specifies that a project has been completed in accordance with the approved project agreement. In addition, the following reports are due within the 90 days:

      (1) A final on-site inspection report in accordance with the on-site inspection agreement.

      (2) A completed Description and Notification Form (DNF). This will not be needed for projects or elements of a consolidated grant which already have a DNF on file unless changes have occurred. (see Attachment 660.3E).

      (3) An as-built or as-acquired site plan unless previously submitted.

      (4) A list of facilities developed and/or acres acquired.

      (5) A signed and dated project boundary map if a more accurate map than the current one on file is available. (see Section 660.2.6).

   E. The Service shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received. The project agreement, as signed by the State and the Service, establishes a total cost and support ceiling for the project that is based upon the project sponsor's best estimate of acquisition and development costs as foreseen at the outset of the project. As

the project proceeds, adjustments are sometimes required in accord with changing processes, unforeseen problems or other conditions. When an upward adjustment is required, an amendment must be executed (see Section 660.2.9). When actual project costs are less than originally estimated, no amendment is necessary.

F. Upon receipt of the reports and final project billings, a determination will be made as to the total sum of:

(1) any amount not otherwise accounted for;

(2) any credits for materials, supplies or equipment on hand; and

(3) any payments or funds to be refunded by the State.

Such total sum will be balanced against any amount owed to the State. In the event the total sum exceeds the amount owed to the State, the excess will constitute a debt owed by the State to the United States and shall be recovered from the State or its assignees in a manner which the Director shall prescribe. If the amount owed to the State is greater than the total sum, the balance will be paid to the State.

G. The project sponsor shall account for any personal property acquired with grant funds or received from the Government in accordance with the provisions of 43 CFR Part 12.1 - .52. The project sponsor shall account for all real property acquired or developed with grant funds in accordance with the statutory requirements of the Land and Water Conservation Fund Act of 1965, as amended.

H. In the event a final audit has not been performed prior to the closeout of the grant, the Service retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

POST-COMPLETION RESPONSIBILITIES

1. Operation and Maintenance. Property acquired or developed with L&WCF assistance shall be operated and maintained as follows:

   A. The property shall be maintained so as to appear attractive and inviting to the public.

   B. Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards.

   C. Properties shall be kept reasonably safe for public use. Fire prevention, lifeguard, and similar activities shall be maintained for proper public safety.

   D. Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.

   E. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

2. Availability to Users.

   A. Discrimination on the Basis of Race, Color, National Origin, Religion, or Sex. Under Title VI of the 1964 Civil Rights Act property acquired or developed with L&WCF assistance shall be open to entry and use by all persons regardless of race, color, or national origin, who are otherwise eligible. The code of Federal Regulations, Title 43, Part 17, effectuates the provisions of Title VI. The prohibitions imposed by Title VI apply to park or recreation areas benefiting from Federal assistance and to any other recreation areas administered by the State agency or local agency receiving the assistance. (see Chapter 650.9) Discrimination is also prohibited on the basis of religion or sex.

   B. Discrimination on the Basis of Residence. Section 6(f)(8) of the L&WCF Act and 36 CFR 59.4 provide that with respect to property acquired or developed with L&WCF assistance, discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

   Fees charged to nonresidents cannot exceed twice that charged to residents. Where there is no charge for residents but a fee is charged

to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable State or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents.

These provisions apply only to the recreation areas described in the project agreement. Nonresident fishing and hunting license fees are excluded from these requirements.

C. Discrimination on the Basis of Handicap. Section 504 of the Rehabilitation Act of 1973 requires that no qualified person shall on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Americans with Disabilities Act of 1990 (P.L. 100-336) simply references and reinforces these requirements for Federally-assisted programs.

D. Reasonable Use Limitations. Project sponsors may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Fund assistance when such a limitation is necessary for maintenance or preservation. Thus, limitations may be imposed on the numbers of person using an area or facility or the type of users, such as "hunters only" or "hikers only." All limitations shall be in accord with the applicable grant agreement and amendments.

3. Conversion. Property acquired or developed with L&WCF assistance shall be retained and used for public outdoor recreation. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of the NPS Regional Director pursuant to Section 6(f)(3) of the L&WCF Act and 36 CFR Part 59. The Director has authority to disapprove conversion requests and/or to reject proposed property substitutions.

The conversion provisions of Section 6(f)(3), 36 CFR Part 59, and this Manual apply to each area or facility for which Land and Water Conservation Fund (L&WCF) assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement bewtween NPS and the State. Responsibility for compliance and enforcement of these provisions rests with the State for both State **and** locally sponsored projects. The responsibilities cited herein are applicable to the area depicted or otherwise described on the 6(f)(3) boundary map and/or as described in other project documentation approved by the Department of the Interior. In many instances, this mutually agreed to area exceeds that

actually receiving L&WCF assistance so as to assure the protection of a viable recreation entity.

A. Conversion applicability. Conversions generally occur in the following four situations:

(1) Property interests are conveyed for non-public outdoor recreation uses.

(2) Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof.

(3) Non-eligible indoor recreation facilities are developed within the project area without NPS approval.

(4) Public outdoor recreation use of property acquired or developed with L&WCF assistance is terminated.

(5) Exceptions.

(a) Underground utility easements that do not have significant impacts upon the recreational utility of the park will not constitute a conversion.

(b) Proposals to construct public facilities or to shelter or enclose Fund assisted or non-assisted outdoor recreation facilities without L&WCF assistance, where it can be shown that there is a gain or increased benefit to public recreational opportunity, will not constitute a conversion. Final review and approval of such cases shall be made on a case by case basis by the responsible NPS office and in accordance with Section 640.3.9 and 675.9.3D-E.

B. Prerequisites to Consideration of Conversions. Requests from the project sponsor for permission to convert L&WCF assisted properties in whole or in part to other than public outdoor recreation uses must be submitted by the State Liaison Officer to the appropriate NPS Regional director in writing. NPS will consider conversion requests if the following prerequisites have been met:

(1) All practical alternatives to the conversion have been evaluated and rejected on a sound basis.

(2) The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a State approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures

or facilities that will not directly enhance its outdoor recreation utility.

Generally, this will necessitate a review of appraisals prepared in accord with Chapter 675.2 for both the property proposed to be converted and that recommended for substitution. However, at the discretion of the Regional Director, a State certification that appraisals of both properties are acceptable and reveal that the replacement property is of at least equal fair market value as that of the property to be converted can be accepted. Exercising this authority should be consistent with the State's review responsibilities with respect to donation appraisals. (see 675.2.6E).

(3) The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. Dependent upon the situation and the discretion of the Regional Director, the replacement property need not provide identical recreation experiences or be located at the same site, provided it is in a reasonably equivalent location. Generally, the replacement property should be administered by the same political jurisdiction as the converted property. NPS will consider State requests to change the project sponsor when it is determined that a different political jurisdiction can better carry out the objectives of the original project agreement. Equivalent usefulness and location will be determined based on the following criteria:

(a) Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities availaable. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. This criterion is applicable in the consideration of all conversion requests with the exception of those where wetlands are proposed as replacement property.

In accordance with Section 6(f)(3) of the L&WCF Act as amended by Section 303 of the Emergency Wetlands Resources Act of 1986, wetland areas and interests therein which have been identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan shall be considered to be of reasonably equivalent usefulness with the property proposed for conversion

regardless of the nature of the property proposed for conversion.

(b) Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation need. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions. For example, if property being converted is in an area undergoing major demographic change and the area has no existing or anticipated future need for outdoor recreation, then the project sponsor should seek to locate the substitute area at another location within the jurisdiction.

(c) Should a local project sponsor be unable to replace converted property, the State would be responsible, as the primary recipient of Federal assistance, for assuring compliance with these requirements and for the substitution of replacement property.

(d) The acquisition of one parcel of land may be used in satisfaction of several approved conversions.

(4) The property proposed for substitution meets the eligibility requirements for L&WCF assisted acquisition (see Part 640.2.1). The replacement property must constitute or be part of a viable recreation area. Unless ***each*** of the following additional conditions (also see 670.3.4K) are met, land currently owned by another public agency **may not be used as replacement land** for land acquired as part of an L&WCF project:

(a) The replacement land was not originally acquired by the sponsor or selling agency for recreation.

(b) The replacement land has not previously been dedicated or managed for recreational purposes while in public ownership.

(c) No Federal assistance was provided in the replacement land's original acquisition unless the assistance was provided under a program expressly authorized to match or supplement L&WCF assistance as described in 670.1.5.

(d) Where the project sponsor acquires replacement land from another public agency, the selling agency must be required by law to receive payment for the land so acquired.

An exception may be made to condition (4)(d) only in the case of **development projects** for which the State match was not derived from the cost of the purchase or value of a donation of the land to be converted, but from the value of the development itself. In this case, public land that has not been previously dedicated or managed for recreation/conservation use may be used as replacement land even if this land is currently owned by the project sponsor or is transferred from one public agency to another without cost. Because of the L&WCF Act's emphasis on preventing any substractions to the **net acreage added to the national recreation estate by grants under the program**, this exception can never be applied to L&WCF acquisition projects, nor to combination projects where the costs of development were matched through the value of land donated or otherwise brought under the protection of Sec. 6(f)(3) for the purpose of development.

(5) In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.

(6) All necessary coordination with other Federal agencies has been satisfactorily accomplished.

(7) The guidelines for environmental evaluation have been satisfactorily completed and considered by NPS during its review of the proposed 6(f)(3) action (see Chapter 650.2). In cases where the proposed conversion arises from another Federal action, final review of the State's proposal shall not occur until the Region is assured that all environmental review requirements related to that other action have been met.

(8) Intergovernmental Review System (E.O. 12372) review procedures have been adhered to if the proposed conversion and substitution constitute significant changes to the original Land and Water Conservation Fund project. (see Chapter 650.8).

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(9) The proposed conversion and substitution are in accord with the SCORP.

(10) Staff consideration of the above points reveals no reason for disapproval and the project files are so documented.

(11) It should also be noted that the acquisition of one parcel of land may be used in satisfaction of several approved conversions. However, previously acquired property can not be used to satisfy substitution requirements except in the case of development projects in 675.9.3B(4) noted above.

(12) The restrictive leasing policy (640.3.4) does not relieve the sponsor of an existing project for the acquisition and/or development of a leasehold interest from fulfilling the conversion requirements of Section 6(f)(3) of the Act, including the provision of replacement land in the event a conversion is proposed or takes place during the term of the lease. In this instance, the conversion of the original lease can be replaced with a leasehold interest for a period of time which is not less than the time remaining on the original lease, and which fulfills the recreation commitment agreed to in the original lease agreement.

Generally, for existing projects which involve leases, the responsibility for retaining the property in recreation terminates at the end of the lease period. However, those lease agreements containing a renewal clause which can be exercised by the lessee must be reviewed to determine if and when the Service's compliance responsibility ceases.

C. Amendments for Conversion. All conversions require amendments to the original project agreement. Therefore, amendment requests should be submitted concurrently with conversion requests or at such time as all details of the conversion have been worked out with NPS. Signed and dated section 6(f)(3) project boundary maps (see section 660.2.6) shall be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new project area pursuant to the substitution. Once the conversion has been approved, replacement property should be immediately acquired. Exceptions to this rule would occur only when it is not possible for replacement property to be identified prior to the State's request for the conversion. It is, however, the Service's policy to avoid such situations if at all possible and to agree only if warranted by exceptional circumstances. In such cases, an express commitment to satisfy Section 6(f)(3) substitution requirements within a specified period, normally not to exceed one year following conversion

approval, must be received from the State. This will be in the form of an amendment to the project agreement.

D. Prerequisites to and criteria for consideration of project amendments for the construction of public facilities on L&WCF assisted sites. The Service will only consider requests to construct sponsor-funded public facilities if the following prerequisites and criteria have been met:

(1) All design and location alternatives have been adequately considered, documented and rejected on a sound basis.

(2) The proposal has been adequately reviewed at the State level and has been recommended by the SLO.

(3) Use of the facility will be compatible with outdoor recreation and will increase outdoor recreation use; and, recreation use remains the overall primary function of the site.

(4) The proposed structure is compatible and significantly supportive of the outdoor recreation resources of the site, whether existing or planned. The park's outdoor recreation use must continue to be greater than that expected for any indoor uses, unless the site is a single use facility, such as a swimming pool, which virtually occupies the entire site. Examples of uses which would not ordinarily be approved include, but are not limited to, community recreation center which takes up all or most of a small park site, police stations, fire stations, professional sports facilities or commercial resort or other facilities which 1) are not accessible to the general public, or 2) require memberships, or 3) which, because of high user fees, have the effect of excluding elements of the public, or 4) which include office, residential or elaborate lodging facilities.

(5) Potential and future benefits to the total park's outdoor recreation utility must be identified in the proposal. Any costs or detriments should be documented and a net recreation benefit must result.

(6) The proposed facility must be under the control and tenure of the public agency which sponsors and administers the original park area.

(7) The proposal has been subjected to specific public review; public comment providing evidence of public support must accompany the proposal.

(8) All applicable Federal requirements for approval and operations are met in accordance with Section 650.1.

E. Procedures for Approval of Construction of a Public Facility or the Sheltering of an Existing Facility. Considerations of proposals for the construction of State or locally funded public facilities on a Fund-assisted site or the sheltering of recreation activities, without Federal funds, on a Fund-assisted site are subject to the following process:

(1) The project sponsor, following public review, shall submit the proposal to the SLO for review.

(2) The SLO, upon afirmative completion of the review, will submit the proposal in the form of a project amendment to the appropriate NPS Regional Office along with all supporting documentation and recommendations.

(3) The Regional Office will review the proposal and forward the proposal along with its recommendation to NPS WASO for final action.

(See also Section 640.3.9.C for sheltering requirements.)

4. **Obsolete Facilities, Changes of Use.** Project sponsors are not required to continue operation of a particular recreation area or facility beyond its useful life. However, Section 6(f)(3) of the L&WCF Act requires that project sponsors maintain the entire area defined in the project agreement in some form of public outdoor recreation use. NPS aproval must be obtained prior to any change from one eligible use to another when the proposed use would significantly contravene the original plans for the area. NPS approval is not necessarily required however, for each and every facility use change. A project area should be viewed in the context of overall use and should be monitored in this context. A change from a swimming pool with substantial recreational development to a less intense area of limited development such as a passive park, or vice versa, would, for example, require NPS approval. NPS approval must also be obtained for any underground utility installations for which an exception to conversion is requested under Part 675.9.3.A5.)

A. Notification of Obsolescence. To assure that facility changes (including granting of underground utility easements when theyhave no above ground impacts) do not significantly contravene the original project agreement, the NPS Regional Director shall be notified in writing by the State of **all** proposed changes in advance

of their occurrence. NPS will then expedite a determination of whether a formal review and approval process will be required. A primary NPS consideration in the review of requests for changes in use will be the consistency of the proposal with the Statewide Comprehensive Outdoor Recreation Plan. Changes to other than public outdoor recreation use require NPS approval and the substitution of replacement land in accordance with Section 6(f)(3) of the L&WCF Act, 36 CFR Part 59, and Chapter 675.9.3 of this manual.

B. Determination That a Facility is Obsolete. Notwithstanding neglect or inadequate maintenance on the part of the project sponsor, a recreation area or facility may be determined to be obsolete if:

(1) reasonable maintenance and repairs are not sufficient to keep the recreation area or facility operating;

(2) changing recreation needs dictate a change in the type of facilities provided;

(3) park operating practices dictate a change in the type of facilities required; or

(4) the recreation area or facility is destroyed by fire, natural disaster, or vandalism.

C. State Responsibilities. Project sponsors may permit the use of a facility to be discontinued or allow a particular type of recreation use of the L&WCF assisted area to be changed provided that the project record maintained by the State is documented by the sponsor with a justification statement that the State concurs in the change, and that the procedures required in 675.9.4A above are adhered to. If in the judgement of the State, the facility is needed and was lost through neglect or inadequate maintenance, then replacement facilities must be provided at the current value of the original investment.

D. Additional L&WCF Assistance. L&WCF assistance may be provided to renovate outdoor recreation facilities which have previously received L&WCF assistance if the State determines that the renovation is not required as a result of neglect or inadequate maintenance and the State documents the project record to that effect.

5. **Post-Completion Inspections.** In order to determine whether properties acquired or developed with L&WCF assistance are being retained and used for outdoor recreation purposes in accordance with the project agreement and other applicable program requirements, a State

compliance inspection is to be made within five years after final billing and at least once every five years thereafter.

The following points should be taken into consideration during the inspection of properties that have been developed for public use:

A. Retention and Use. Is the property being used for the purposes intended?
B. Appearance. Is the property attractive and inviting to the public?
C. Maintenance. Is upkeep and repair of structures and improvements adequate? Is there evidence of poor workmanship or use of inferior quality materials or construction? Is vandalism a problem?

D. Management. Does staffing and servicing of facilities appear adequate?
E. Availability. Is there evidence of discrimination? Is the property readily accessible and open to the public during reasonable hours and times of the year?
F. Environment. Is the quality of the area being maintained?

G. Signing. Is the area properly signed to allow for user information and safety, and proper acknowledgement of the Land and Water

H. Interim Use. Where lands have been acquired but not yet developed, the inspection should determine whether the interim use being made of the property, if any, is as agreed to by the Service.

6. **Post-Completion Inspection Reports.** Within 90 days of completion of an on-site inspection, States shall submit to the appropriate Regional Office a post-completion inspection report for all projects which have compliance problems. The report should include the date of inspection, description of discrepancy, and corrective actions taken or to be taken. (see Section 675.1.6)

A performance report shall be provided on an annual basis where no compliance issues have been identified. This report will be due by March 31 of each year and will include identification of the projects inspected by project name and number and the date the on-site inspection occurred. (see Sections 675.5.5 and 675.1.6).

Post-completion inspection reports shall also be completed for those projects in which the facilities have been deemed obsolete. The report should include certification by the State Liaison Officer that the facility is obsolete and that such obsolescence is not a result of neglect or inadequate maintenance on the part of the project sponsor. (see Section 675.9.4).

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7. **Applicability**. The rules given in this chapter apply to each area or facility for which L&WCF assistance is obtained, regardless of the extent of L&WCF assistance in that area or facility. That is, in cases where assistance is provided only for an acquisition, the entire park or recreational area involved, including developments on the lands so acquired, are subject to the provisions of this chapter. Where development assistance is given, the lands of the park or recreation area identified on the project boundary map are subject to this chapter.

8. **State Responsibility**. Responsibility for enforcement of the provisions of this chapter rests with the State. The Service will inspect L&WCF assisted areas and facilities from time to time, but it shall conduct such visits in concert or through consultation with the State Agency or State Liaison Officer.

9. **Costs**. The costs of making post-completion inspections by the State are allowable overhead costs for L&WCF assistance.

10. **Penalties**. Failure to comply with the provisions of this chapter shall be considered cause for the Director, at his/her election, to:

    A. Withhold future payments being made to the State on current projects of the project sponsor who is responsible for the infraction in question; or

    B. Withhold future payments to the State on any or all current projects until the situation involved is corrected; or

    C. Withhold action on all pending projects of the State and/or project sponsor who is responsible for the infraction in question; or

    D. Withhold current or future reimbursements due to the State in the amount of assistance previously paid out for the project or projects involved.

11. **Service Inspection**. Properties acquired or developed with L&WCF assistance shall be available for inspection by the Director or other NPS representative.

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