

Proposed Rules

Federal Register

Vol. 68, No. 136

Wednesday, July 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 3015, 3019 and 3020

Office of the Chief Financial Officer; General Program Administration Regulations

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to amend the administrative requirements for all USDA grants and cooperative agreements that are used to document Federal assistance transactions. USDA also proposes to remove the outdated regulations and replace them with streamlined regulations that are applicable to non-profit and for-profit Federal financial assistance recipients. USDA further proposes to implement several additional administrative policies and new requirements.

DATES: Submit comments on or before August 15, 2003.

ADDRESSES: Questions and comments may be addressed to: Ava Lee, Director, Planning and Accountability Division, Office of the Chief Financial Officer, USDA, Stop 9020, 1400 Independence Avenue, SW., Washington DC 20250; FAX (202) 690-3561; telephone (202) 720-1179; E-mail alee@cfo.usda.gov.

FOR FURTHER INFORMATION CONTACT: Ava Lee, (202) 720-1179.

SUPPLEMENTARY INFORMATION:

Background

Prior to 1981, departmental regulations required USDA agencies to issue individual, program-specific regulations and directives to implement USDA, Office of Management and Budget (OMB), and other applicable guidance and policies related to Federal program administrative requirements. This was practiced throughout the Federal government and frequently resulted in complaints from program participants about the confusion and duplication in the administration and management of Federal programs.

Public Law No. 95-224, the "Federal Grant and Cooperative Agreement Act of 1977," (FGCA) and the related OMB guidance (43 FR 36860, Aug. 18, 1978), emphasized the need for a uniform policy and the standardization of common administrative requirements for all Federal assistance programs. Consequently, in November 1981, USDA published 7 CFR part 3015, "Uniform Federal Assistance Regulations" (46 FR 55636, Nov. 10, 1981). The original purpose for part 3015 was to set out in a single "uniform" regulation all requirements that applied to recipients and subrecipients of USDA Federal assistance. In terms of agreement coverage, part 3015 was limited to grants and cooperative agreements as defined by the FGCA.

Experience with this approach soon demonstrated a definite need for specific regulations that recognized the differences between types of recipients, especially as between State and local governments and the various kinds of nonprofit organizations, including universities. Therefore, USDA subsequently participated in a series of government-wide initiatives establishing more specific rules applicable based on the type of recipient. These initiatives simultaneously reduced the scope and effect of part 3015.

In March 1988, USDA joined with other Federal agencies in simultaneously publishing a common rule applicable to State and local government recipients. The USDA rule was codified in 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." (53 FR 8034, Mar. 11, 1988). In November 1993, OMB revised OMB Circular A-110 (58 FR 62992, Nov. 29, 1993). In August 1995, USDA published 7 CFR part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," to implement the revised A-110 (60 FR 44122, Aug. 24, 1995). The definition of "recipient" in section 3019.2 authorizes agencies at their discretion to apply part 3019 to for-profit organizations as well. In August 1997, USDA published 7 CFR part 3052, "Audits of States, Local Governments and Non-Profit

Organizations" (62 FR 45947, Aug. 29, 1997) to implement the requirements of the Single Audit Act Amendments of 1996 and the related revision to OMB Circular A-133. In August 2000, USDA published a final rule to include USDA's entitlement programs within the scope of part 3016 and part 3019 as appropriate (65 FR 49474, Aug. 14, 2000).

As the result of these actions, a substantial portion of the original purpose and scope of part 3015 was transferred to other rules. Currently, part 3015 may be used by USDA agencies as an option to using part 3019 for one remaining type of recipient, for-profit organizations. Part 3015 also includes certain requirements that: (1) Are not included in one or more of the other parts identified above; and (2) are generally applicable to any assistance transactions between USDA and any type of recipient.

In the period since the enactment of the FGCA, and concurrent with all of the regulatory changes set out above, Congress passed a number of acts which included language excluding certain USDA authorities from the FGCA. At a later date and as a separate action, USDA plans to develop a uniform rule for the agreements not covered by this rule such as those that are issued under sections 1472(b) and 1473A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3318 and 3319a, and similar authorities.

Congress has recently taken actions both to improve the general financial management of the Federal government and to specifically improve the effectiveness and performance of Federal assistance programs. Congress enacted the Chief Financial Officers Act of 1990 (CFO Act) for various reasons, including bringing " * * * more effective general and financial management practices to the Federal Government through statutory provisions which would * * * designate a Chief Financial Officer (CFO) in each executive department and in each major executive agency in the Federal Government" (31 U.S.C. 501 note, CFO Act sec.102(b)). The CFO Act specifies that the agency CFO "shall * * * oversee all financial management activities relating to the programs and operations of the agency; * * *" (31 U.S.C. 902(a)). The Federal Financial

Assistance Management Improvement Act of 1999 (FFAMIA) (Pub. L. 106–107) requires USDA to “* * * develop and implement a plan that * * * streamlines and simplifies the application, administrative, and reporting procedures for Federal financial assistance programs administered by the agency.” (31 U.S.C. 6101 note, FFAMIA sec.5).

USDA now proposes the following actions: (1) USDA has concluded that allowing awarding agencies the discretion to choose between two rules for the administration of assistance agreements with for-profit organizations is both unnecessary and confusing. Therefore, USDA proposes to revise part 3019 to require that agencies entering into assistance agreements with for-profit organizations use part 3019 exclusively for the administration of these agreements; (2) The combination of the recent transfer of the entitlement programs and the proposed transfer of for-profit organizations to the administrative requirements of other regulations make much of the text currently in part 3015 unnecessary. Furthermore, a substantial portion of part 3015 is based on superceded OMB guidance that is no longer used by any other Federal agency. Therefore, USDA proposes to revise the current text to remove unneeded language and to improve readability. In addition, to avoid potential confusion, USDA proposes to remove part 3015 in its entirety and replace it with a new part 3020 entitled “General Program Administration Regulations.” The table at the end of this preamble provides cross-references between the sections in the current part 3015 and the equivalent sections in the existing parts 3016 and 3019 as well as the proposed part 3020. The proposed part 3020 will apply to all types of recipients, supplementing the regulations in parts 3016 and 3019; (3) To carry out the OCFO oversight responsibilities for financial management activities, USDA proposes to make parts 3020, 3016, and 3019 applicable, as appropriate, to nearly all parties entering into assistance transactions with USDA relating to USDA’s programs, including non-governmental international recipients. The proposed rule is intended to establish the basic requirements for USDA’s financial management of programs; (4) The proposed rule will be a major step toward conformance with the FFAMIA initiative to simplify the application, administrative, and reporting procedures for the covered Federal programs administered by the agency. In terms of streamlining, the

current version of part 3015 consists of 123 sections containing 302KB of information while the proposed version of part 3020 consists of 28 sections containing 90KB of information. In terms of uniformity, the proposed rule will have the effect of placing nearly all of USDA’s assistance relationships with non-Federal entities under two administrative rules that codify for USDA the same policies used by the majority of other Federal Departments. Further streamlining is expected to occur over the coming months and years. OMB published notices in the **Federal Register** on August 12, 2002 (67 FR 52544–52560, Aug. 12, 2002) that propose to standardize the announcement format for discretionary grants and cooperative agreements across government agencies. Also, a standard set of data elements has been proposed to standardize the electronic posting of funding announcements. When they are finalized, USDA expects that parts 3016, 3019 and 3020, and particularly §§ 3016.10, 3019.12 and 3020.15 will be amended to reflect the implementation of FFAMIA; (5) USDA has corrected the reference to USDA’s audit regulation in 7 CFR 3019.26 to reflect the correct citation of 7 CFR part 3052; and, (6) USDA also proposes to include in part 3020 the additional specific requirements itemized below.

Summary of Proposed Rule 3020

The following paragraphs provide a summary of the various revisions and sections of this proposed rule 3020. Following the summary is a table that cross-references each section of part 3015 and indicates the comparable sections in parts 3016 and 3019 and proposed part 3020.

Changes to Part 3019

USDA proposes to amend the title of part 3019 and revise §§ 3019.1, 3019.2, and 3019.5 to include for-profit organizations within the scope of part 3019. The proposed revision in § 3019.26(a) replaces the reference to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and the OMB Circular A–133 with a reference to part 3052, “AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS,” the USDA regulation implementing OMB Circular A–133.

Part 3020—General Program Administration Regulations

Subpart A—General

Section 3020.1 Purpose. No substantive change from part 3015.

Section 3020.2 Applicability. This section lists which USDA agreements and recipients are covered by this rule and the exceptions to this rule. The applicability of proposed part 3020 is broader than that of part 3015. Proposed part 3020 will apply to all USDA agreements, including memoranda of understanding, not explicitly excepted. Part 3015 applies only to assistance agreements.

Section 3020.3 Conflicting policies and deviations. This section simplifies current section 3015.3. Proposed section 3020.3 clarifies that unless authorized by statute or by a waiver by OCFO, the requirements in part 3020 will take precedence over any USDA agency specific regulations.

Section 3020.4 Other regulations applicable to USDA agreements. This section lists other regulations that currently apply to some or all cover USDA agreements. The only new requirement proposed is that awarding agencies are to apply the rules in part 3019 of this chapter to for-profit entities.

Subpart B—Basic Requirements

Section 3020.10 Authority clause. USDA proposes this section to codify the requirement to include a section in all covered USDA agreements addressing the statutory authority and funding authority for any financial transaction and the statutory authority for any non-financial transaction.

Section 3020.11 Identification and use of USDA agreements. USDA proposes this section to resolve questions as to the primary types of USDA agreements. This section defines the agreements commonly entered into by USDA agencies, subject to each agency’s specific authorizations. This section specifically addresses the use of procurement contracts, cooperative agreements, grants, memoranda of understanding, interagency agreements, and intra-agency agreements.

Section 3020.12 Program reporting requirements. The Federal Program Information Act (31 U.S.C. chapter 61) requires Federal agencies to report specified information for programs involving non-procurement transactions. The USDA complies with the requirements through submission of data to the Catalog of Federal Domestic Assistance (CFDA) and the Federal Assistance Award Data System (FAADS). While these are not new requirements and USDA has complied with the reporting requirements since their inception, the requirements were never codified in our regulations. USDA proposes this section to codify these reporting requirements.

Section 3020.13 Acknowledgment of support on publications and audiovisuals. USDA is proposing no substantive changes from § 3015.200. This section changes when a recipient shall acknowledge the awarding agency support in publications or audiovisual media.

Section 3020.14 Competing discretionary awards. There is no substantive change from § 3015.158 “Competition in the awarding of discretionary grants and cooperative agreements.” This section covers the standards for competition, approval of applications and exceptions.

Section 3020.15 Program regulations and announcements. USDA is proposing no major substantive changes from § 3015.204. Proposed § 3020.15 addresses program announcements, program regulations, program solicitations, evaluation criteria and procedures, funding priorities, projects building on prior awards, and discussions with applicants. Proposed § 3020.15 clarifies and standardizes basic program notice and fairness requirements.

Section 3020.16 Nondiscrimination requirement. USDA proposes to establish a mandatory nondiscrimination statement that is to be included in covered USDA agreements.

Section 3020.17 Waiver of “single” State agency requirements. USDA is proposing no substantive changes from current § 3015.30. This section implements section 204 of the Intergovernmental Cooperation Act, which authorizes and establishes criteria for waiver of requirements that a single State agency or multimember agency administer a program.

Subpart C—Management of Agreements

Section 3020.20 Use of consultants. USDA is proposing no major substantive changes from § 3015.201. The Definitions and Applicability subsections have been removed. The Definitions are now covered in § 3020.50 and Applicability is addressed in §§ 3020.20(a) and 3020.20(b)(2). Unlike § 3015.201, applicability of § 3020.20 is not limited to grants, subgrants, and cost-type contracts. All other subsections are virtually the same. The proposed section addresses the basic policy for recipient use of consultants, exceptions, requirements for approval, and documentation standards.

Section 3020.21 Disposition of long term financial interests in real property, personal property, and equipment. This section creates a new departmental policy to terminate any departmental

financial interest in property or equipment acquired by a recipient, under a USDA agreement, after 20 years have passed since the last Federal need or use of the property or equipment. Executive Order 12803, “Infrastructure Privatization,” directs Federal agencies to “Approve State and local governments’ requests to privatize infrastructure assets, * * * and, where necessary, grant exceptions to the disposition requirements of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments’ common rule” (57 FR 19063, May 4, 1992). As set out in Executive Order 12803, to privatize an asset means to dispose of, or transfer, an asset from a State or local government to a private party. Examples of infrastructure assets include roads, electrical supply facilities, water supply facilities, recycling plants, waste water treatment facilities, solid waste disposal facilities, housing, schools and hospitals. Executive Order 12803 provides that, “To the extent permitted by law,” Federal agencies should revise the existing common rule requirements for the recuperation of Federal financial interests from State or local government grantees when the State or local government grantee privatizes a Federally funded infrastructure asset. The revised method set out in Executive Order 12803, Section 3(c)(iii) calls for use of the Internal Revenue Service accelerated depreciation schedules in calculating the value of the Federal interest in the asset.

Subpart D—Management of Funds

Section 3020.30 Management of indirect costs. In § 3020.30, USDA is proposing to codify the Federal indirect cost policies established in OMB Circulars numbers A–21, Cost Principles for Educational Institutions, and A–87, Cost Principles for State, Local, and Indian Tribal Governments. This section allows for a provisional indirect cost rate to be used pending determination of a final rate. These indirect costs may be paid only after establishing an indirect cost rate as required by §§ 3016.22 and 3019.27 of this chapter and the applicable cost principles or in the case of for-profit entities, the cost accounting standards. This section also explains which agency shall negotiate and establish the rate.

Section 3020.31 Physical segregation and eligibility. USDA proposes in this section to codify the requirement in OMB Circular number A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, that awarding

agencies shall not require the recipient to use a separate bank account for the deposit of Federal funds or establish any eligibility requirements for banks or other financial institutions in which recipients deposit Federal funds for USDA agreements. Exceptions are found in §§ 3020.32, 3016.21 (h), and 3019.22 (i), (j), and (k) of this chapter.

Section 3020.32 Funds advanced to recipients. USDA proposes no substantive changes from section 3015.12. All moneys advanced to a recipient must be deposited in an FDIC insured bank whenever possible and anything over the FDIC limit must be collaterally secured.

Section 3020.33 Source of bonds. USDA is proposing no substantive changes in this section. Any bonds required under § 3016.36 (h) (1) through (3) or §§ 3019.21 (c) and (d) and 3019.48 (c) (1) through (3) of this chapter shall be obtained from companies holding certificates of authority as acceptable sureties listed by the Department of the Treasury in its Department Circular 570.

Section 3020.34 Limits on total payments to the recipient. USDA proposes in this section to codify the four most widely applicable legal limits on the total amount of money a recipient is entitled to receive from USDA as a result of a Federal award.

Subpart E—Intergovernmental Review of Department of Agriculture Programs and Activities

This subpart implements Executive Order 12372, Intergovernmental Review of Federal Programs, and the applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and has been completely rewritten in consultation with active State Single Points of Contacts (SPOCs). These consultations were conducted over an extended period of time and the various draft revisions of this section were circulated to all active SPOC States. This was followed by discussions with individual SPOCs and a final review session held at the 1999 National SPOC Network Conference held in Washington, D.C. The proposed language reflects the ideas and comments presented by the SPOCs throughout this consultation process.

Section 3020.40 Purpose. USDA proposes no substantive changes from part 3105.300 “Purpose.” This subpart is intended to foster an intergovernmental partnership for the review of proposed Federal financial assistance and direct Federal development.

Section 3020.41 State responsibilities. This proposed section addresses the State option to establish a coordinated review process consisting of a Single Point Of Contact (SPOC) within the State to review proposed Federal awards. The proposed section describes the SPOC's assigned functions.

Section 3020.42 USDA awarding agency responsibilities. This proposed section defines the USDA awarding agency responsibilities to publish certain information in the **Federal Register** and obtain clearance from the OCFO for any **Federal Register** publications regarding implementation of this subpart. The USDA awarding agency must coordinate with the SPOC to maintain a current list of the programs and activities selected by the SPOC for review. The awarding agency is responsible for notifying all State and local governments that would be directly affected by proposed Federal

financial awards from, or direct Federal development by, USDA.

Section 3020.43 Office of the Chief Financial Officer responsibilities. This proposed section lists OCFO's responsibilities regarding intergovernmental cooperation and codifies OCFO's responsibility within USDA for the Federal Assistance Awards Data System (FAADS). OCFO will coordinate the resolution of any conflicts between the USDA awarding agency and the SPOC and, to the extent practicable, shall consult with all other substantially affected Federal departments and agencies to ensure full coordination between such agencies and the Department regarding programs and activities covered under this subpart.

Section 3020.44 Processing comments. This proposed section provides guidance to address how USDA agencies will process comments on proposed awards.

Section 3020.45 Accommodation of intergovernmental concerns. This

proposed section covers how issues and concerns about an award are handled and the timeframes in which they should be addressed.

Section 3020.46 State plans. This proposed section indicates that Federal programs that statutorily require States to submit plans before receiving awards are subject to the requirements set out in § 3016.11 of this chapter. This section also indicates when plans may be submitted for review, without prior approval.

Section 3020.47 Waivers. This proposed section states that in an emergency, the Secretary of Agriculture may waive any provision of subpart E of this part.

Subpart F—Definitions

Section 3020.50 Definitions and acronyms. This proposed section lists definitions for the terms used throughout part 3020.

CROSS REFERENCE—TRANSITION OF PART 3015—TRANSFERS AND DELETIONS

3015 Section—title	3016, 3019, 3020 Section—title
Subpart A—General	
3015.1 Purpose and scope of this part	3020.1 Purpose. 3020.4 Other regulations applicable to USDA grants.
3015.2 Applicability	3020.2 Applicability.
3015.3 Conflicting policies and deviations	3020.3 Conflicting policies and deviations.
3015.4 Special restrictive terms	3016.12 Special grant or subgrant conditions for "high-risk" grantees. 3019.14 Special award conditions.
Subpart B—Cash Depositories	
3015.10 Physical segregation and eligibility	3020.31 Physical segregation and eligibility.
3015.11 Separate bank accounts	3016.21(h)(2) Payment. 3019.22(i)(1) Payment.
3015.12 Moneys advanced to recipients	3020.32 Funds advanced to recipients.
3015.13 Minority and women owned banks	3016.21(h)(1) Payment. 3019.22(j) Payment.
Subpart C—Bonding and Insurance	
3015.15 General	Deleted.
3015.16 Construction and facility improvement	3016.36(h) Procurement. 3019.48(c) Contract provisions.
3015.17 Fidelity bonds	3019.21(d) Standards for financial management systems.
3015.18 Source of bonds	3020.33 Source of bonds.
Subpart D—Record Retention and Access Requirements	
3015.20 Applicability	Deleted.
3015.21 Retention period	3016.42(b) Retention * * * for records. 3019.53(b) Retention * * * for records.
3015.22 Starting date of retention period	3016.42(c) Retention * * * for records. 3019.53(b) Retention * * * for records.
3015.23 Microfilm	3016.42(d) Retention * * * for records. 3019.53(c) Retention * * * for records.
3015.24 Access to records	3016.42(e) Retention * * * for records. 3019.53(e) Retention * * * for records.
3015.25 Restrictions to public access	3016.42(f) Retention * * * for records. 3019.53(f) Retention * * * for records.

CROSS REFERENCE—TRANSITION OF PART 3015—TRANSFERS AND DELETIONS—Continued

3015 Section—title	3016, 3019, 3020 Section—title
Subpart E—Waiver of “Single” State Agency Requirements	
3015.30 Waiver of “single” State agency requirements	3020.17 Waiver of “single” State agency requirements.
Subpart F—Grant Related Income	
3015.40 Scope	Deleted.
3015.41 General program income	3016.25(a) Program income.
	3019.24 Program income.
3015.42 Proceeds from sale of real property * * * acquired for use ...	3016.25(f) Program income.
	3019.24(g) Program income.
3015.43 Royalties * * * from a copyright	3016.25(e)–(g) Program income.
	3019.24(h) Program income.
3015.44 Royalties * * * from inventions	3016.25(e)–(g) Program income.
	3019.24(h) Program income.
3015.45 Other program income	3016.25(h) Program income.
	3019.24(e) Program income.
3015.46 Interest earned on advances	3016.21(i) Payment.
	3019.22(1) Payment.
Subpart G—Cost-Sharing or Matching	
3015.50 Scope	Deleted.
3015.51 Acceptable contributions and costs	3016.24(a) Matching or cost sharing.
	3019.23(a) Cost sharing or matching.
3015.52 Qualifications and exceptions	3016.24(b) Matching or cost sharing.
	3019.23(a)(2) & (5) Cost sharing or matching.
3015.53 Valuation of donated services	3016.24(c) Matching or cost sharing.
	3019.23(d), (e), (h)(5) Cost sharing or matching.
3015.54 Valuation of donated supplies * * * loaned equipment or space.	3016.24(d) Matching or cost sharing.
3015.55 Valuation of donated equipment, buildings, and land	3019.23(f), (h)(4) Cost sharing or matching.
	3016.24(e) Matching or cost sharing.
	3019.23(g), (h)(1) Cost sharing or matching.
3015.56 Appraisal of real property	3016.24(g) Matching or cost sharing.
	3019.23(h)(1) Cost sharing or matching.
Subpart H—Standards for Financial Management Systems	
3015.60 Scope	Deleted.
3015.61 Financial management standards	3016.20 Standards for financial management systems.
	3019.21 Standards for financial management systems.
Subpart I—(Reserved)	
Subpart J—Financial Reporting Requirements	
3015.80 Scope and applicability	Deleted.
3015.81 General	3016.41(a) Financial reporting.
	3019.52(a) Financial reporting.
3015.82 Financial status report	3016.41(b) Financial reporting.
	3019.52(a)(1) Financial reporting.
3015.83 Federal cash transactions report	3016.41(c) Financial reporting.
	3019.52(a)(2) Financial reporting.
3015.84 Request for * * * reimbursement	3016.41(d) Financial reporting.
	3019.22(d) and (m)(1) Payment.
3015.85 Outlay report * * * construction	3016.41(e) Financial reporting.
	3019.22(m)(2) Payment.
Subpart K—Monitoring and Reporting Program Performance	
3015.90 Scope	Deleted.
3015.91 Monitoring by recipients	3016.40(a) Monitoring * * * performance.
	3019.51(a) Monitoring * * * performance.
3015.92 Performance reports	3016.40(b) Monitoring * * * performance,
	3019.51(b)–(e) Monitoring * * * performance
3015.93 Significant developments	3016.40(d) Monitoring * * * performance,
	3019.51(f) Monitoring * * * performance.
3015.94 Site visits	3016.40(e) Monitoring * * * performance.
	3019.51(g) Monitoring * * * performance.
3015.95 Waivers, extensions and enforcement actions	3016.40(f) Monitoring * * * performance.
	3019.4 Deviations.

CROSS REFERENCE—TRANSITION OF PART 3015—TRANSFERS AND DELETIONS—Continued

3015 Section—title	3016, 3019, 3020 Section—title
Subpart L—Payment Requirements	
3015.100 Scope	Deleted.
3015.101 General	3016.21(b) Payment. 3019.22(a) Payment.
3015.102 Payment methods	3016.21 Payment. 3019.22 Payment.
3015.103 Withholding payments	3016.21(g) Payment. 3019.22(h) Payment.
3015.104 Requesting * * * reimbursements	3016.41(d) & (e) Financial reporting. 3019.22(d) & (m) Payment.
3015.105 Payments to subrecipients	3016.21 Payment. 3019.5 Subawards.
Subpart M—Programmatic Changes and Budget Revisions	
3015.110 Scope and applicability	Deleted.
3015.111 Cost principles	3016.22 Allowable costs. 3016.30(b) Changes. 3019.25(c)(6) Revision of budget & program plans. 3019.27 Allowable costs.
3015.112 Approval procedures	3016.30(a) & (f) Changes. 3019.5 Subawards. 3019.25 Revision of budget & program plans.
3019.13 Programmatic changes	3016.30(d)(1) & (3) Changes. 3019.25(c)(1) & (2) Revision of budget & program plans.
3015.114 Budgets general	3019.25(a) Revision of budget & program plans.
3015.115 Budget revisions	3016.30(c)(1) & (e) Changes. 3019.25(c)(4), (c)(6), (c)(7), (d), & (e) Revision of budget & program plans.
3015.116 Construction and nonconstruction * * * under same agreement.	3016.30(c)(3) Changes. 3019.25(j) Revision of budget & program plans.
Subpart N—Grant and Subgrant Closeout, Suspension and Termination	
3015.120 Closeout	3016.50 Closeout. 3019.71 Closeout procedures.
3015.121 Amounts payable to the Federal government	3016.52 Collection of amounts due. 3019.73 Collection of amounts due.
3015.122 Violation of terms	3016.43(a) Enforcement. 3019.62(a) Enforcement.
3015.123 Suspension	3016.43(a)(3) & (c) Enforcement. 3019.62(a)(3) & (c) Enforcement.
3015.124 Termination	3016.43(a)(3) Enforcement. 3016.44 Termination for convenience. 3019.62(a)(3) & (c) Enforcement.
3015.125 Applicability to subgrants	3019.61(a) Termination. 3019.5 Subawards
Subparts O—P (Reserved)	
Subpart Q—Application for Federal Assistance	
3015.150 Scope and applicability	Deleted.
3015.151 Authorized forms	3016.10 Forms for applying for grants. 3019.12 (a) & (b) Forms for applying for Federal assistance.
3015.152 Preapplication for Federal assistance	3016.10 Forms for applying for grants.
3015.153 Notice of preapplication review action	3016.10 Forms for applying for grants.
3015.154 Application * * * non construction	3016.10 Forms for applying for grants.
3015.155 Application for * * * construction	3016.10 Forms for applying for grants.
3015.156 Application * * * short form	3016.10 Forms for applying for grants.
3015.157 Authorized form for nongovernmental organizations	3019.12 Forms for applying for Federal assistance.
3015.158 Competition in the awarding of * * * agreements	3020.14 Competing discretionary awards.
Subpart R—Property	
3015.160 Scope and applicability	Deleted.
3015.161 Additional requirements	Deleted.
3015.162 Title to real *** property supplies	3016.31(a) Real property. 3019.32(a) Real property.
3015.163 Real property	3016.31(b) & (c) Real property. 3019.32 Real property.

CROSS REFERENCE—TRANSITION OF PART 3015—TRANSFERS AND DELETIONS—Continued

3015 Section—title	3016, 3019, 3020 Section—title
3015.164 Statutory * * * exemptions supplies	Deleted.
3015.165 Rights to require transfer of equipment	3016.32(a) & (g) Equipment.
3015.166 Use of equipment	3019.34(g) Equipment.
3015.167 Replacement of equipment	3016.32(c) Equipment.
3015.168 Disposal of equipment	3019.34(c) Equipment.
3015.169 Equipment * * * requirements	3016.32(c)(4) Equipment.
3015.170 Damage of * * * of equipment	3019.34(e) Equipment.
3015.171 Unused supplies	3016.32(e) Equipment.
3015.172 Federal share real property, equipment, and supplies	3019.34(g) Equipment.
3015.173 Using * * * returning * * * Federal share	3016.32(d) Equipment.
3015.174 Subrecipient's share	3019.34(f) Equipment.
3015.175 Intangible personal property	Deleted.
3015.176	3016.33(b) Supplies.
3015.177	3019.35(a) Supplies and other expendable property.
3015.178	3016.31(c) Real property.
3015.179	3016.32(e)(2) Equipment.
3015.180	3016.33(b) Supplies.
3015.181	3019.32(c)(2) Real property.
3015.182	3019.34 Equipment.
3015.183	3020.21 Disposition of long term * * * equipment.
3015.184	3016.31(c) Real property.
3015.185	3016.32(e) Equipment.
3015.186	3019.32 Real property.
3015.187	3019.33 Federally-owned * * * property.
3015.188	3019.34 Equipment.
3015.189	3020.21 Disposition of long term * * * equipment.
3015.190	3016.31(c) Real property.
3015.191	3016.32(e)(2) Equipment.
3015.192	3016.33(b) Supplies.
3015.193	3019.5 Subawards.
3015.194	3019.32 Real property.
3015.195	3020.21 Disposition of long term * * * equipment.
3015.196	3016.34 Copyrights.
3015.197	3019.36 Intangible property.
3015.198	Deleted.
3015.199	3016.36(b)(3) Procurement.
3015.200	3019.42 Codes of conduct.
3015.201	3016.36(c)(1) Procurement.
3015.202	3019.43 Competition.
3015.203	3020.14 Competition in * * * agreements.
3015.204	3016.36(i)(10) & (11) Procurement.
3015.205	3019 Appendix A—Contract provisions.
3015.206	3016.36(i)(3) Procurement.
3015.207	3019 Appendix A—Contract provisions.
3015.208	3020.16 Nondiscrimination requirements.
3015.209	Deleted.
3015.210	3016.22(b) Allowable costs.
3015.211	3019.27 Allowable costs.
3015.212	3016.22(b) Allowable costs.
3015.213	3019.27 Allowable costs.
3015.214	3016.22(b) Allowable costs.
3015.215	3019.27 Allowable costs.
3015.216	3016.22(b) Allowable costs.
3015.217	3019.5 Subawards.
3015.218	3019.27 Allowable costs.
3015.219	3016.22(b) Allowable costs.
3015.220	3019.27 Allowable costs.
3015.221	3020.13 Acknowledgment of support * * * audiovisuals.
3015.222	3020.20 Use of consultants.
3015.223	3020.34 Limits on total payments to the recipient.

CROSS REFERENCE—TRANSITION OF PART 3015—TRANSFERS AND DELETIONS—Continued

3015 Section—title	3016, 3019, 3020 Section—title
3015.203 Reserved	Deleted.
3015.204 Federal Register publications	3020.15 Program regulations and announcements.
3015.205 General provisions for grants and cooperative agreements with institutions of higher education, other non-profit organizations and hospitals.	3019.12 Forms for * * * assistance.
Subpart V—Intergovernmental Review of Department of Agriculture Programs and Activities	
3015.300 Purpose	3020.40 Purpose.
3015.301 Definitions	3020.50 Definitions and acronyms.
3015.302 Applicability	3020.42 USDA awarding agency responsibilities.
3015.303 Secretary's * * * responsibilities	3020.42 USDA awarding agency responsibilities.
3015.304 Federal interagency coordination	3020.43 Office of the Chief Financial Officer responsibilities.
3015.305 State selection of * * * activities	3020.41 State responsibilities.
3015.306 Communication with State and local elected officials	3020.42 USDA awarding agency responsibilities.
3015.307 State comments * * * development	3020.42 USDA awarding agency responsibilities.
	3020.44 Processing comments.
3015.308 Processing comments	3020.44 Processing comments.
3015.309 Accommodation of * * * concerns.	3020.45 Accommodation of * * * concerns
3015.310 Interstate situations	3020.42 USDA awarding agency responsibilities.
3015.311 Simplification * * * of State plans	3016.11 State plans.
	3020.46 State plans.
3015.312 Waivers	3020.47 Waivers.
Appendix A—Definitions	3016.3 Definitions.
	3019.2 Definitions.
	3020.50 Definitions and acronyms.
Appendix B—OMB Circular A-128 "Audits of State and Local Governments".	Deleted. See 7 CFR part 3052 "Audits of States, Local Governments, and Non-profit Organizations".

Regulatory Impact Analysis

Executive Order 12866

Executive Order 12866 requires that a regulatory impact analysis be prepared for "significant regulatory actions" which are defined in Executive Order 12866 as any rule that has an annual effect on the national economy of \$100 million or more or certain other specified effects.

USDA does not believe that the proposed rule will have an annual impact of \$100 million or more or any other effects listed in Executive Order 12866. For this reason, USDA has determined that this proposed rule is not a significant regulatory action within the meaning of Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 13132

It has been determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this proposed rule will not have a

substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

USDA recognizes that the proposed rule has component language that may have some federalism impact. First, the proposed rule removes the existing regulatory language in 7 CFR part 3015 subpart V addressing Intergovernmental Review of Department of Agriculture Programs and Activities, and promulgates revised regulatory language at 7 CFR part 3020. As explained above, USDA consulted extensively with the active State Single Points of Contact throughout the drafting process. These consultations were conducted over an extended period of time and the various draft revisions of this section were circulated to all active SPOC States. This was followed by discussions with individual SPOCs and a final review session held at the 1999 National SPOC Network Conference held in Washington, DC. The proposed language reflects the ideas and comments presented by the SPOCs throughout this consultation process.

Second, the proposed rule also implements Executive Order 12803, "Infrastructure Privatization," in § 3020.21, authorizing exceptions to the disposition requirements for infrastructure assets applicable to State, local, and Indian tribal government

recipients under 7 CFR part 3016. This proposed regulation essentially provides that such recipients may request a waiver in accordance with Executive Order 12803. USDA intends to incorporate, and not to alter, the provisions of Executive Order 12803 allowing for such waivers. Implementation of Executive Order 12803 in the departmental regulations codifies the waiver policy, increasing the awareness of State, local, and Indian tribal governments of their ability to request such waivers. USDA considers the proposed rule to have minimal federalism implications, and those minimal implications to be positive because of the added flexibility and awareness of such flexibility in USDA relationships with State, local, and Indian tribal government recipients.

Finally, the rule proposes codification of the applicability of the current regulations at 7 CFR part 3016 to all USDA agreements, as defined in proposed § 3020.2, with State, local, and Indian tribal governments. USDA is not revising the substantive requirements of 7 CFR part 3016. USDA again considers the proposed rule to have minimal federalism implications because State governments are already subject to these requirements for assistance awards.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires that, for each

rule with “a significant economic impact on a substantial number of small entities,” an analysis must be prepared describing the rule’s impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. USDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25) requires agencies to prepare several analyses before proposing any rule that may result in annual expenditures of \$100 million or more in any one year by State, local, and Indian tribal governments or the private sector. USDA certifies that this proposed rule will not result in expenditures of this magnitude.

Paperwork Reduction Act of 1995

This proposed rule will not impose additional reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

List of Subjects

7 CFR Part 3015

Accounting, Grant programs, Intergovernmental relations, Reporting and recordkeeping requirements.

7 CFR Parts 3019 and 3020

Accounting, Colleges and universities, Grant programs, Hospitals, Intergovernmental relations, Nonprofit organizations, Reporting and recordkeeping requirements.

Edward R. McPherson,
Chief Financial Officer.

Ann M. Veneman,
Secretary of Agriculture.

For the reasons stated in the preamble, USDA proposes to amend parts 3015, 3019 and 3020 of 7 CFR chapter XXX as follows:

PART 3015—[REMOVED AND RESERVED]

1. Remove and reserve part 3015.

PART 3019—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT, AND FOR-PROFIT ORGANIZATIONS

2. The authority citation for part 3019 is revised to read as follows:

Authority: 5 U.S.C. 301, Pub. L. 101–576, 7 CFR 2.2, 7 CFR 2.28.

3. The heading for part 3019 is revised to read as set forth above.

4. Amend subpart A of 7 CFR part 3019 as follows:

Subpart A—General

- a. Revise § 3019.1 to read as follows:

§ 3019.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, other non-profit organizations, and for-profit organizations. USDA awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 3019.4 and 3019.14 or unless specifically required by Federal statute or executive order. Non-profit and for-profit organizations that implement Federal programs for the States are also subject to State requirements.

- b. Revise § 3019.2 (cc) to read as follows:

§ 3019.2 Definitions.

* * * * *

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations and for-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, health centers, commercial organizations, and foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. The term does not include procurement contracts or other agreements, that are otherwise subject to the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AgAR).

* * * * *

- c. Revise § 3019.5 to read as follows:

§ 3019.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit organizations or for-profit organizations such as, but not limited to, community

action agencies, research institutes, educational associations, health centers, commercial organizations, and foreign or international organizations (such as agencies of the United Nations). State and local government subrecipients are subject to the provisions of regulations implementing the common rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” codified by USDA at 7 CFR part 3016.

* * * * *

- d. Revise § 3019.26(a) to read as follows:

§ 3019.26 Non-Federal audits.

(a) Non-Federal recipients and subrecipients that receive funds from a Federal awarding agency shall be subject to the audit requirements codified at 7 CFR part 3052, “Audits of States, Local Governments, and Non-Profit Organizations.”

* * * * *

5. Add part 3020 as follows:

PART 3020—GENERAL PROGRAM ADMINISTRATION REGULATIONS

Subpart A—General

Sec.

- 3020.1 Purpose.
- 3020.2 Applicability.
- 3020.3 Conflicting policies and deviations.
- 3020.4 Other regulations applicable to USDA agreements.

Subpart B—Basic Requirements

- 3020.10 Authority clause.
- 3020.11 Identification and use of USDA agreements.
- 3020.12 Program reporting requirements.
- 3020.13 Acknowledgment of support on publications and audiovisuals.
- 3020.14 Competing discretionary awards.
- 3020.15 Program regulations and announcements.
- 3020.16 Nondiscrimination requirement.
- 3020.17 Waiver of “single” State agency requirements.

Subpart C—Management of Agreements

- 3020.20 Use of consultants.
- 3020.21 Disposition of long-term financial interests in real property, personal property and equipment.

Subpart D—Management of Funds

- 3020.30 Management of indirect costs.
- 3020.31 Physical segregation and eligibility.
- 3020.32 Funds advanced to recipients.
- 3020.33 Source of bonds.
- 3020.34 Limits on total payments to the recipient.

Subpart E—Intergovernmental Review of Department of Agriculture Programs and Activities

- 3020.40 Purpose.
- 3020.41 State responsibilities.
- 3020.42 USDA awarding agency responsibilities.

- 3020.43 Office of the Chief Financial Officer responsibilities.
 3020.44 Processing comments.
 3020.45 Accommodation of intergovernmental concerns.
 3020.46 State plans.
 3020.47 Waivers.

Subpart F—Definitions

- 3020.50 Definitions and acronyms.

Authority: 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838.

Subpart A—General

§ 3020.1 Purpose.

This part establishes Department wide standards for USDA's administration of Federal programs.

§ 3020.2 Applicability.

(a) *USDA agreements.* Except as provided for in paragraph (c) of this section, this part applies to all USDA agreements.

(b) *USDA agreement recipients.* Except as provided for in paragraph (c) of this section, this part is applicable to all USDA agreement recipients including subrecipients.

(c) *Exceptions.* This part does not apply to:

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

(2) Agreements providing loans or insurance directly to an individual.

(3) Agreements with foreign governments.

(4) Agreements entered into under statutory authorities that explicitly exempt such agreements from chapter 63 of title 31, United States Code.

(5) Cooperative research and development agreements entered into under 15 U.S.C. 3710a.

§ 3020.3 Conflicting policies and deviations.

(a) Except when authorized to act otherwise by statute or by a waiver by the Office of the Chief Financial Officer (OCFO), the provisions in this part apply and take precedence over any individual USDA agency regulations, directives, and policies dealing with the administration of USDA agreements.

(b) Responsibility for developing, interpreting, and updating this part is assigned to the OCFO.

§ 3020.4 Other regulations applicable to USDA agreements.

(a) Related issuances are in other parts of title 7 as follows:

(1) 7 CFR part 3016 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;"

(2) 7 CFR part 3017 subparts A–E "Governmentwide Debarment and Suspension (Nonprocurement);"

(3) 7 CFR part 3017 subpart F "Governmentwide requirements for Drug-Free Workplace (Grants);"

(4) 7 CFR part 3018 "New Restrictions on Lobbying;"

(5) 7 CFR part 3019 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and For-Profit Organizations;"

(6) 7 CFR part 3052 "Audits of States, Local Governments, and Nonprofit Organizations;"

(b) Entitlement and mandatory awards are included in the scope of part 3016 and part 3019 of this chapter as determined by the type of recipient.

(c) Awarding agencies are to apply the rules in part 3019 of this chapter to for-profit entities.

Subpart B—Basic Requirements

§ 3020.10 Authority clause.

(a) USDA agencies must include in every USDA agreement a clause citing the appropriate statutory and funding authority for the agreement.

(b) USDA agencies shall ensure that only those statutorily authorized Federal resources are used in support of any agreement.

(c) USDA agencies shall establish appropriate internal control systems to ensure that each agreement is administered within the related statutory authority.

§ 3020.11 Identification and use of USDA agreements.

(a) In accordance with 31 U.S.C. Chapter 63, a USDA agency shall use the following criteria in identifying the proper type of instrument to document a procurement or an assistance relationship with a non-Federal party.

(1) *Procurement relationship.* A USDA agency shall use a procurement contract when "the principal purpose of the relationship is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government." The administration of these agreements is subject to the rules set out in the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, and the Agriculture Acquisition Regulation (AgAR), 48 CFR Chapter 4.

(2) *Federal assistance relationship.*

(i) *Grant agreement.* A USDA agency shall use a grant agreement when "the principal purpose of the relationship is to transfer a thing of value (money, property, services, etc.) to the recipient

to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government," and "substantial involvement is not expected" between the USDA agency and the recipient when carrying out the contemplated activity.

(ii) *Cooperative agreement.* A USDA agency shall use a cooperative agreement when "the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government," and "substantial involvement is expected" between the USDA agency and the recipient when carrying out the contemplated activity.

(b) *Memorandum of Understanding (MOU).* A USDA agency may use an MOU as a planning document to define the nature, terms, and conditions for facilitating and coordinating efforts of mutual interest to the parties involved. An MOU is not an obligating document and may not be used to commit USDA assets or resources in any manner. Other types of agreements may be used in conjunction with an MOU to achieve any needed commitments.

(c) *Interagency and intra-agency agreements.* Agreements between two or more Federal entities which result in the transfer of funds or other resources for the purpose of carrying out a program, initiative, activity or function of the Federal government shall be either an inter- or intra-agency transfer.

(d) *Agreements with institutions of higher education, hospitals, non-profit, and for-profit organizations.* Any USDA agreement, regardless of title but excluding agreements subject to the rules set out in the FAR and the AgAR, between a USDA agency and any institution of higher education, hospital, non-profit, or for-profit organization will be governed by this part and part 3019 of this chapter. This includes USDA agreements with these types of foreign organizations unless specifically excluded or exempted by treaty or statute.

(e) *Agreements with State, local and tribal Governments.* Any USDA agreement, regardless of title except for agreements subject to the rules set out in the FAR and the AgAR, between a USDA agency and any State, local or tribal government will be governed by this part and part 3016 of this chapter.

§ 3020.12 Program reporting requirements.

The following are mandatory reporting requirements for all USDA agreements:

(a) *Catalog of Federal Domestic Assistance (CFDA)*. (1) In accordance with the Federal Program Information Act (31 U.S.C. chapter 61), USDA agencies shall submit CFDA information consistent with standards, time lines, and formats established by the General Services Administration (GSA) or any successor central guidance agency for any program that has been determined to be a domestic assistance program as defined in that Act.

(2) Based on the information submitted, the OCFO, in consultation with GSA, shall assign an appropriate permanent or temporary CFDA number.

(3) USDA agencies shall include the CFDA number in any printed or electronic information available to any non-Federal entity, including but not limited to regulatory actions published in the **Federal Register** and program announcements.

(b) *Federal Assistance Award Data System (FAADS)*. (1) In accordance with the Federal Program Information Act and section 201 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6502), USDA agencies shall submit FAADS information consistent with standards, time lines, and formats established by the OCFO and the Department of Commerce or any successor central guidance agency for programs involving financial transactions that have been determined to be domestic assistance as defined in the Federal Program Information Act. Non-financial transactions such as dissemination of technical information, advisory services or consulting by Federal employees are not to be reported in FAADS.

(2) Agencies are encouraged to transmit FAADS data on-line. Agencies may also transmit FAADS data using the batch or tape methods of data collection and transmission provided that such methods meet established FAADS standards and are approved in advance by the OCFO.

§ 3020.13 Acknowledgment of support on publications and audiovisuals.

(a) *Publications*. Recipients shall acknowledge USDA awarding agency support, whether cash or in-kind, in any publications written or published with Federal support and, if feasible, on any publication reporting the results of, or describing, a Federally supported activity.

(b) *Audiovisuals*. Recipients shall acknowledge USDA awarding agency support in any audiovisual produced

with Federal support that has a direct production cost to the recipient of over \$5,000. Unless the terms of the Federal award provide otherwise, this requirement does not apply to:

(1) Audiovisuals produced under mandatory or formula grants or under subawards.

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

(c) *Waivers*. USDA awarding agencies may waive any requirement of § 3020.13. USDA awarding agencies may establish such requirements and procedures for the waiver process as they deem necessary.

§ 3020.14 Competing discretionary awards.

(a) *Standards for competition*. Except as provided in paragraph (c) of this section, USDA awarding agencies shall enter into discretionary assistance agreements only after competition. A USDA agency's competitive award process shall adhere to the following standards:

(1) Potential applicants must be invited to submit proposals through publications and electronic media to achieve the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

(2)(i) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth in program solicitations.

Independent reviewers may be from the public or private sector as long as they do not include:

(A) Anyone who has approval authority for the applications being reviewed; or

(B) Anyone who appears to have a conflict of interest in reviewing applications.

(ii) The appearance of a conflict of interest arises when the reviewer or the reviewer's immediate family members have been associated with the applicant or applicant organization within the past two to five years, as determined by the agency, as an owner, partner, officer, director, employee, or consultant; has any financial interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment with the applicant. If the awarding agency makes a written determination that the pool of qualified individual reviewers is so small that all or almost all qualified reviewers would have the appearance of or an actual conflict of interest, the awarding agency may waive the appearance of conflicts of interest to

allow a qualified individual to serve as a reviewer. However, the agency may not allow that individual to review any applications for which an actual conflict of interest exists.

(3) An unsolicited application that is not unique and innovative shall be competed under the USDA program solicitation it comes closest to fitting. USDA officials will determine the solicitation under which the application is to be competed. When the USDA awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of paragraph (c) of this section. Otherwise, the application should be returned to the applicant.

(b) *Approval of applications*. The final decision to award is at the discretion of the awarding official in each agency. The awarding official shall consider the ranking, comments, and recommendations from the independent reviewers, and any other pertinent information before deciding which applications to fund and their order of funding. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or, in the absence of established agency appeal procedures, good administrative practice and sound business judgment.

(c) *Exceptions*. The awarding official may make a written determination that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions for which a noncompetitive award can be adequately justified as being in the best interest of the Government and necessary to accomplish the program goals. Reasons to consider noncompetitive award may include, but are not limited to, the following:

(1) Non-monetary awards of property or services;

(2) Awards of less than \$75,000;

(3) Awards to fund continuing work started under a previous award;

(4) Awards relating to a current emergency or substantial danger to health or safety;

(5) Awards for which competition is impracticable; or

(6) Awards to fund unique and innovative unsolicited applications.

§ 3020.15 Program regulations and announcements.

(a) *Publication method*. The **Federal Register** is the preferred, and in certain instances mandatory, method for providing information to the public on

matters related to USDA agreements and programs.

(b) *Program regulations.* Regulations or other documents that establish requirements or procedures binding on the public related to USDA's programs or activities shall be published in the **Federal Register**.

(c) *Program announcements.* For each competition for funds under a program, the awarding agency must publicize the availability of Federal assistance under the program in either the **Federal Register** or through other methods reasonably expected to notify the targeted audience. Program announcements invite applications for one or more stated program objectives. They should include at least the following information:

- (1) The CFDA number and title;
- (2) An estimate of how much money will be available for awards and the expected size of the awards, broken down by subprogram or priority area when appropriate;
- (3) Who is eligible;
- (4) How to obtain application kits;
- (5) Where to submit applications;
- (6) The deadline for submitting applications; and
- (7) Whether any or all of the awards are likely to be cooperative agreements rather than grants. In that case, if feasible, the program announcement should also describe the anticipated substantial Federal involvement in performance. (This paragraph does not prevent the award of cooperative agreements under a program announcement that mentioned only grants. Nor does it prevent the award of grants under a program announcement that mentioned only cooperative agreements.)

(d) *Program solicitations.* A program solicitation for competitive assistance awards by the awarding agency shall include or reference the following, as appropriate:

- (1) A description of the eligible activities that the awarding agency proposes to support and the program priorities;
- (2) Eligible applicants;
- (3) The dates and amounts of funds expected to be available for awards;
- (4) Evaluation criteria and weights, if appropriate, assigned to each;
- (5) Methods for evaluating and ranking applications;
- (6) Name and address where proposals should be mailed and submission deadlines(s);
- (7) Any required forms and how to obtain them;
- (8) Applicable cost principles and administrative requirements;

(9) Type of funding instrument intended to be used (grant or cooperative agreement); and

(10) The CFDA number and title.

(e) *Evaluation criteria and procedures.* The awarding agency may elect to publish its criteria and procedures for evaluating applications for competitive awards either in the program regulations or the program announcement in addition to the program solicitation. If the criteria are not all equal in importance, their relative weights should also be published. Failure to identify any relative weights creates a presumption that all criteria are weighted equally. The criteria should cover at least the following factors (except where the nature of the eligible projects makes one or more of these factors irrelevant):

- (1) The qualifications of proposed project personnel;
 - (2) The adequacy of the applicant's facilities and resources;
 - (3) The adequacy of the project plan or methodology;
 - (4) The cost-effectiveness of the project; and
 - (5) How closely the project objectives fit the objectives for which applications were invited.
- (f) *Funding priorities.* If the awarding agency intends to give priority to one or more particular kinds of projects, the priority (and how it will be applied in deciding which applications to fund) should be described in the program announcement.

(g) *Projects building on prior awards.* If the awarding agency intends to give a preference to applications proposing to further previously funded projects over applications for projects not previously receiving support under the program, or vice versa, the preference should be described in the program announcement.

(h) *Programs with specific identifiable potential applicants.* For programs with limited eligibility for which all potential applicants can be specifically and accurately identified (for example, State Governments), the awarding agency may elect to create a complete list of potential applicants and to send a copy of the program announcement or program solicitation directly to every potential applicant instead of publishing it in the **Federal Register**, provided that the awarding agency establishes an adequate internal control system to ensure that:

- (1) Prior to each use of the list, the list is verified for completeness and accuracy; and
- (2) Use of the list does not violate the intent of § 3020.14(a)(1).

(i) *Additional information to be made available.* In addition to the items specified in paragraphs (b) through (g) of this section, each awarding agency shall make available to the public the following information and materials for each program:

- (1) A copy of, or reference to, the authorizing statutes for the program; and
 - (2) All guidelines generally applicable to administration of the program.
- (j) *Discussions with applicants.* Each awarding agency should publish as much information as practicable to reduce the need for individual discussions with potential applicants. If the awarding agency does engage in consultations or discussions with any potential applicants, the agency shall give consistent interpretations and fair treatment to all potential applicants. The agency shall ensure that any discussions do not knowingly prejudice any applicant or undermine the competitive process of the program.

§ 3020.16 Nondiscrimination requirement.

It shall be a condition of every USDA agreement that the recipient assures compliance with the following statement:

No person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to prohibited discrimination in programs and activities funded in whole or part by USDA based on race, color, national origin, age, disability, and, where applicable, sex, religion or political beliefs.

§ 3020.17 Waiver of "single" State agency requirements.

(a) *Waiver authority.* In the event that Federal law requires that a single State agency or multi member board or commission be established to administer or supervise the administration of a program, then section 204 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6504) authorizes the Federal awarding agency to waive the "single" State agency requirements upon request of the Governor or other authorized State authorities.

(b) *Approval authority.* The USDA awarding agency has approval authority for waiver requests, and shall handle them as quickly as feasible. Approval should be given whenever possible under the statutory criteria.

(c) *Refusal procedures.* When it is necessary to refuse a request for the waiver of the "single" State agency requirements, the USDA awarding agency shall, through the OCFO, advise the Office of Management and Budget (OMB) that the request cannot be granted. Such advice should indicate

the reasons for the denial of the request. The notification to OMB shall occur prior to informing the State of the refusal.

Subpart C—Management of Agreements

§ 3020.20 Use of consultants.

(a) *Basic policy*—(1) *Prior approval*. Awarding agencies shall not require prior approval for the use of consultants, except as noted in paragraphs (a)(2) and (b) of this section.

(2) *Exceptions*. (i) In unusual cases, using a consultant may constitute a transfer of substantive programmatic work, which requires prior approval under discretionary Federal awards.

(ii) Consulting fees paid by an organization to its own employees require prior approval.

(b) *Use of an organization's own employees*—(1) *Faculty members of educational institutions*. Charges representing extra compensation (above base salary) paid by an educational institution to a salaried member of its faculty for consulting work are allowable only in unusual cases, and only if both of the following conditions exist:

(i) The consultation is across departmental lines or involves a separate or remote operation; and

(ii) The work performed by the consultant is in addition to his or her regular departmental load.

(2) *All other cases*. In all other cases, consulting fees paid in addition to salary by recipients to people who are also their employees may be supported by a Federal award or subaward only in unusual cases, and only if all of the following three conditions exist:

(i) The policies of the recipient permit such consulting fee payments to its own employees regardless of whether Federal funds are involved;

(ii) The work involved is clearly outside the scope of the person's salaried employment; and

(iii) It would be inappropriate or not feasible to compensate for the additional work by paying additional salary to the employee.

(3) *Requirement for approval*. Consulting fees paid under paragraphs (a)(2) and (b)(1) and (2) of this section must have a specific prior approval in writing from the Head of the recipient organization or from his or her designated representative. If the recipient is a government, the approval may be given by the Head (or a designated representative of the Head) of the government agency that is primarily responsible for administering or carrying out the project or program.

If the designated representative is personally involved in the project or program under consideration, only the Head may give the approval. If the Head is personally involved in the project or program under consideration, prior approval from the awarding agency is required. Such prior approval must include a determination that the applicable requirements in paragraph (b) (1) or (2) of this section are present.

(c) *Documentation standards*. (1) Charges for consulting payments must be supported in the records of the recipient by an invoice from the consultant and a copy of the written report (if a report is appropriate) or other documented evidence of the work performed from the consultant.

(2) If any of the following information is not shown on the invoice or report from the consultant, the information must be shown in a memorandum or other document prepared by the recipient for its files, or noted in handwriting on the consultant's invoice by the recipient. The memorandum, other document, or handwritten notation must be signed by an official of the recipient and show:

(i) The name of the consultant;

(ii) The nature of the services provided (such as statistical analysis of data, participation on project advisory committee, or specified medical services to eligible beneficiaries);

(iii) The relevance of the services to the project or program, if not apparent from the nature of the services; and

(iv) Whichever of the following is applicable:

(A) If the fee was based on a rate per day or hours worked, the rate and the dates or hours worked;

(B) If the fee was based on a rate per unit of service provided, such as the number of patients examined by a physician, the rate, the number of units of service provided, and the beginning and ending dates of the overall period of service; or

(C) If the fee was determined on some other basis, the basis for determining the fee and the beginning and ending dates of the period in which services were provided.

§ 3020.21 Disposition of long term financial interests in real property, personal property, and equipment.

(a) When a USDA agency acquires a financial interest in real property in accordance with the rules set out in part 3016 or part 3019 of this chapter, and the originally authorized purpose for the property has been met, agencies shall follow the appropriate rules set out in part 3016 or part 3019 of this chapter for

the disposal of such real property except:

(1) When the recipient is a State or local government requesting authority to dispose of the property by sale to a domestic, non-governmental entity in accordance with Executive Order 12803 "Infrastructure Privatization," then the USDA awarding agency shall follow the method set out in Executive Order 12803 provided that the real property portion of the transaction is not depreciated in any manner.

(2) When the recipient has not requested disposal instructions and 20 years have passed since the last Federal need or use of the real property, then any Federal financial interest in the property shall be deemed to have ended.

(b) When a USDA agency acquires a financial interest in personal property or equipment in accordance with the rules set out in part 3016 or part 3019 of this chapter, and the originally authorized purpose for the property or equipment has been met, the agency shall follow the appropriate rules set out in part 3016 or part 3019 of this chapter for the disposal of such property or equipment except:

(1) When the recipient has not requested disposal instructions and 20 years have passed since the last Federal need or use of the property or equipment, then any Federal financial interest in the property or equipment shall be deemed to have ended.

(2) [Reserved]

Subpart D—Management of Funds

§ 3020.30 Management of indirect costs.

(a) Indirect costs may be paid only subsequent to the establishment of an indirect cost rate as required by §§ 3016.22 and 3019.27 of this chapter and the applicable cost principles or in the case of for-profit entities, the cost accounting standards. A provisional rate may be used pending the establishment of a final rate. In the absence of either a final or provisional indirect cost rate, awarding agencies are not authorized to advance or reimburse payments to entities for these costs.

(b) An awarding agency should pay the established indirect cost rate. Only where statutory authority exists, an awarding agency may pay an increase in the established direct cost rate. An awarding agency may pay a lesser amount than the established indirect cost rate if required by statute or if the recipient waives some or all of its indirect costs.

(c)(1) Recipients requesting payment of indirect costs may request the establishment of a negotiated indirect

cost rate. Such requests should be made to:

(i) The Federal department designated by the OMB to be the lead agency;

(ii) The Federal department providing the most Federal money in the current fiscal year; or

(iii) The Federal department with which the entity has had the longest standing relationship.

(2) When USDA is the Federal department responsible for negotiating the indirect cost rate, the request shall be made to the OCFO. The OCFO will determine which of the USDA agencies shall conduct the negotiation. Only those USDA agencies that have been delegated negotiation authority by the OCFO may conduct indirect cost rate negotiations.

§ 3020.31 Physical segregation and eligibility.

(a) Except as provided in §§ 3020.32, 3016.21 (h), and 3019.22 (i),(j), and (k) of this chapter, awarding agencies shall not impose conditions which:

(1) Require the recipient to use a separate bank account for the deposit of Federal funds; or

(2) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit Federal funds for USDA agreements.

(b) [Reserved]

§ 3020.32 Funds advanced to recipients.

Any moneys advanced to recipients that remain subject to the control or regulation of the United States or any of its officers, agents, or employees (public moneys as defined in 31 CFR 202.1), must be deposited in a bank with FDIC insurance coverage whenever possible, and the balance exceeding the FDIC coverage must be collaterally secured.

§ 3020.33 Source of bonds.

Any bonds required under § 3016.36 (h)(1) through (3) or §§ 3019.21 (c) and (d) and 3019.48 (c)(1) through (3) of this chapter shall be obtained from companies holding certificates of authority as acceptable sureties listed by the Department of the Treasury in its Department Circular 570.

§ 3020.34 Limits on total payments to the recipient.

(a) This section summarizes the four most widely applicable limits on the total amount of money the recipient is entitled to receive from USDA as a result of a Federal award. It is permissible for the terms of a USDA agreement to provide one or more additional limits.

(b) For each Federal award, the lowest of the applicable limits is the one that

governs the final settlement upon expiration or termination of the award.

(c) The following two limits apply to every Federal award:

(1) The amount of Federal funds authorized; and

(2) The Federal share of the allowable costs incurred by the recipient.

(d) Federal awards that require a specified percentage of cost sharing or matching are subject to the applicable limits described in §§ 3016.24 and 3019.23 of this chapter.

(e) For each budget period of an incrementally funded discretionary Federal award, the limit is the Federal share of the allowable costs for that period's approved budget.

Subpart E—Intergovernmental Review of Department of Agriculture Programs and Activities

§ 3020.40 Purpose.

(a) This subpart establishes regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs" and the applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506) and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334).

(b) This subpart is intended to foster an intergovernmental partnership for review of proposed Federal financial assistance and direct Federal development.

§ 3020.41 State responsibilities.

(a) A State may elect to establish a coordinated review process within the State to review proposed Federal awards. The State review process shall consist of a Single Point Of Contact (SPOC) with the assigned functions of:

(1) Selecting any of the programs or activities published in the **Federal Register** in accordance with § 3020.42 (a) for intergovernmental review. Each SPOC, before selecting programs and activities, should consult with local elected officials;

(2) Notifying the USDA awarding agency of the Department's programs and activities selected for the State review process. A State may notify the USDA awarding agency of changes in its selections anytime;

(3) Reviewing proposed Federal awards forwarded to the SPOC by the USDA awarding agency;

(4) Distributing for comment the proposed award to all interested or affected local governments or other interested parties within the State, and compiling and analyzing any comments received;

(5) Providing the USDA awarding agency with a consolidated State recommendation for or against the proposed Federal award;

(6) Providing the USDA awarding agency with the State Agency Identification (SAI) number on each SPOC recommendation, if the SPOC process includes a State tracking system that assigns SAI numbers.

(b) If a State elects not to establish a SPOC in accordance with paragraph (a) of this section or the SPOC does not select a particular program or activity, the State, area wide, regional and local officials and entities may submit comments in accordance with § 3020.42 (b)(2).

§ 3020.42 USDA awarding agency responsibilities.

(a) The USDA awarding agency is required to publish in the **Federal Register** a list of the agency's programs and activities that are subject to this subpart and identify which of these are also subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act (42 U.S.C. 3334).

(1) The USDA awarding agency shall obtain clearance from the OCFO for any **Federal Register** publications regarding implementation of this subpart.

(2) In coordination with the SPOC, each USDA awarding agency shall maintain a current list of the programs and activities selected by the SPOC for review in accordance with § 3020.41 (a) (2).

(b) The USDA awarding agency is responsible for notifying all State and local governments that would be directly affected by proposed Federal financial awards from, or direct Federal development by, USDA:

(1) When a State has established a process under § 3020.41 (a), the USDA awarding agency shall exclusively use that process adopted by the State to review and coordinate proposed awards and shall allow a minimum of 60 days for the SPOC to comment on proposed awards. The USDA awarding agency shall allow for a comment period of less than 60 days only with the formal concurrence of the SPOC.

(2) When a State has not established a process or a program or activity has not been selected by the SPOC for review, the USDA awarding agency shall notify each of the affected State and local government officials directly and shall allow a minimum of 30 days for comments on proposed awards.

(c) The USDA awarding agency shall establish a system for accepting and evaluating comments when received

from the SPOC or individual entities and shall maintain appropriate records.

(1) The USDA awarding agency should make every effort to coordinate the process adopted by States at the Federal organizational level geographically closest to the State and local government affected.

(2) The USDA awarding agency shall establish a system to ensure that the SPOC assigned SAI number is entered into the FAADS database in an accurate and timely manner.

(3) The USDA awarding agency shall make every effort to resolve State and local elected officials' concerns with proposed awards.

§ 3020.43 Office of the Chief Financial Officer responsibilities.

(a) OCFO approval is a required prerequisite for any **Federal Register** publication listing USDA programs and activities that are subject to these regulations and subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act (42 U.S.C. 3334).

(b) The OCFO will coordinate the resolution of any conflicts between the USDA awarding agency and the SPOC in accordance with § 3020.45 (b).

(c) The OCFO ensures that the USDA central database, FAADS, supports the requirements of this system, including accurate SAI numbers.

(d) The OCFO, to the extent practicable, shall consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to ensure full coordination between such agencies and the Department regarding programs and activities covered under this subpart.

§ 3020.44 Processing comments.

(a) *Application.* The USDA awarding agency shall provide a copy of the award application to all affected entities either through the SPOC in States where a process has been established or to each entity directly in non-SPOC States.

(b) *Comments.* All comments on proposed awards shall be sent to the USDA awarding agency and processed in accordance with this section before the USDA awarding agency makes a final decision on the award.

(1) Comments shall be sent to the USDA awarding agency in the 30 or 60 days time period as required in § 3020.42 (b)(1) or (2). If this time expires or if all relevant substantive comments are favorable, the USDA awarding agency may move to a final decision on the application provided only that the action be documented in the award file.

(2) [Reserved]

(c) *Opposition comments.* If comments are in opposition to the proposed award or request a substantive change to the award, the USDA awarding agency shall make every effort to resolve the differences.

(1) In non-SPOC States, the USDA awarding agency shall notify each commenter of agency's final decision. Other than documenting this action in the award file, no further action is required on the part of the USDA awarding agency.

(2) In SPOC States, if the USDA awarding agency and the SPOC resolve their differences then the USDA awarding agency may move to a final decision on the application provided only that the action be documented in the award file.

(3) If the SPOC issues are not resolved then the process set out in § 3020.45 shall be followed.

§ 3020.45 Accommodation of intergovernmental concerns.

(a) When any issues raised by the SPOC in opposition to the award are not resolved informally as set out in § 3020.44, the USDA awarding agency shall provide the SPOC with a written explanation of the agency's reasons for not accepting the SPOC recommendations. The USDA awarding agency may supplement the written explanation by also providing the explanation to the SPOC by telephone, other telecommunication, or other means. In any explanation the USDA awarding agency shall inform the SPOC that:

(1) The SPOC has 10 days to respond to the agency's position. For purposes of computing the waiting period, a SPOC is presumed to have received written notification five days after the date of mailing of such notification;

(2) The USDA awarding agency will not implement its decision during this period.

(3) If the SPOC response is favorable or if no response is received from the SPOC within the time set out in paragraph (a) (1) of this section, the USDA awarding agency may proceed to a final decision on the award with appropriate documentation to the file.

(b) When the SPOC does not accept the USDA awarding agency's explanation, the SPOC may file an appeal to the Department by sending written notification, including background information, to both the agency and the OCFO within the time frame set out in paragraph (a) (1) of this section.

(1) The OCFO will notify the appropriate Under or Assistant Secretary and the Head of the USDA

awarding agency and prepare the disputed issue for presentation to the Secretary of Agriculture for final decision.

(2) At any point prior to the Secretary of Agriculture's decision, the parties to the dispute may resolve the issues and immediately notify the OCFO. The OCFO will withdraw the request for a Secretarial decision and notify the USDA awarding agency to proceed to final decision on the award.

§ 3020.46 State plans.

The statutes authorizing some Federal programs require States to submit plans before receiving awards.

(a) Such plans are subject to the requirements set out in § 3016.11 of this chapter.

(b) If not inconsistent with law, a State may elect to submit for review, without prior approval, a plan that:

(1) Consists of a State developed format, planning period, and submission date;

(2) Consolidates two or more plans; or

(3) Was developed for the State's own purposes.

(c) The USDA awarding agency shall reject such plans only when they fail to meet those Federal administrative or programmatic requirements that are in statutes or codified regulations.

§ 3020.47 Waivers.

In an emergency, the Secretary of Agriculture may waive any provision of this subpart E.

Subpart F—Definitions

§ 3020.50 Definitions and acronyms.

Approved budget means a budget (including any revised budget) that has been approved in writing by the awarding agency. (See the definition of "budget").

Audiovisual means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use by the hearing impaired.

Awarding agency means:

(1) The USDA agency, such as the Forest Service, making the award, and

(2) For subawards, the recipient.

Budget means the recipient's financial expenditure plan approved by the awarding agency to carry out the purposes of the Federally supported project. The budget is comprised of both the Federal share and any non-Federal

share of such plan and any subsequent authorized rebudgeting of funds. For those programs that do not involve Federal approval of the non-Federal share of costs the term *budget* means the financial expenditure plan approved by the awarding agency including any subsequent authorized rebudgeting of funds, for the use of Federal funds only. Any expenditure charged to an approved budget consisting of Federal and non-Federal shares is deemed to be supported by the agreement in the same proportion as the percentage of Federal/non-Federal participation in the overall budget.

Budget period means the period specified in the agreement during which Federal funds awarded are authorized to be expended, obligated, or firmly committed by the recipient for the purposes specified in the agreement.

CFR means the Code of Federal Regulations.

Consultant means a person who gives advice or services for a fee, but not as an employee. The term includes guest speakers when not acting as employees of the party that engages them. Note that in unusual cases it is possible for a person to be both an employee and a consultant at the same time. (See § 3020.20.)

Cost-sharing and *matching* each mean that portion of the allowable costs not supported by the Federal Government including the value of any third party in-kind contributions. (The terms *cost-sharing* and *matching*, in this part, are synonymous.)

Department means the U. S. Department of Agriculture

Discretionary Federal agreements are ones which a Federal statute authorizes but does not require USDA to award.

FDIC means the Federal Deposit Insurance Corporation.

Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount is a limit on the total amount of money that the recipient is entitled to receive from the Federal Government as a result of the award.

GSA means the General Services Administration.

Local government means a local unit of government including specifically, a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 622.10), any other regional or interstate government entity, or any

agency or instrumentality of a local government.

Mandatory or *formula* Federal agreements are ones which a Federal statute requires USDA to award if the applicant meets specified conditions.

Obligations mean the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or future period.

OCFO means the Office of the Chief Financial Officer, which is an organizational component in USDA reporting to the Secretary of Agriculture, or any successor organizational unit.

OMB means the Office of Management and Budget in the Executive Office of the President.

Publication means a book, periodical, pamphlet, brochure, flier, or similar item, whether published by paper or electronic means.

Recipient means a State or local government, Federally recognized Indian Tribe, institution of higher education, non-profit organization, for profit organization, or other non-Federal organization such as, but not limited to, community action agencies, research institutes, educational associations, health centers, commercial organizations, foreign or international organizations (such as agencies of the United Nations) that are a party to or a subrecipient, or contractor or subcontractor of a party to or subrecipient of a USDA agreement.

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, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or any agency or instrumentality of a State. The term does not include local governments.

Subaward means: (1) An award of money or property that:

(i) Is made under a USDA agreement by the recipient; and

(ii) Is made principally to accomplish a purpose of support or stimulation rather than to establish a buyer-seller relationship between the two parties.

(2) Any award by a recipient that meets that definition is a subaward even if the parties to the award use some other label such as grant, agreement, cooperative agreement, contract, allotment, or delegation agreement. Also, if the award meets that definition, it is a subaward whether or not the awarding agency is expected to be substantially involved in its performance. However, the term subaward does not include any type of

relationship under an agreement excluded from the scope of USDA agreements in § 3020.2;

Termination of an award means permanent withdrawal or voluntary relinquishment of the recipient's authority to obligate previously awarded funds before that authority would otherwise expire. Termination does not include:

(1) Withdrawal of the unobligated balance upon expiration of award;

(2) Refusal by the awarding agency to extend an award or to award additional funds (such as refusal to make a competitive or noncompetitive continuation, renewal, extension, or supplemental award);

(3) Annulment, *i.e.*, voiding of an award upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from inception;

(4) Withdrawal of surplus Federal funds under a discretionary award or any analogous withdrawal of funds by a recipient from a subrecipient; or

(5) Withdrawal under a mandatory or formula USDA award of surplus Federal funds authorized which the recipient will not obligate during the fiscal year, or any analogous withdrawal of funds by a recipient from a subrecipient.

Terms mean all rights and duties created by the award, whether by statute, regulation, the award document or any other document.

Third party means, with respect to a USDA agreement, any entity except:

(1) The Federal government,

(2) The recipient of the agreement, and

(3) Subrecipients under that agreement.

Third party in-kind contributions mean property or services benefiting the USDA assisted project or program that are contributed by third parties without charge.

Unobligated balance means the portion of Federal funds authorized that has not been obligated by the recipient. It is calculated by subtracting the Federal share of the recipient's cumulative obligations from the cumulative Federal funds authorized.

USDA Agency means any USDA agency, office or comparable organizational unit established by statute, by the President of the United States, or by the Secretary of Agriculture.

[FR Doc. 03-17777 Filed 7-15-03; 8:45 am]

BILLING CODE 3410-90-P