

STATE OF TEXAS
HAZARD MITIGATION PLAN

ANNEX A

HAZARD MITIGATION GRANT PROGRAM
ADMINISTRATIVE PLAN

APPROVAL AND IMPLEMENTATION

This annex is hereby approved for implementation and supersedes all previous editions.

December 22, 2005
Date

< ORIGINAL SIGNED >
Jack Colley, Chief
Emergency Management Division

STATE OF TEXAS
HAZARD MITIGATION PLAN
ANNEX A

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**STATE OF TEXAS HAZARD MITIGATION PLAN
ANNEX A**

**HAZARD MITIGATION GRANT PROGRAM
ADMINISTRATIVE PLAN**

I. AUTHORITY:

A. State

1. Texas Disaster Act of 1975, V. T. C. A., Government Code, Chapter 418
2. Executive Order of the Governor (75) designating the Department of Public Safety as the agent responsible for Emergency Management in the State of Texas.
3. State of Texas Emergency Management Plan

B. Federal

1. Public Law 93-288, as amended by Public Law 100-707
2. Public Law 100-707, as amended by Public Law 103-181 (Hazard Mitigation and Relocation Assistance Act).
3. Public Law 103-324 (Reigle Community Development and Regulatory Improvement Act of 1984)
4. Robert T. Stafford Relief and Emergency Assistance Act, as amended by Public Law 106-390 (Disaster Mitigation Act (DMA) of 2000), October 30, 2000.
5. FEMA Regulation, 44 CFR Part 206 – Federal Disaster Assistance for Disasters Declared on or After November 23, 1988.
6. FEMA Regulation, 44 CFR Part 9 – Floodplain Management and Protection of Wetlands
7. FEMA Regulation, 44 CFR Part 10 – Environmental Considerations
8. FEMA Regulation, 44 CFR Part 13 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
9. FEMA Regulation, 44 CFR Part 14 – Administration of Grants: Audits of State and Local Governments.
10. FEMA Regulation, 44 CFR Part 201 – Mitigation Planning.
11. Executive Order 12898, Environmental Justice
12. Executive Order 11988, Floodplain Management
13. Executive Order 11990, Protection of Wetlands
14. Executive Order 12612, Federalism
15. Coastal Barrier Resources Act, Public Law 97-348

II. PURPOSE:

The State shall be a constant advocate for mitigation activities through a program of cooperation, education, and incentive grants.

This administrative plan describes how the State will administer a portion of the third leg of the State's Mitigation program (incentive grants), by identifying the responsibilities and procedures in the administration of the FEMA Hazard Mitigation Grant Program (HMGP).

The State assures FEMA that it shall comply with all applicable Federal statutes and regulations, and the terms and conditions of this plan in effect during each declared disaster period for which it receives federal grant funding.

III. CONTINUITY OF GOVERNMENT

Lines of succession for personnel assigned HMGP responsibilities are in accordance with the State of Texas Emergency Management Plan and agency procedures.

IV. DIRECTION AND CONTROL

A. General:

1. Overall direction and control of the state-level routine emergency management operations will be exercised by the State Coordinating Officer (SCO) of the Governor's Division of Emergency Management (GDEM) of the Department of Public Safety (DPS).
2. The Governor's Authorized Representative (GAR) (who normally serves as the SCO) is designated by the Governor in each Federally declared disaster, to represent the State and execute all necessary documents for the disaster assistance programs available to the State and local federal grant recipients.
3. The direction and control of the Hazard Mitigation Grant Program (HMGP) will, at all times, be exercised by the designated State Hazard Mitigation Officer (SHMO) designated by the State (normally the Mitigation Section supervisor), who reports directly to the SCO/GAR.
4. This program constitutes only one aspect of hazard mitigation planning and implementation activities, as outlined in the State of Texas Emergency Management Plan.
5. This document is Annex A of the State of Texas Hazard Mitigation Plan, and will outline the responsibilities, staffing requirements, policies, procedures and goals for any State of Texas HMGP participation

B. Pre Disaster Declaration Activities:

The State will review the State Hazard Mitigation and Administrative Plans to ensure compliance with all authorities listed in section I of this document, accurate accountability of all State resources, changes in any State law, organization, policy, or State agency operating procedures, and that, all resulting amendments and changes have been submitted to and approved by FEMA.

C. Post Disaster Declaration Activities:

1. Upon declaration of a Federal disaster, the Governor appoints a GAR to be responsible for the overall direction and control of the State's disaster recovery operations, and disaster assistance programs.
2. Responsibility for administration of the HMGP will be exercised by the SHMO who will inform the GAR of all progress on the duties as outlined in section VIII, B, 3 of this document.

D. Overview of the HMGP Cycle:

1. A severe weather event develops into a disaster beyond local governments and the State's ability to manage.
2. Local jurisdictions and the State teams begin to assess the magnitude and severity of damages.
3. The Governor declares an emergency and requests a Federal Declaration.
4. The President issues a Federal Declaration and the State requests participation in the federal disaster grant programs. The State's request makes the HMGP funding available to the State and its sub grantees.
5. FEMA and the State open a joint field office (JFO).
6. All jurisdictions within the declared area are notified of the availability of HMGP funds. Public information meetings are held encouraging local governments to submit HMGP project NOIs to the GDEM Mitigation Section.
7. Completed NOIs are received no later than the posted deadline (usually 30 to 60 days after the Federal declaration).
8. Application packages are mailed to all jurisdictions submitting qualifying NOIs, determined by the State Hazard Mitigation Team, to be likely for funding.
9. Applications are received, evaluated and prioritized by the State Hazard Mitigation Team (SHMT).
10. The SHMT purposes the list of recommended projects to the GAR.
11. The GAR evaluates the SHMT recommendations and forwards the final listing of proposed projects to FEMA Region VI for approval and funding.
12. Applicants are notified of the terms, conditions and amount funded on all FEMA approved projects, by letter from the GDEM Mitigation Section..

13. Grants are administered by the GDEM Mitigation Section's Project Officer(s) assigned responsibility for the numbered declared disaster.
14. Project is closed after the GDEM Project Officer(s) has completed a final programmatic and financial audit.
15. Continuous periodic evaluation of project effectiveness. This can provide Mitigation Success Stories that are key elements in promoting good mitigation practices for continued availability of future federal funding after any new major event or declared disaster in the area. In addition completed project evaluations insure continued compliance program requirements (such as open space deed restrictions).

V. CONCEPTS OF HMGP OPERATIONS:

- A. The State and Federal authority listed in section I provides that with a FEMA approved Standard or Enhanced State Mitigation Plan, a Presidential Disaster Declaration allows for federal grant monies to be made available through the Federal Emergency Management Agency (FEMA) for the Hazard Mitigation Grant Program (HMGP) in accordance with the following:
 1. The Hazard Mitigation Grant Program (HMGP) is a Federal program with funding amounts not to exceed either 7.5 percent (Standard State Mitigation Plan), or 20 percent (Enhanced State Mitigation Plan), of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C.
 2. The amount available for each grant is established and adjusted by the three, six and twelve month FEMA estimation letters.
 3. Federal contributions can be up to, but not exceed, 75 percent of the cost of the hazard mitigation projects developed by local governments and the State, which are approved for funding. Those jurisdictions whose FEMA approved Mitigation Action Plan (MAP) demonstrates a qualification under the provision of an economically distressed area; small population; or predominant minority population could have a federal cost share of 90 percent.
 4. State/local share of HMGP funding must be equal to or greater than 25 percent of the cost of hazard mitigation measures approved for funding. Those jurisdictions qualifying for a 90 percent federal cost share must have a local cost share equal or greater than 10 percent.
 5. The rules and regulations concerning participation requirements are available in the Code of Federal Regulations (CFR) 44 parts 13 and 206, as written in the volume of last revision prior to the declared disaster date, and this administrative plan.
- B. The State, as grantee, has the primary responsibility for HMGP project management and accountability of funds as indicated in the 44 CFR.

- C. The State's intent is to actively participate in all instances where HMGP program funds are available and, under the direction of the SHMO, to fully fund as many projects as possible in the most efficient manner possible, to achieve the ultimate mitigation goals of the HMGP program and the State Mitigation Plan.
 - 1. HMGP funding is authorized statewide after July 7, 1997, for all appropriate hazard mitigation projects. The approved mitigation project is not required to be from damages sustained in a specific disaster event.
 - 2. Awards of funding will be competitive and in accordance with this Administrative Plan.

- D. The State of Texas Strategy guidelines are continuously updated by the State Hazard Mitigation Team to prioritize the mitigation goals identified by the Texas Hazard Analysis. To maximize the reasonable expectation of mitigation benefits, the State Strategy (**Appendix 1**) will be used as a guide for HMGP funding, subject to the modifications of:
 - 1. The disaster project score sheet selected by the SHMO for each disaster (**Appendix 1, Tab A & B**).
 - 2. The State Hazard Mitigation Team project evaluations to fairly appropriate the available funds and address as many needs as possible for the eligible Texas communities.
 - 3. New concepts and initiatives determined to be in the best interest of the long term State mitigation goals.
 - 4. Projects prioritized by approved and adopted local Mitigation Action Plans.

- E. The Emergency Management Council by Executive Order of the Governor and various annexes to the State Plan developed by Council members, delineates the organization of the Council and how it supports all aspects of emergency management and the HMGP.

- F. Planning Concepts:
 - 1. The State of Texas will maintain a FEMA approved Standard or Enhanced State Mitigation Plan.
 - 2. Each eligible applicant receiving funding as a sub grantee, after November 1, 2004, under the State of Texas HMGP application will maintain a State and FEMA approved Mitigation Action Plan.
 - 3. Each eligible applicant receiving HMGP funding as a sub grantee must have a current emergency management plan that meets the requirements for a basic level of planning preparedness as defined in *the Preparedness Standards for Texas*

Emergency Management (DEM-100 available on the Governor's Division of Emergency Management website).

VI. Assignment of Responsibilities:

A. State of Texas Governor will:

1. The Governor has designated GDEM as the State agency responsible for managing and administering the HMGP.
2. The Governor will appoint a GAR for each disaster declared.

B. The GAR will:

1. Submit the State HMGP application, and selected list of sub-grantee projects to FEMA Region VI for approval and funding (**NOTE: In a tornado declared disaster, the State application must include the request to increase the initiative funding cap to the 10% allowable for that type of disaster.**)
2. Forward project completion documents to FEMA for review and final determination
3. Review and forward appeals to FEMA, along with a recommendation, within sixty days of the action or decision being appealed.
4. Be responsible for the complete and ultimate operation of all State activities in the HMGP.
5. Approve and authorize this administrative plan as Annex A of the State Hazard Mitigation Plan.

C. The SHMO will:

1. Report directly to the GAR.
2. Audit and adjust the admin plan, select the scoring sheet and prepare the State HMGP participation letter for the GAR to approve and submit to FEMA.
3. Insure that the Hazard Mitigation Grant Program is administered to the grantee and all sub-grantees, in accordance with all of the State and Federal authorities listed in this document including all requirements outlined in the 44 CFR in effect at the time of each disaster.
4. Assign a lead project officer for each disaster.
5. Manage the disaster from, and attend meetings in, the State Operations Center (SOC) at the GDEM headquarters, however, if necessary, the SHMO may deploy to the JFO initially.

6. Determine budget and staffing requirements for proper program implementation in both the JFO and home office, and request the management funds necessary for each disaster
7. Maintain a roster of available Disaster Reservists and request the Mitigation Specialists and Disaster Reservists to be assigned to the JFO based upon the size of the event. Normal distribution, in addition to the Mitigation Grants Officer (MGO), is one specialist/reservist per 30 jurisdictions impacted, but this may vary with distance and population density, to provide technical assistance to subgrantees as required.
8. Direct and ensure that the HMGP guidance training and local briefings are made available to all potential applicants as required (**see Appendix 2 & 4**).
9. Establish project application deadlines.
10. Review all NOI's submitted and, based on the information provided, responds with one of the three response letters describing the project as likely, unlikely, or ineligible (**Appendix 3**).
11. Act as chairperson of the State Hazard Mitigation Team (**Appendix 8**).
12. Review quarterly reports, sub-grantee contracts (for accuracy and reasonableness), site inspections, and audits, as necessary to ensure program compliance and provide quarterly progress reports to FEMA on approved projects.
13. Review and approve the disaster project officer's assessment of any and all requests from sub grantees for advances, reimbursements and cost overruns, and to request the necessary FEMA approval for reallocation of available grant funding as required.
14. Ensure all financial records are maintained, to include current availability, obligation, and expenditures of HMGP funds for every open disaster.
15. Review all appeals on FEMA decisions regarding projects submitted for HMGP funding, and either denies the appeal at the State level, or forward the appeal with a recommendation to FEMA for additional consideration. This must be done within 60 days of the initial FEMA determination letter being appealed.
16. Conduct additional environmental and floodplain management reviews as determined to be necessary to ensure compliance with 44 CFR part 206.437(b)(4)(iv). See also section VI. E.4. – State Hazard Mitigation Team and Appendix 7 – FEMA Public Assistance and Hazard Mitigation Grant Program Environmental Considerations and Contacts, for additional guidance.
17. Approve the final project completion documents for the GAR to submit to FEMA for final project/disaster review and determination.
18. Monitor and evaluate completed project effectiveness in future events.

19. Maintain any contracts for professional disaster assistance to be employed in the event the scope of the disaster(s) exceeds the capability of the existing staff and reservists available for deployment.
20. Provide for the updates and training of G-710 (Basic Texas Hazard Mitigation Workshop) and G-720 (Advanced Hazard Mitigation Workshop including buy outs and Benefit Cost Analysis) to be offered twice a year.

D. The Disaster Project Officer will:

1. Normally be the MGO, unless available (due to multiple disasters).
2. Report directly to the SHMO.
3. In the event of a Presidential declared disaster the appointed Disaster Projects Officer (DPO) will normally deploy to the JFO and report to the SCO.
4. Coordinates with the SHMO, to estimate the staff and office equipment required to set up the Mitigation Area in the JFO.
5. Establishes NOI deadlines.
6. Attends required federal and state staff meetings in the JFO.
7. Writes required daily/weekly Mitigation Situation Reports (Sitrep) for the JFO.
8. Responsible for delivering HMGP notification, training information, and technical assistance to all jurisdictions within the declared areas. This information will be posted and tracked through the “Quicklook 1” procedures.
9. Determines and assigns the geographic areas for each of the mitigation staff to provide jurisdictional notifications and training information.
10. Attends public meetings as required (**Appendix 2, C-Sample Briefing Notes and Appendix 4 – Community Meeting Guidelines**).
11. Presents the HMGP program at all meetings as required by other sections in the JFO
12. Publishes the Individual Talking Points letter for use in the Disaster Recovery Centers (DRC’s).
13. Review all JFO mitigation staff Outlook Journal entries for completeness and insure the Outlook.pst file is transferred back to the SHMO at the closing of the JFO.
14. Responsible for the loading and transporting of all electronic documentation needed by the mitigation staff at the JFO, and the Hazard Mitigation Field Library as itemized in **Appendix 4**.

15. Recommends the JFO mitigation section staff reductions and final closure date to the SHMO, as the number of declared jurisdictions, requiring HMGP notification and training information, reduces.
16. Respond to Citizen and Jurisdiction inquiry's, creating outlook journal entries when speaking, exchanging e-mails, or sending correspondence that involve NOI's, applications, or when discussing matters of policy or procedure.
17. Prepare letters going to any elected public official for SHMO approval and the required signature of the State Coordinator.
18. Receive, review for completeness, and analyze all sub-grantee applications. Apply the scoring criteria selected for the disaster; create a project prioritized package for the SHMT; present the projects at the SHMT meeting and record the team member recommendations; finalize the recommended project list for the SHMO's approval and presentation to the GAR for final approval. Brief the GAR and prepare his submission to FEMA.
19. Receive, review, analyze, request corrections, and approve quarterly reports from all sub-grantees with open projects, on or before the report due dates of January 15th, April 15th, July 15th, and October 15th.
20. Attend conferences, meetings, and training courses as requested by the SHMO.
21. Review all payment requests for, advances or reimbursements; to assure accuracy and completeness of the request and it's related documentation, to present to the SHMO for final approval.

E. STATE HAZARD MITIGATION TEAM

The State Hazard Mitigation Team (**Appendix 10**) shall be composed of staff members of the Emergency Management Council and other State agencies, who will provide support, such as but not limited to:

1. The identification of potential applicants and projects meeting the State mitigation goals.
2. Responsible for the periodic verification of the State of Texas Strategy Guidelines for HMGP Projects in accordance with any updates to the State Hazard Analysis or the State of Texas mitigation goals.
3. The membership of the State Mitigation Team provides the expertise necessary to review project applications for completeness and accuracy in areas such as the engineering feasibility, benefit cost analysis, floodplain management reviews, and mitigation objectives to be accomplished (**NOTE: The State floodplain manager is among the team members and provides NFIP information and floodplain reviews as necessary.**) See Appendix 7 – FEMA Public Assistance and Hazard

Mitigation Grant Program Environmental Considerations and Contacts for additional guidance.

4. TECQ as a member of the State Hazard Mitigation Team will provide, when necessary:
 - The services of an environmental lawyer to review each application environmental check list to insure that it contains sufficient information to allow FEMA to perform the environmental assessments,
 - The State floodplain manager to provide NFIP information and floodplain management reviews.
5. Assist in creating the project prioritization and funding recommendations for all eligible projects, to be submitted by the SHMO to the GAR.

F. Other Responsibilities:

1. State Emergency Management Council Members shall provide assistance for accomplishment of hazard mitigation objectives in accordance with responsibilities assigned in the State of Texas Emergency Management Plan.
2. Reservists will augment the GDEM staff in the field and at the JFO's as required.

VII. Operational Guidance:

A. Applicant Eligibility – (For the purpose of this admin plan, the State of Texas will be the grantee):

1. Eligible sub-grantees are identified as:
 - a) local governments
 - b) state agencies:
 - State agencies with geographical limitations (e.g. universities and river authorities) are required to meet all planning requirements shown below
 - State agencies with statewide authority (e.g. TxDOT and DHS) are included in the State Mitigation Plan and not required to have a separate MAP
 - c) non-profit organizations with an effective ruling letter from U. S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue producing organization is a nonprofit one organized or doing business under State Law.

- d) Indian tribes or authorized tribal organizations.
2. Meeting the planning requirements of:
- a) State and FEMA approved Mitigation Action Plan (MAP) is required for all (except MAP planning grant) applications.

NOTE: HMGP applications for projects other than planning grants may be made once the completed MAP has been submitted for approval, however, no funds may be distributed until the MAP is approved by both the State and FEMA.
 - b) A current emergency management plan that meets the requirements for a basic level of planning preparedness as defined in *the Preparedness Standards for Texas Emergency Management* (DEM-100 available on the Governor's Division of Emergency Management website).
3. Must be a participating member in good standing with the National Flood Insurance Program (NFIP). If the applicant is a private non-profit, the project must be located in a jurisdiction, which is a participating member in good standing with the NFIP.

B. Project Eligibility:

- 1. Be in conformance with the State Hazard Mitigation Plan
- 2. Be in conformance with 44 CFR Part 9, Floodplain Management and Protection of Wetlands and 44 CFR Part 10, Environmental Considerations
- 3. Be submitted by an eligible applicant in compliance with section VII.A.1 of this document.
- 4. Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible
- 5. Have a beneficial impact, be cost effective (unless submitted under the initiative portion of the State application) and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The applicant must demonstrate this by documenting that the project:
 - a) Addresses a problem that has been repetitive, or a problem that poses a significant risk to public health and safety if left unsolved;
 - b) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impact to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis;
 - c) Is determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options;

- d) Contributes to the extent practicable to a long-term solution to the problem it is intended to address;
- e) Does not permanently affect the environment or the historic integrity of the surrounding area, considers long-term changes to the areas and entities it protects, and has manageable future maintenance and modification requirements, and:
 - 1) Has a State Historical Preservation Office (SHPO) clearance
 - 2) Has the approval of the Texas Department of Parks and Wildlife Department
- f) Projects may be of any nature that will result in protection to public or private property and will be rated according to the State of Texas Strategy and adjusted by the disaster elected scoring sheet (**Appendix 1**). Eligible projects include, but are not limited to:
 - 1) Acquisition projects in accordance with the goals of the State Hazard Mitigation Plan, the operational guidance of this administrative plan, the Texas Property Acquisition Handbook (**Appendix 6**), the Environmental Considerations and Contacts for Public Assistance and Hazard Mitigation Grant Program (**Appendix 7**), and the Code of Federal Regulations (44 CFR) in effect at the time of the Federal disaster declaration. The State will review closing costs on buy out applications for reasonableness and will not approve properties where the closing costs exceed \$2,500.00 per property.

NOTE: Acquisition projects are automatically considered cost effective if the structure has been determined by the permitting official to be substantially damaged and if the structure is located in a FEMA designated floodway or floodplain. The score sheet selected for flooding disaster declarations will assign a higher priority to the acquisition and elimination of NFIP repetitive loss structures.

- 2) Relocation or elevation of structures from hazard-prone areas. State will review cost estimates and may not approve properties whose elevation costs exceed the guidelines in FEMA 312 by more than 100% without addition justification.
- 3) Construction activities that will result in protection from hazards (e.g. raising sewage lift stations);

NOTE: All construction/structural project applications must include a completed Engineering Checklist (Appendix 5, Tab B).

- 4) Retrofitting of facilities (e.g. flood-proofing to protect structures from future damage);

- 5) Small structural hazard control or protection projects (e.g. debris basins, floodwalls, culverts, and drainage enhancements);
 - 6) Development of state or local mitigation standards to protect new and substantially improved structures from disaster damage;
 - 7) Development of comprehensive hazard mitigation programs with implementation as an essential component (not to exceed 7% of total grants).
 - 8) Development or improvement of warning systems (available only under the 5% initiative category).
 - 9) NOTE: Emergency generators as a stand-alone project are not an eligible project even under the 5% initiative category.
- g) Is not funded under a previous disaster with the HMGP (**NOTE: Duplication of benefits will not be allowed. An internal 404 grant property database is used to query each property prior to sub-grantee payment.**)

C. Fast Track Project Eligibility:

1. Fast Track acquisition projects can be approved very quickly due to some standing FEMA rules. A fast track acquisition project can only contain homes that are:
 - a) Owner Occupied
 - b) In the FEMA mapped floodplain.
 - c) Less than 50 years old.
 - d) Receive a Substantial Damage certificate in the disaster event.
2. The State will not offer the opportunity for Fast Track acquisition projects in every disaster.
3. Fast Track acquisition projects will normally have different application deadlines than regular acquisition projects.

D. Applicant Identification and Notification:

1. Identification of Potential Applicants:

- a) Upon declaration of a disaster, the SHMO will consult with the GAR and Federal Coordination Officer (FCO) to identify all of the jurisdictions within the declared area, and establish State Deadlines for receipt of NOIs (**see HMGP Notification Package - Appendix 2**).
- b) The notice of available HMGP funding and directions to the NOI and application forms for all eligible sub-grantees statewide, will be posted in the Texas Registry.

- c) The GDEM Recovery PA team will organize a private non-profit conference, once during each disaster, for the presentation of both the PA and HMGP programs.
- d) The State Hazard Mitigation Team will assist in identifying potential applicants.

2. Notification of Potential Applicants:

- a) After a county is declared, every incorporated jurisdiction within the county will be sent a notification package which includes a letter inviting sub grantee HMGP participation, HMGP fact sheet, scheduled briefing dates and locations, established program deadlines, an NOI form with completion instructions used to describe prospective projects, and a contact list (see **HMGP Notification Package - Appendix 2**).
 - This package will normally be sent out between 10 and 15 days after deployment to the JFO, or as the declared area is defined by the FCO.
 - The State NOI's deadline established will normally be within 30 to 45 days of sending out the notification package.
- b) The SHMO and MGO, in cooperation with the FCO, will set up and conduct briefings (see sample briefing notes in **Appendix 2, Tab C**) in the declared area to:
 - 1) Assist local governments in better understanding the HMGP process;
 - 2) Provide guidance material and other information to enable potential applicants to prepare their NOIs by the established State deadline;
 - 3) Apply additional notification measures and Community Meeting Guidelines as needed and identified in the Hazard Mitigation Section Field Standing Operating Procedures (**Appendix 3**).
- c) The notice of available HMGP funding and directions to the NOI and application forms for all eligible sub-grantees statewide, will be posted in the Texas Registry.
- d) If possible the HMGP presentation with NOI form distribution will be provided at the private non-profit conferences held by the GDEM PA team during each disaster.

E. Notice of Interest (NOI) Procedures:

1. The GAR (or the appointed SCO) in coordination with the SHMO and MGO, will establish the State deadline for submission of the NOIs for each disaster. This deadline will normally be approximately 30 days after the disaster declaration but is disaster dependent.
2. NOIs will be mailed with the notification letter to all jurisdictions within the declared area.
3. Directions to the NOI and HMGP application forms will be posted with HMGP funding notice in the Texas Registry.
4. Information and procedural assistance in completing the NOIs will be available through the briefings set up in the declared area, the JFO, the GDEM Mitigation office, and the GDEM website.
5. Reviews of the incoming NOIs will generate one of three letters (**Appendix 3**):
 - a) Likely project – please continue the application process
 - b) Unlikely project – you may still continue the application process
 - c) Ineligible – the applicant or the project does not meet the requirements for HMGP funding

F. Project Selection Procedures:

1. The SHMO and MGO, with additional GDEM mitigation staff members if necessary, will review all incoming applications for completeness and accuracy. Corrections and missing information required will be requested from the jurisdiction.
2. All corrected and completed applications will then be initially rated by the State of Texas Strategy and additionally rated by the score sheet selected for the disaster. Correct and completed applications must include but are not limited to:
 - a) A Benefit Cost Analysis (BCA) using FEMA approved Benefit Cost Software.
 - b) A cost estimate with a minimum of separate breakdowns for materials, equipment, services, and management costs (**NOTE: Sub grantee admin costs may no longer include contract personnel services e.g. paying for a contractor to administer your buy out program – contractors are a project cost**)
 - c) A time schedule, with specific project milestones or measures, by quarter, for the entire project term (**NOTE: This application time schedule will be considered the project master time schedule and all quarterly reports will be compared to this master when rating project performance. To be valid a**

time schedule must have a minimum of two measures scheduled for each quarter.)

3. If determined necessary, engineers from various State agencies and/or State Disaster Reservists may be used to conduct the engineering analyses and, at a minimum, will check environmental issues, verify cost estimates and determine engineering feasibility of the projects, prior to submitting the projects to the State Hazard Mitigation Team. Also see Section VI.E. Items 3 & 4.
4. The Team will meet for preliminary project review and evaluations, to establish an initial rating and address the necessity for any additional documentation or analysis requirements.
5. The Team will meet for a final project review and prepare a recommended funding list for the SHMO to approve and present to the GAR. When it is necessary to eliminate projects, the SHMT will evaluate and prioritize all eligible applications. Consideration will be given to the total amount of funding available, and may also be given to each applicant's degree of commitment to mitigation measures such as the CRS and Fire wise programs, the ability to provide the twenty five per-cent (25%) funding match, and past grant performance information if available.
6. The GAR will then recommend to FEMA, the projects to be funded until 100% of available HMGP funds are obligated. An additional 20% of unfunded projects will be selected and submitted to FEMA for approval, and identified as such within the 12-month application period.
7. The State will enter the required information into NEMIS; however the project will be considered submitted only when the paper application reaches FEMA.
8. Prior to closing of the one-year application period, all completed documentation for the recommended projects for that declaration will be sent by the GAR to the FEMA Regional Director for final project approval.

VIII. ADMINISTRATION:

A. STAFFING:

1. The pre disaster primary staffing for the HMGP will be from GDEM and includes:
 - a) SHMO
 - b) Two Hazard Mitigation Officers
 - c) One Hazard Mitigation Specialist
2. Post disaster HMGP staff will include the GDEM staff, augmented as workload demands, with:
 - a) Temporary Mitigation Specialists

- b) Reservists
 - c) Organizations providing representation to the State Hazard Mitigation Team
 - e) Other Texas State agencies
 - f) Other states through employment of interstate mutual aid may be requested to assist in various facets of project management
3. All temporary staff requirements and terms of employment will be reviewed annually, extended and/or terminated based on actual HMGP administrative needs, and be included in the state Action Plan submitted to FEMA for each new disaster declaration.
 4. In accordance with 44 CFR Part 206, Subpart N, paragraph 206.439(b) (2):
 - a) The GAR will, within 5 days of opening the Joint Field Office (JFO), submit to the FEMA Regional Director, a JFO staffing plan and budget.
 - b) State management costs will be identified and submitted to FEMA, and could include the Staff time for the Interagency Hazard Mitigation Team; engineering and appraisal review costs, and additional staff to manage the HMGP process (e.g. reservists and temporary Hazard Mitigation Specialists).

B. ACCOUNTABILITY:

1. The Governor's Division of Emergency Management will represent the State, as Grantee.
2. The GAR serves as the grant administrator for project management, administrative requirements, audit requirements, and accountability of funds in accordance with parts 13, 14, and 206 of the 44 CFR in effect on the date of the declared disaster.
3. The State's application may be amended as the State identifies and selects project applications to be funded for a period of twelve months from the date of the declared disaster.
4. All mitigation projects approved for the Grantee and Sub-grantee will be subject to the cost sharing provisions outlined in the FEMA-State Agreement. The non-federal share may exceed the Federal share and be combined with other State, local, or private funding sources
5. Based on the approved application and work schedule of the project(s), a record keeping and financial system will be implemented for the duration of each project. Quarterly progress reports will be submitted to FEMA on all open projects.

6. Sub-grantees:

- a) The GAR and/or SHMO will notify sub-grantees when the project is approved and will be provided additional information concerning administrative procedures, audit requirements, suspense dates, and interim inspections, and project completion dates. **(NOTE: For all construction projects the sub-grantee will notify the grantee when the project is near 50% completion to allow for grantee inspection requirements if deemed necessary. Large projects may be notified when the project is approved, if additional inspection will be required.)**
- b) Sub-grantees (applicants) are accountable to the Grantee for all funds that are awarded, including copies of all service and construction contracts, all payment requests with supporting receipts, and project close out documentation as required. **(NOTE: Copies of all service and construction contracts executed by the sub-grantee are to be submitted with the quarterly report covering the period in which they are executed.**
- c) Sub-grantees are required to submit all quarterly reports, complete and timely, for the entire period the project is open. The quarterly reports should reflect the timely progress of the project in accordance with the original work element schedule and address any changes in that progress. Quarterly reports are to be filled on the following schedule: **(Appendix 6).**

1st Quarter (Oct–Dec) due January 15

2nd Quarter (Jan–Mar) due April 15

3rd Quarter (April–June) due July 15

4th Quarter (July–Sept) due October 15

NOTE: Failure to submit the quarterly reports, complete and on time, will immediately prevent the sub grantee from receiving payment of any requested reimbursements. Repeated failure to submit reports could result in the cancellation of the approved project funding (by FEMA and/or the State) as well as the requirement for the jurisdiction to reimburse the State for project funds already received.

- d) The sub-grantee is required to keep complete records of all work, i.e. receipts, checks, job orders, contracts, equipment usage documentation, and payroll information. These records must be retained for three years from the completion date, or after any litigation claim, negotiation audit or other action has been resolved, whichever is later. During this three-year period, all project documentation is subject to random audits. A final accounting and reporting will take place after the project is completed.

e) In cases where the sub-grantee has contracted for the preparation of a mitigation action plan, the payment schedule will be as follows:

- | | |
|---|-----|
| 1) Upon signing the contract- | 10% |
| 2) If the sub-grantee maintains the time schedule submitted with the grant application they will be eligible to request up to | 65% |
| 3) FEMA approval | 25% |

If the sub-grantee is using current employees to prepare the plan, all appropriate documentation such as time sheets verifying hours worked shall be submitted. In addition jurisdictions must identify the cost per capita of population covered. **(NOTE: Plans that exceed \$2.00 per capita must submit an explanation for the increased cost).**

- f) If the jurisdiction received over \$300,000.00 total funding from Federal programs it may be required to provide GDEM with a copy of its audit performed under the Single Audit Act of 1996, for the year. Please contact the GDEM Disaster Auditor, at (512) 424-2439 for further information on audit requirements.
- g) Overpayments must be refunded and made payable to the Division of Emergency Management (GDEM) within 30 days of sub-grantee notification.
- h) Should an advance be necessary, copies of invoice(s) and receipt(s) must be sent along with the request for an advanced payment by letter. Normally the State will not entertain a request for advance payment but instead runs a “payment upon contract” system. This may be considered in the case of economically disadvantaged communities unable to provide temporary outlays above the 25% match.
- i) The sub-grantee must notify GDEM when the project is complete and ready for audit.
- j) All cost overruns must be reviewed and approved by the SHMO, and FEMA if necessary, before any additional funds will be made available to the sub-grantee.
- k) In order to request a period of performance extension, the request must be made to the State no later than 90 days prior to the expiration of the period of performance and must include a justification for the extension. The State will review the request and submit the request to FEMA prior to 60 days before the expiration of the period of performance. The justification must also show the work is in progress and can be completed within the extended period of performance requested. The regional FEMA office must approve all extensions. If a second extension becomes necessary it must be sent to the Regional Director for approval. As a result of this policy and in keeping with program

regulations in 44 CFR 13.50 (d) (2), any funds not disbursed by the grantee within the approved performance period will be deobligated and returned to FEMA. Guidance is located in Appendix 6.

7. A Project Approval Letter will be sent to the jurisdiction explaining the following documentation requirements:
 - a) A Categorical Exclusion (CATEX) document provided by FEMA Region VI Mitigation Staff that excludes sub-grantee from preparing an Environmental Impact Statement in accordance with 44 CFR 10.8 (d)(vii).
 - b) A requirement for the Sub-grantee to prepare a final Public Notice in accordance with Executive Order 11988 and 44 CFR 9.12 (e) and to provide a copy of the published Public Notice to GDEM and FEMA Region VI Mitigation Section.
8. All grant related GDEM office Correspondence received and sent will be recorded in an excel spreadsheet named "mail log" which resides on the mitigate drive. The entire mitigate drive is backed up daily by the IM section of GDEM, thus precluding the loss of data. Each disaster will have a file drawer or a portion of a file drawer dedicated to the paper copies of applications.
9. All GDEM records on each disaster must be retained for three years from the FEMA closing date for that disaster.
10. FEMA has final approval authority for the funding of all projects.

C. FINANCE PROCEDURES:

1. Federal Section 404 funds will be obligated by FEMA for all approved projects and supplements.
 - a) The GAR/SHMO will submit required documentation to the FEMA Regional Director in order to receive Federal funding
 - b) These funds will be placed into the Hazard Mitigation Account at GDEM.
 - c) The dispersing of HMGP funds will be on a cash drawn and reimbursement basis in accordance with current FEMA and GDEM procedures.
2. The approved projects under the State's grant will be the basis for a sub-grant by the State to the applying entity. All approved projects will be subject to the cost sharing provisions (75% Federal share/25% local share) established by the FEMA-State cost sharing agreement. The State reimburses 75% of 100% of submitted receipts, rather than 100% of 75% of receipts. **(NOTE: Property acquisition projects for jurisdictions requesting payment on contract, funds are disbursed no earlier than two weeks before the scheduled closing. The HUD 1 form must accompany all requests for payment or reimbursement on property acquisition projects.)**

3. When sub-grantee documentation is received and payment is made, the SHMO will certify the validity of the reported costs, disallow unsupported or ineligible costs, initiate a Payment/Journal Entry Request Form (green sheet) and submit this form to the Auditor for processing.
4. Upon project completion a Certificate of Completion (**Appendix 6**) must be filled out and returned to GDEM signed by a chief elected official or a designated representative. Final payment will be made based upon this certification, completion of staff audit and final inspection.
6. Overpayments to sub-grantees must be collected by GDEM within 30 days of sub-grantee notification.
7. Cost overruns, which can be met with offsetting cost under runs on other projects, or without additional Federal funds, may be approved by the SHMO as long as the full scope of work on all affected projects can still be met. Cost overruns requesting additional funds for project completion, not meeting the above criteria, will be submitted with a State determination, by the SHMO to FEMA for approval.
8. Refund of Federal funds to FEMA will be processed through the Electronic Payment Management System (SMARTLINK).
9. General policies for defining allowable costs are established in 44 CFR parts 13.22, 13.4, and 13.6, and are further explained in part §206.439.
10. All accounting and audit procedures will conform to Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Standards Act of 1981 (**Appendix 9**) and in accordance with OMB A-87, A-102, and A-133 (**Appendix 10**).

D. Appeal Procedures:

1. In accordance with the 44 CFR, any eligible applicant may appeal any State or FEMA decision regarding projects submitted for HMGP funding under the following appeal guidelines:
 - a) The appeal package must contain documentation that justifies the request for reconsideration such as but not limited to:
 - a necessary change in the scope of work,
 - an increase in the cost of available materials,
 - new or corrected information,
 - reviewer oversight from lack of documentation,
 - b) The appeal must be in writing and signed by the chief elected representative
 - c) The appeal must be submitted by the sub grantee to the grantee within 30 days of the date of written notice of the determination being appealed.

- d) The appeal will be reviewed by the SHMO and sent with a State determination letter to FEMA within 60 days of the original determination being appealed or within 30 days of receipt of appeal from sub grantee – whichever is the shorter time frame.
 - e) It is a responsibility of the SHMO, based on the appeal received, to determine which appeals are sent on to FEMA and to deny unjustified appeals at the state level.
2. The second and final appeal must follow the same guidelines outlined in item one for the appeal package including the same timeframes.

E. Project Reviews and Audits

1. Final inspections and reviews of all projects will be performed in accordance with 44 CFR, and approved by the SHMO.
2. As stated in each area of responsibilities throughout this admin plan State will comply with all audit requirements of 44 CFR part 14.
3. Any funds not used by the applicant will be returned to GDEM.
4. The OMB Circular A133 (Single Audit Act of 1996) requires that applicants having expenditures of \$500,000 or more in total federal financial assistance (not just disaster assistance) within their own fiscal year, will be required to have an audit completed by an independent outside auditor. This audit must be submitted to the State within 30 days after completion but not later than 6 months from their fiscal year end.
5. The State will submit the audit to the Federal Clearing House within 30 days of receipt
6. FEMA may elect to conduct a Federal audit on the disaster assistance grant or any of the sub grants.
7. The State will annually conduct a random re-inspection of 2% of the properties purchased thru mitigation grant programs to insure continued enforcement of the open space, recreational, and wetland management practices outlined in the 44 CFR Part 206.434 (e)

F. Project Closeout Procedures

1. Sub grantee will submit a Certificate of Completion (**Appendix 6**) to the State when all work has been completed, all necessary documentation has been submitted, all project payments have been made, and no further actions or appeals are pending.

2. The State conducts final program inspections and financial audits as required and at that time the buy out projects are photographed to prove deed restriction compliance. The photographs are put on CD by property address and kept in a permanent property buy out file in the office of the SHMO.
3. Upon closing the last project in a disaster funding stream, the State conducts an internal reconciliation as outlined in the requirements of Appendix 8 (Uniform Grants Management Standards) and returns unused management and State admin funds to FEMA
4. The closeout of a grant does not affect
 - a) FEMA's right to disallow costs and recover funds on the basis of a later audit or other review
 - b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions

IX. DEVELOPMENT AND MAINTENANCE

This plan will be reviewed and updated following each major disaster declaration, changes in State or Federal legislation, or as a result of HMGP policy changes. All updates will be prepared by the SHMO and submitted to FEMA for approval.

Explanation of Terms

A. Definitions:

Activity: Any Mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters. Activities include both plans and projects.

Activity Completion Date: The FEMA date, determined at the time of project approval, by which a sub grantee must complete an activity funded under a HMGP grant. Individual sub grant activity completion dates fall under the overall HMGP program grant to the State. The last activity completion date sets the period of performance for the HMGP program grant.

Activity Completion Timeframe: This is the sub grant equivalent of the period of performance. It is the period of time during which the sub grantee is expected to complete activities, including plans, and liquidate HMGP program funds. HMGP program guidance limits individual activity completion timeframes to three years.

Application Period: For disasters declared on or after February 26, 2002, the 12 month period from the date of declaration that the State has to identify activities and submit its applications to FEMA (44 CFR 206.436(d)). Scope of work changes cannot be made after the application period expires. No new activities or activities that have not been pre-identified and submitted during the application period can be considered after the application period expires. The Regional Director may extend the application period by 30 to 90 day increments, not to exceed 180 days. The application period does not affect FEMA's 24-month obligation deadline.

Applicant: A state agency, local government, Indian tribal government, or eligible private nonprofit organization, as defined by § 206.434, submitting an application to the grantee for assistance under the HMGP.

Benefit Cost Analysis (BCA): Used to determine if a mitigation project reduces the risk sufficiently to justify the cost, and meets the statutory requirements for cost-effectiveness established in the Stafford Act, Section 404(a), and the 44 CFR Parts 78 and 206.

Community Rating System (CRS): A voluntary incentive program that recognizes and encourages community floodplain management activities that exceeds the minimum NFIP requirements, resulting in increased flood risk awareness, reduced flood losses, and discounted flood insurance rates.

Cost Overrun: A cost overrun is an unanticipated increase in the cost of performing the specified objectives of an activity. Guidance on cost overruns can be found at 44 CFR 206.438(b).

Cost Under Run: A cost under run is an unanticipated decrease in the cost of performing the specified objectives of an activity. Cost under runs can be used to offset cost

overruns for other HMGP activities within the same disaster grant. Cost under runs cannot be applied to new activities if the application period has expired.

Disaster Project Officer (DPO): Appointed by the SHMO for each disaster, (normally the MGO if available), to execute the HMGP responsibilities of the SHMO at the JFO, and assist the SHMO throughout the entire disaster grant process.

Enhanced State Mitigation Plan: A State hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

Federal Emergency Management Agency (FEMA): The Federal agency responsible for coordinating disaster recovery efforts. The term when used in this plan refers primarily to the Regional Director, Disaster Recovery Manager, or other personnel of FEMA region 6.

Firewise Community: A mitigation project of the National Wildland/Urban Interface Fire Program, providing a community assessment designed to provide the knowledge necessary to maintain an acceptable level of fire readiness, and increase firefighting efficiency during a wildland fire emergency.

Governor's Authorized Representative (GAR): The individual designated by the Governor to represent the State and execute all necessary documents for the disaster assistance programs available to the State and local grant recipients. The GAR is normally the designated State Coordinating Officer (SCO).

Grant: An award of financial assistance for FEMA approved HMGP projects under the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as defined in the 44 CFR revision in force at the time of the federally declared disaster.

Grant Application: The request to FEMA for HMGP funding, as outlined in § 206.436, by a State or tribal government that will act as grantee.

Grant Award: The total of Federal and non-Federal contributions to complete the approved scope of work.

Grantee: The State government, or Indian tribal government to which a grant is awarded. For the purposes of this plan, the State of Texas is the Grantee and is accountable for use of the funds provided.

Joint Field Office (JFO): A temporary facility established in a disaster area, with a Presidential declaration, to serve as the joint field office for FEMA and State recovery personnel. This is the focal point for disaster operation, direction, coordination, and information.

Local Hazard Mitigation Coordinator ((LHMC): The representative of local government who serves as the primary focal point of contact with FEMA, other Federal agencies, and the State in the planning and implementation of pre-disaster and post-disaster hazard mitigation activities.

Local Hazard Mitigation Team (LHMT): The team of individuals selected by local governments to accomplish hazard mitigation activities in their locale and assist State and Federal mitigation efforts.

Measure/Project: Any mitigation measure, project, or action proposed to reduce the risk of future damage, hardship, loss or suffering from natural disasters.

Mitigation Action Plan (MAP): The hazard mitigation plan required of a local or Indian tribal government acting as a sub-grantee, as a condition of receiving a project sub-grant under the HMGP as outlined in 44 CFR 201.6.

Notice of Interest (NOI): (Also referred to as a Notice of Intent) The “Notice of Interest and Hazard Mitigation Team Report” is to assist in identifying mitigation opportunities. It provides initial project description, loss history, project officer contact information, work elements, cost estimates, and funding resources.

Period of Performance: For the overall program grant this is the period of time during which the Grantee is expected to complete activities and obligate HMGP program funds. A Grantee may not expend FEMA funds after the expiration of the specified period of performance unless that period is extended by FEMA. The Grantee has up to 90 days following the expiration of the period of performance to liquidate valid expenditures made in the performance period. The last activity completion date sets the end date for the overall HMGP program grant.

Pre-Identified Activity: A proposed activity that has been approved by the Grantee and has been forwarded to FEMA to approve should funds become available as a result of withdrawn sub grant applications or reductions in scopes of work. These applications must be prioritized and submitted within the application period and must note that they are to be held in reserve in the event of a reduced scope of work in another activity or a withdrawn activity. Applications for pre-identified activities must be complete, including benefit cost analysis, before they are submitted to FEMA.

Private Non-Profit Organization: Any nongovernmental agency or entity that currently has an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit one organized or doing business under State law.

Scope of Work: The specific goal, purpose and result of an approved mitigation activity, including the activity objectives, budget, activity completion date, and period of availability of funds.

Scope of Work Change: Any change to the objective, purpose and outcome of approved mitigation activity, regardless of budget implications. Scope of work changes cannot occur after the application period expires. Examples of scope of work changes include:

- Changing the number of houses in a retrofit or acquisition project
- Changing the size of a replacement culvert
- Expanding or reducing the project area

- Changing the number of homes to be elevated
- Changing from an acquisition to a relocation project
- A change in State or local agency implementing the grant or sub grant
- A change in key personnel, if key personnel are mentioned by name in the application

State Administrative Plan For the Hazard Mitigation Grant Program: The plan developed by the State to describe the procedures for administration of the Hazard Mitigation Grant Program. This document is Annex A of the State Hazard Mitigation Plan.

State Application: The initial request for Section 404 funding, to be submitted to FEMA by the State within 60 day of the declaration. This action initiates HMGP funding for the state, for each disaster.

State Coordinating Officer (SCO): The head of all of the operations of the Governor’s Division of Emergency Management and normally, in the event of a disaster, also appointed as the GAR.

State Hazard Mitigation Officer (SHMO): The representative designated as the responsible individual on all operational matters related to the Hazard Mitigation Grant Program, the Section 409 Hazard Mitigation Plan, and the coordinated State Hazard Mitigation Planning Program.

State Hazard Mitigation Team (SHMT): Representatives of State agencies designated to participate in, various facets of the state hazard mitigation program, to include: participation in Interagency Hazard Mitigation Team activities and to review, prioritize, and recommend funding levels for selected HMGP project applications.

State Mitigation Plan: A plan that establishes:

- hazard mitigation goals
- hazard mitigation strategies
- organization and responsibilities
- operational concepts
- administrative procedures
- tasks and responsibilities for natural hazard mitigation objectives
- specific measures designed to reduce the occurrence or severity of the consequences of natural hazards on the people, property, infrastructure, and environment of Texas
- procedures for implementation and administration of the federally funded Hazard Mitigation Grant Program (HMGP) addressed in Annex A
- procedures for implementation and administration of the federally funded Pre-Disaster Mitigation (PDM) Program, addressed in Annex B

Sub-grant: An award of financial assistance under a grant by a grantee to an eligible sub-grantee. HMGP activities are sub-grants.

Sub-grantee: The government or other legal entity to which a sub-grant is awarded and which is accountable to the grantee for the use of the funds provided. The sub-grantee can be a State agency, local government, private non-profit organization, or Indian tribe as outlined in Section § 206.434 of the 44CFR, Federal regulations..

Supplement: An amendment to the hazard mitigation application to add or modify one or more mitigation measures.

Void Activity: An application that has been submitted by the State to FEMA and is withdrawn before funds are awarded.

Withdrawn Activity: A sub-grant that has been submitted by the State and awarded funds by FEMA, but is withdrawn by the State and will not be implemented.

B. Acronyms:

BCA	Benefit Cost Analysis
CERT	Community Emergency Response Team
CFR	Code of Federal Regulations
COG	Council of Governments
CRS	Community Rating System
DDC	Disaster District Committee
DFO	Disaster Field Office
DPO	Disaster Project Officer
DPS	Department of Public Safety
DRC	Disaster Recovery Center
EMC	Emergency Management Coordinator
EFS	Emergency Support Function
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
GAR	Governor's Authorized Representative
GGDEM	Governor's Division of Emergency Management
HMGP	Hazard Mitigation Grant Program
JFO	Joint Field Office
MAP	Mitigation Action Plan
MGO	Mitigation Grants Officer
NFIP	National Flood Insurance Program
NOI	Notice of Interest
PA	Public Assistance
PNP	Private Non Profit
SCO	State Coordinating Officer
SHMO	State Hazard Mitigation Officer
SHMT	State Hazard Mitigation Team
SHPO	State Historical Preservation Office

**STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN**

ANNEX A

APPENDIX 1

**THE STATE OF TEXAS
STRATEGY GUIDELINES
FOR HMGP PROJECTS**

STATE OF TEXAS STRATEGY GUIDELINES FOR HMGP PROJECTS

Based on projections of available funds for the HMGP, there will not be adequate funds to address all mitigation projects. Therefore, projects must be prioritized to maximize the reasonable expectation of mitigation benefits as follows:

- I. Priority I is Acquisition Projects: The highest priority mitigation project will be the voluntary evacuation/removal of people/structures from flood prone areas, with a resulting permanent land use change that includes a significant enhancement to the natural resource values and low-impact recreational opportunities for the public.
 - A. Acquisition funding may be given for those properties in flood-prone areas, along the following priority order guidelines:
 1. Structures in the floodway
 2. Structures in the floodplain with > 50% damage.
 3. Structures with repetitive losses in the past ten years.
 4. Structures in the floodplain with < 50% damage.
 5. Other structures in the floodplain with > 50% damage.
 6. Other structures in the floodplain with < 50% damage
 7. Vacant lots in the floodway.
 8. Vacant lots in the floodplain.
 - B. Additional priority ratings are applied to the structures in categories 1 through 7, section A, as follows:
 1. Structure priority will be as follows:
 - (a) Primary residences;
 - (b) Secondary residences/rentals;
 - (c) non residential property.
 2. Properties will be ranked for purchase, lowest to highest in cost.
 3. In determining priorities for vacant lots, contiguity to structures acquired will be a contributing factor.
 - C. In acquisition projects, the State will not normally approve Non-URA (Uniform Relocation Assistance) payments to property owners seeking buy-outs.
 - D. Properties NOT INCLUDED IN THE ORIGINAL APPLICATION, OR SUBSTITUTED DURING THE ORIGINAL APPLICATION PERIOD, MAY NEVER be used as substitutions during an acquisition project's performance period.
- II. Priority II is Residential Relocation projects: Projects will be prioritized according to Benefit Cost Analysis (BCA) scores, beginning with the highest BCA. Projects below the 1 to 1 Benefit Cost ratio are normally not considered.

- III. Priority III is Elevation projects: Projects will be prioritized according to Benefit Cost Analysis (BCA) scores, beginning with the highest BCA. Projects below the 1 to 1 Benefit Cost ratio are normally not considered.
- IV. Priority IV is Retrofitting (including safe rooms): Projects will be prioritized according to Benefit Cost Analysis (BCA) scores, beginning with the highest BCA. Projects below the 1 to 1 Benefit Cost ratio are normally not considered.
- V. Priority V is Structural: Projects will be prioritized according to Benefit Cost Analysis (BCA) scores, beginning with the highest BCA. Projects below the 1 to 1 Benefit Cost ratio are normally not considered.
- VI. Priority VI is Warning and Public Information: These projects are usually submitted as *initiative projects*, and as such do not have to achieve the normally required 1 to 1 Benefit-Cost ratio. A maximum of 5% (10% in the case of declared tornado disasters) of the available HMGP funds may go toward initiative type projects.
- VII. Priority VII is Mitigation Action Plans (MAPs):
Congress has established that no more than 7% of the available HMGP funds, may go toward eligible planning grants that meet the State/FEMA criteria.
- (Note: The final 25% of funding for all planning grants will be withheld by the State pending final plan approval within the project's performance period by FEMA.)
- VIII. Priority VIII is Equipment: Items such as communication equipment, which do little to reduce damages in the next disaster, will normally not achieve an acceptable B/C, and are therefore requested under the 5% initiative category.
- (Note: Emergency generators are no longer eligible as independent projects, nor may they be purchased under the initiative category. However, emergency generators may be included as an element in, or a part of, another eligible stand-alone mitigation project.)
- IX. The last step of the Texas Strategy project rating process is to apply one of the following two score sheets (generally based on the type of disaster) selected by the SHMO for each declared disaster.

(9/1/05)

ANNEX A, APPENDIX 1

SCORE SHEET USED PRIMARILY FOR HURRICANE AND FLOOD DISASTERS

	POINTS	SCORE
Is this project geographically identified in the applicants MAP?	45	
Is this <i>type</i> of project identified in the applicants MAP?	10	
Is this project in the declared area?	20	
Is this project in a CRS community?	2	
ENVIRONMENTAL		
Catex eligible?	5	
Assessment required?	3	
Requires Full Environmental Impact Statement	1	
COST EFFECTIVE		
Good BC study provided	5	
Initiative project (no BC required)	5	
Weak BC study provided	3	
No BC study provided	1	
STATE STRATEGY POINTS		
Residential		
Is buyout in the floodplain	Value:	10
Buyout of a NFIP repetitive loss home	Value:	7
Other Buyouts	Value:	5
Residential Relocation		
Elevation		4
Retrofit & Safe-rooms		3
Structural		2
Warning and Public Information Systems		1
Mitigation Action Plans		1
Equipment		1

ANNEX A, APPENDIX 1

SCORE SHEET USED PRIMARILY FOR WINDSTORM DISASTERS

	POINTS	SCORE
Is this project geographically identified in the applicants MAP?	45	
Is this <i>type</i> of project identified in the applicants MAP?	10	
Is this project in the declared area?	20	
Is this project in a CRS community?	2	
ENVIRONMENTAL		
Catex eligible?	5	
Assessment required?	3	
Requires Full Environmental Impact Statement	1	
COST EFFECTIVE		
Good BC study provided	5	
Initiative project (no BC required)	5	
Weak BC study provided	3	
No BC study provided	1	
STATE STRATEGY POINTS		
Residential		
Is buyout in the floodplain	Value: 6	
Buyout of a NFIP repetitive loss home	Value: 6	
Other Buyouts	Value: 5	
Residential Relocation		
Elevation	4	
Retrofit & Safe-rooms	10	
Structural - Storm Shelters	6	
Structural	2	
Warning and Public Information Systems	8	

**STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN**

ANNEX A

APPENDIX 2

HMGP NOTIFICATION PACKAGE

(Post disaster briefing information package)

TAB A

**SAMPLES OF:
BRIEFING SCHEDULE MEMO
LETTER INVITING SUB GRANTEE HMGP PARTICIPATION
TEXAS REGISTER NOTIFICATION
MEDIA ADVISORY**

SAMPLE INTERNAL SCHEDULE MEMO

From: Pekar, Gregory
Sent: Monday, December 09, 2002 1:08 PM
To: Gibson, Bob
Subject: Contact Status for Dr 1439
Bob, ref. your question on contact status for the newly declared counties.

We make contact in two directions, from the 'bottom' with a program briefing to interested floodplain managers and emergency management coordinators, and from the 'top', with a letter to the chief elected official of all declared jurisdictions. We have two groups of counties which we are managing separately.

In the Southern area, the mailing to the chief elected officials of the newly declared counties (Cameron, Hidalgo, Kleberg, Jim Wells) is complete; It went out on Monday, 2 Dec. Jim Wells w/ jurisdictions also had their program briefing on the 2nd. The program briefing for Cameron/Hildago, through the Lower Rio Grande COG, is currently unscheduled, we are shooting for Monday or Tuesday next week. Jurisdictions in Kleberg will be called individually.

In the Northern area, the first mailing to the chief elected officials of the initially declared counties went out 27 Nov. The mailing to the newly declared counties (Brazoria, Fort Bend, San Jacinto, and Jasper) should go out today. San Jacinto and Jasper are in the Deep East Texas COG, the program briefing there is currently unscheduled, but again, we are shooting for early or middle of next week. The other new counties are in the HGAC, but are being called individually to determine their interest, as they were declared after the HGAC general program meeting.

Gregory F. Pekar
State Hazard Mitigation
512-424-2429

SAMPLE INVITATION LETTER FOR HMGP PARTICIPATION



Media Advisory

October 9, 2002 DR-1434-TX MA001

Media Contacts:

FEMA News Desk	Federal Emergency Management Agency	210-697-4593
Michael Lampton 307-6634	U.S. Small Business Administration	817-
Mary Lenz	Division of Emergency Management (DEM), 424-2138	512- Texas Department of Public Safety

One-On-One Media Availability For Flood Recovery

Representatives from state and federal agencies will be available in Lake Jackson on Friday for one-on-one media questions regarding the floods from Tropical Storm Fay. Focus will be on what has been done so far and the long-term plan for the recovery process.

DATE: Friday, October 11, 2002

TIME: 2:15 p.m.

PLACE: Lake Jackson Civic Center
Plaza Room (Media Room)
333 Highway 332 East
Lake Jackson, TX
(979) 415-2600

Federal representatives will be available to answer questions regarding Individual Assistance, Hazard Mitigation, U.S. Small Business Administration, the National Flood Insurance Program and agricultural issues.

State officials will be available to discuss Individual Assistance and Hazard Mitigation. Representatives from the following agencies can discuss the disaster recovery programs they have in place: Office of Rural Community Affairs (ORCA), Texas Dept. of Insurance (TDI), Texas Dept. of Mental Health Mental Retardation (MHMR), Texas Dept. of Human Services

(DHS), Texas Commission on Environmental Quality, Texas Workforce Commission (TWC) and others.

Information on the Tropical Storm Fay is available on the Internet at <http://www.fema.gov> or <http://www.txdps.state.tx.us/dem>. Information also is available through FEMA's 24-hour fax-on-demand service by calling 1-202-646-FEMA

M E E T I N G N O T I C E

Hazard Mitigation Grant Program

Monday, November 4, 2002

9 A.M. to 12 P.M.

Lake Jackson Civic Center

333 Highway 332 E.
Lake Jackson, TX 77566

The Houston-Galveston Area Council is sponsoring a State presentation about the federally sponsored Hazard Mitigation Grant Program. This presentation is for the benefit of those communities affected by Tropical Storm Fay. The presentation will be held at the Lake Jackson Civic Center in Ballroom from 9 AM to noon.

We look forward to seeing you and hope that you will find this information useful as you help your community recover from the damage caused by the tropical storm.

If you have any questions, please contact(the contact information for the Disaster Project Officer, the JFO, and the SHMO is inserted here)

Sincerely,

SAMPLE TEXAS REGISTER NOTIFICATION

As a result of severe weather and flooding during the incident period of October 24th through November 15th, 2002, a major disaster, (FEMA-1439-DR) was declared by the President. Due to this declaration, Texas is authorized federal funds through the Hazard Mitigation Grant Program (HMGP). The HMGP is a 75/25 federal to applicant cost-share program designed to help prevent reoccurring disaster losses to citizens and infrastructure. It is imperative that these funds be used to reduce the risk of loss of life and property in the future.

All eligible applicants, which include local governments, state agencies, certain non-profit organizations and institutions, and Indian tribes or authorized tribal organizations are invited and encouraged to take advantage of this additional opportunity and apply for HMGP funds. These funds will be allocated to applicants based on a competitive application process. The number one mitigation strategy for Texas is the purchase and removal of structures at risk from flooding; however, all cost effective actions that mitigate the consequences of the hazards, and provide long term meaningful and definable risk reduction benefits will be considered. In accordance with Public Law (PL) 106-390 (Disaster Mitigation Act of 2000) the development of local mitigation action plans that comply with provisions of the law, and Texas planning standards are also eligible projects for consideration. It is recommended that you contact your supporting Council of Governments office for possible hazard mitigation planning assistance.

If your organization is interested in participating in the HMGP process, you are invited to submit a notice of interest within thirty days of date of publication of this edition of the *Texas Register* to the Texas Hazard Mitigation Officer, Department of Public Safety, Division of Emergency Management PO Box 4087 Austin Tx 78773-0226, or fax to (512) 424-2444. Detailed information including an HMGP Fact Sheet and the forms to use for development and submission of a notice of interest (NOI) are available on the Department of Public Safety/Division of Emergency Management website at www.txdps.state.tx.us/dem/dr1434_mitigation.htm.

If you have questions or need assistance please contact state Mitigation Officer Greg Pekar at (512) 424-2429 or by email at gregory.pekar@txdps.state.tx.us.

STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 2

TAB B
HMGP FACT SHEET



HAZARD MITIGATION GRANT PROGRAM (HMGP)



PROGRAM DESCRIPTION

The HMGP (authorized by Section 404 of the Stafford Act) is funded by the Federal Emergency Management Agency (FEMA) and administered by the State of Texas following a Presidential Major Disaster Declaration. The HMGP is not a disaster relief program for individual disaster victims, nor is it a recovery program that funds repairs to public property damaged during a disaster.

While disaster Recovery programs seek to repair damages, and return to pre-disaster conditions, the single focus of the HMGP is to provide a means to fund long-term hazard mitigation actions specifically designed to eliminate or reduce the consequences of future disasters. HMGP goals are:

- To prevent future losses of lives, property damages, and costs from hazards;
- To provide funding for previously identified but unfunded cost-effective mitigation measures;
- To enable mitigation measures to be implemented during immediate recovery from a disaster; and
- To implement State and local hazard mitigation action plans.

Mitigation projects may also be identified and funded through FEMA's Public Assistance Program (PA) after a disaster declaration. The PA program (authorized by Section 406 of the Stafford Act) provides funds to allow existing public facilities damaged by the disaster to incorporate/include mitigation measures during repairs, if the measures are cost-effective or are required by current building codes. FEMA, the State, or local applicants can identify these potential measures.

The HMGP can fund any mitigation measures that protect public or private property, so long as the measures fit within the overall mitigation strategy for the disaster area, and comply with program guidelines.

Eligibility Requirements

The HMGP may provide federal funds up to 75% of the cost of appropriate hazard mitigation projects. Eligible applicants, who include state and local governments, certain non-profit organizations and institutions, and Indian tribes or authorized tribal organizations, must contribute at least 25% of the cost of their projects. This 25% match can be made in a variety of ways to include "in kind" matches.

Federal funding is limited, and there are usually more requests than there are dollars. Awards are made on a competitive basis, with only the most effective projects that provide the most long-term risk reduction benefits being funded. All projects, to be considered, must be consistent with state and local hazard mitigation plans and strategies and:

- Solve a problem (prevent or substantially reduce hazard consequences and future risk);
- Have a beneficial impact (provide long-term meaningful and definable risk reduction benefits);
- Be cost effective (cost less than potential future damages);
- Be environmentally sound (positive rather than negative impacts);
- Comply with applicable laws, rules, and administrative requirements.

ADDITIONAL REQUIREMENTS TO PARTICIPATE IN HMGP INCLUDE:

- **A current State approved emergency management plan that meets the requirements for a basic level of planning preparedness as defined in the Preparedness Standards for Texas Emergency Management (DEM-100) for all applications, and;**
- **A State and FEMA approved mitigation action plan is required (disasters declared after November 1, 2004) for all applications except planning grants**
PLEASE NOTE: HMGP project applications are competitive and those projects meeting all other requirements, that are specifically identified in the sub grantee's mitigation action plan will have the best chance of selection.

STATE STRATEGY AND PRIORITIES

Upon activation following a major disaster declaration, the HMGP is open to participation from eligible applicants throughout Texas. State strategy, however, gives priority to applicants located in the counties affected and included in the disaster declaration.

Flooding represents the highest continuing hazard to Texans. The majority of the people and property throughout the state of Texas are vulnerable to flash flooding and riverine flooding. Recognizing this fact, the state strategy gives priority for the use of HMGP funds to reduce long-term risks from flooding, specifically, the voluntary acquisition of structures from mapped floodplain areas. Acquisition provides one of the best opportunities for the effective and permanent land use changes that are needed to eliminate the flooding vulnerabilities of the people and property in Texas.

TYPES OF PROJECTS CONSIDERED FOR FUNDING

The HMGP can be used to fund projects to protect either public or private property. Example of projects include:

- Acquisition/demolition/elevation of flood-prone structures;
- Retrofitting facilities (flood proofing, high wind, seismic, etc.);
- Small scale structural hazard control/protection projects;
- Limited funding is available for initiative projects such as public awareness, enhanced hazard information systems, enhanced warning capabilities, etc.
- Limited funding is available for the development of State and local mitigation action plans (MAPs);

APPLICATION PROCESS

The Governor's Division of Emergency Management (GDEM) serves as the Grantee and administers the HMGP for the State of Texas.

All eligible jurisdictions/organizations are encouraged to develop proposed eligible mitigation projects and seek funding through the HMGP. Priority will be to fund eligible projects within counties affected by declared disasters; however, if HMGP funds are available, eligible projects from all other areas of the state will be considered.

All jurisdictions within all-counties included in a major disaster declaration will be notified of their eligibility to seek HMGP funding and invited to complete and submit a Notice of Interest (Hazard Mitigation Team Report) describing their prospective project(s). All jurisdictions having NOIs with eligible projects will then be requested to complete and submit a formal application for HMGP funds. Applications must be received by GDEM no later than the posted application deadline. The State Hazard Mitigation Team will review each application, and recommend to the Governor's Authorized Representative (GAR), those projects that should be sent to FEMA for fund obligation. Once projects are approved by FEMA, up to 75% of eligible project costs can be reimbursed to applicants.

PLEASE NOTE: Because of limited funds, the comprehensive application process, and federal program requirements, the approval of HMGP projects by FEMA often takes several months.

APPLICANT RESPONSIBILITIES

- Applicants (Sub grantees) must submit a complete and accurate application to GDEM for participation, and commit to meeting the 25% cost-share requirement;
- County Judges, Mayors, and as applicable, Chief Executive Officers, must appoint an individual to serve as the local Project Officer.
- The local Project Officer serves as a single point of contact with GDEM, and is responsible for administering the HMGP at the local level in accordance with all-applicable laws, regulations, and administrative requirements.

ADDITIONAL INFORMATION AND ASSISTANCE

Regulations for the HMGP are published in the revised Title 44 of the Code of Federal Regulations (CFR) in effect at the time of the disaster declaration.

All required forms as well as fact sheets, job aids, and guidance materials are available on line at www.txdps.state.tx.us/dem .If additional assistance is needed please contact:

Mr. Greg Pekar, State Hazard Mitigation Officer, GDEM (512) 424-2429
e-mail: GREGORY.PEKAR@TXDPS.STATE.TX.US

Hildy Soper, Mitigation Grants Officer, GDEM (512) 424-2454
e-mail: HILDY.SOPER@TXDPS.STATE.TX.US

**STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN**

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TAB C

SAMPLE OF A BRIEFING OUTLINE WITH TALKING POINTS

SAMPLE OF BRIEFING OUTLINE

HAZARD MITIGATION GRANT PROGRAM

- Authorized by the Stafford Act, November 1988.
- Purpose: Prevent future losses of lives and property due to disasters.
- 75 - 25 Cost Share. **Statewide Competitive Selection.**
- Based on 7.5% Federal Share of PA.
- Eligibility: any
 - local government,
 - state agency,
 - authorized private nonprofit,
 - Indian tribal government

with

 - a State and FEMA approved Mitigation Action Plan, and
 - a current emergency management plan that meets the requirements for a basic level of planning preparedness as defined in *the Preparedness Standards for Texas Emergency Management* (DEM-100 available on the Governor's Division of Emergency Management website).
- Project must:
 - Be beneficial to community and solve a problem;
 - Be environmentally sound: Floodplain Management, Wetlands, EPA, etc;
 - Be cost effective.
- Types of eligible projects include (show pamphlet):
 - Acquisition or relocation of structures;
 - Structural hazard control;
 - Retrofitting to protect structures;
 - Development of comprehensive mitigation programs, including standards;

- Application process:
 - Turn in Notice of Interest to DEM;
 - Complete application package;
 - Package goes through review by state agencies;
 - Selection panel ranks all the projects and recommends funding;
 - DEM sends recommended projects to FEMA for approval;
 - Get funded and complete project;

- Questions: Gregory Pekar,
State Hazard Mitigation Officer at (512) 424-2429
gregory.pekar@txdps.state.tx.us

Hildy Soper
Mitigation Grants Officer at (512) 424-2454
hildy.soper@txdps.state.tx.us

1. The Hazard Mitigation Grant Program is FEMA funded, State Administered, and Locally implemented. HMGP has a limited amount of funds; the value of applications from city/counties normally exceeds the available funding by a large margin.
2. Local cities and counties decide if they wish to compete for the available funds. They normally make this decision based upon their individual financial situation, other possible mitigation measures, and degree of citizen interest.
3. An individual who desires a buyout should:
 - a). Determine if their house has been substantially damaged. A city/county building official or floodplain manager will make this determination and issue a substantial damage certificate. Homes that have been substantially damaged, and are located in the regulatory floodplain, have the best chance of being selected for a buy-out.
 - b). Attend public meetings on disaster recovery that may be scheduled in their area. Watch local media and newspapers for the announcement of these meetings. Inform their city/county of their interest in a buy-out at that meeting, or beforehand by telephone or mail.
 - c). The individual remains in control during a buy-out program. If they do not wish to accept their city/counties buy-out offer, they may politely turn it down. If a city/county decides to make a buyout offer, it will make an offer based upon pre-flood market values, rather than post-flood or tax record values.

d). Because a city/county must compete for the available funding, it may not be able to immediately tell a homeowner that they will be receiving a buy-out offer.

4. Once a city/county decides that buy-outs are the mitigation measure it wants to pursue, it will select the properties that it wishes to buy, and apply to the State for financial assistance under the HMGP. 75% of the project costs will be paid for by federal funds, 25% by the city/county.
5. The State will collect the applications, and based upon funds available, select which city/county applications it will approve. A thirteen person State Hazard Mitigation Team decides which applications will be recommended to FEMA for funding.
6. Citizens who wish additional information should contact their local building official or floodplain manager.

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TAB D

SAMPLE NOI DEADLINES LETTER



GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT
Office of the Governor

RICK PERRY
Governor

Mailing Address:
PO Box 4087
Austin, Texas 78773-0220

Contact Numbers:
512-424-2138 Duty Hours
512-424-2277 Non-Duty Hours
512-424-2444 Fax

Physical Address:
5805 N. Lamar Blvd.
Austin, Texas 78752

STEVEN McCRAW
Director
Office of Homeland Security

JACK COLLEY
State Coordinator

(Date)

Dear Judge/Mayor:

RE: DR-()/NOI/HMGP-3.2

As a result of (Event type and incident period), a major disaster (FEMA- -DR) was declared by the President. The State will be authorized federal funds through the Hazard Mitigation Grant Program (HMGP). The HMGP is a 75/25 federal to local cost-share program designed to help local governments prevent reoccurring losses to citizens and infrastructures. It is imperative that these funds be used to reduce the risk of loss of life and property in the future.

Your jurisdiction is eligible to apply for these funds and I encourage you to take advantage of this opportunity. These funds will be allocated to jurisdictions based on a competitive application process. Types of projects which may be favorably considered are: removal of structures from flood-prone areas, drainage basin management actions that improve the retention/detention qualities of the riparian (overflow) zone, elevation of property above the basic flood elevation (BFE), and other floodplain related projects. Our highest priority will be the voluntary acquisition of residential structures to be removed from flood-prone areas. Acquisition of structures from the floodplain entails a permanent land use change that will provide a significant enhancement to the natural resource values and also, provide low-impact recreational opportunities to the public. **See Attached State of Texas Strategy Guidelines for HMGP Projects.**

Also attached is a "**Notice of Interest (NOI)**" form. If you wish to participate in the HMGP process, please provide preliminary data on the NOI and return it to this office no later than (**date**). If you have any questions, please call our State Hazard Mitigation Officer, at (512) 424-_____.

Sincerely,

Jack Colley
State Coordinator

cc: Emergency Management Coordinator

Attachments

STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN

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TAB E

SAMPLE NOI AND HAZARD MITIGATION TEAM REPORT FORM
NOI INSTRUCTION SHEET
SAMPLE NOI RESPONSE LETTERS

NOTICE OF INTEREST AND HAZARD MITIGATION TEAM REPORT

Date: _____

Applicant: _____

County: _____

Mitigation Action Plan approval date:		
If not approved – Date submitted to State:		
Preparedness Level of Emergency Management Plan:	<input type="checkbox"/>	Substandard
	<input type="checkbox"/>	Basic
	<input type="checkbox"/>	Intermediate
	<input type="checkbox"/>	Advanced
If substandard explain:		
Is this project geographically identified in the MAP?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
IF NO – is this <i>type of project</i> identified in the MAP?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Is project in a CRS Community?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Is project in a Firewise Community?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Is Community in good standing with NFIP?	YES <input type="checkbox"/>	NO <input type="checkbox"/>

1. Grant Incident:
2. Local Hazard Mitigation Coordinator(LHMC)/Project Officer: Mailing Address:
Phone#: _____ Fax#: _____ E-mail: _____
3. List number of Projects included in this NOI:

Applicant: _____

Work Project # 1	
1. Hazard Identification:	
2. Impact Area:	
3. Number of Previous Events Involving this Hazard:	
4. Number of Residents at Risk from this Hazard:	
5. Proposed Mitigation Action:	
6. Estimated Cost:	
7. Funding Method:	
8. Background and Discussion:	
9. Project Schedule:	
10. Local Hazard Mitigation Team (LHMT) Assessment:	

Use a separate Work Project sheet for each project – numbered separately beginning with #1

Applicant: _____

Work Project #
1. Hazard Identification:
2. Impact Area:
3. Number of Previous Events Involving this Hazard:
4. Number of Residents at Risk from this Hazard:
5. Proposed Mitigation Action:
6. Estimated Cost:
7. Funding Method:
8. Background and Discussion:
9. Project Schedule:
10. Local Hazard Mitigation Team (LHMT) Assessment:

Use a separate Work Project sheet for each project – numbered separately beginning with #1

INSTRUCTIONS FOR COMPLETING NOI/ MITIGATION TEAM REPORT
--

A. General:

The “Notice of Interest and Hazard Mitigation Team Report” is a two page report to assist the local jurisdictions and other eligible applicants, in the identification and implementation of mitigation actions that will reduce, or eliminate, loss of lives and future damages or losses to property.

The NOI report consists of the cover page for the jurisdiction/applicant information and the second page - a work project page to be filled out for each individual project to be submitted (use one page for each project – number them - and use as many as you need). One cover page may have many work project pages attached.

The NOI form is primarily used to document necessary mitigation actions following a disaster or significant event. However, in an ever-changing environment, this tool may also be used to document mitigation opportunities identified in other ways (e.g. findings or recommendations of special comprehensive studies), to update the community’s Hazard Analysis and Mitigation Action Plan (MAP) strategies.

IT IS RECOMMENDED THAT THE REPORT BE PREPARED NO LATER THAN 15 WORKING DAYS FOLLOWING A SIGNIFICANT EVENT.

B. Explanation of Report Components on page 1 (cover page):

The first three lines are for the date, the name of the applicant (ex: Incorporated City Name, County Name, or other eligible organization name) and the County in which the project is located.

The second section is a series of questions concerning the applicant. If the applicant is a jurisdiction (City or County) all of the questions apply and must be answered. For any other type of applicant some of the questions may not apply, but it is important that all questions are addressed – **these are screening criteria questions.**

1. Grant Incident:

This is a specific event such as “Hurricane Rita” or a specific disaster declaration number such as DR-1606. The event determines the Stafford Act funding stream for which the grant application is being made.

2. Local Hazard Mitigation Coordinator(LHMC)/Project Officer (HMC):

Identify the person (designated by the local elected official or organization CEO) responsible for completing the report and serving as the single point of contact concerning the project(s). This person represents the jurisdiction and works directly with the state project officer to manage and administer this project. **If this person should be changed a new Project Officer Designation Form must be submitted.**

3. List number of Projects included in this NOI:

If you are submitting 5 potential projects list each of them – and for your benefit we recommend you list them in priority order beginning with your most important project.

C. Explanation of Report Components on page 2:

For openers – don't overlook the applicant's name at the top right of the form – to avoid lost projects should the NOI become separated.

1. Hazard Identification:

This is only the hazard for the project on this page. The applicant might submit a storm shelter project for a windstorm hazard as work project #1, and a buy out project for a flooding hazard as work project #2, on the same NOI.

2. Impact Area:

This will be the area impacted for the project on this page. Identify the area(s) impacted by the incident/disaster such as a specific sub division, a section of property along a creek or drainage ditch, or a specific structure such as a building or bridge or culvert etc. This could also identify a vulnerable area potentially at risk such as a designated hurricane risk area, floodway, floodplain, dam failure inundation zone, high erosion or subsidence area, vulnerability zone, etc.

3. Number of Previous Events Involving this Hazard:

Example: If this project is for a flood hazard – how many times has it flooded, when, and how deep did it get?

4. Number of Residents at Risk from this Hazard:

This is a people count not a structure count. The twelve homes in the proposed buy out project might have 53 people living in them – we are looking for the 53 people. **NOTE:** Be sure to update this information if the NOI form was created before the application period - populations can change quickly in both quantity and make-up (example: a new nursing home or apartment complex is built in the project target area).

5. Proposed Mitigation Action:

Describe the proposed project. “Put your best foot forward” you are selling your project here – Be clear and brief but cover the major points (a project steps approach) example: (a) identify the number and value of structures at risk in a particular area (b) apply for environmental and historical preservation clearances (c) develop a land use plan (d) then invite property owners to participate, etc.

6. Estimated Cost:

This project only – and if possible, general cost breakdowns are helpful to us.

7. Funding Method:

IMPORTANT - This concerns the 25% match – will the community provide the grant match, will the homeowner provide the 25% for the buyout, is it a public/private project

with the private partner providing the match, or is the match coming from another grant? Once again this applies to this project only (there could be a different funding method on every project), and be as specific as possible.

8. Background and Discussion:

How did you arrive at this project? What happened? Why did it happen? How many solutions did you consider? Briefly explain the problem and what benefits will be derived once the problem is corrected.

9. Project Schedule:

How long will this take? When will it begin? **Remember: Activity per quarter is very important** – make your schedule and keep your schedule.... FEMA guidance is....Break your schedule into quarters – with at least 2 measures in each quarter – Do not propose projects requiring more than 2 years to complete.

10. Local Hazard Mitigation Team (LHMT) Assessment:

This should include information from the LHMT members such as reviews, evaluations, and other information to allow the local jurisdiction to prioritize the identified mitigation action.

This form was designed as a mitigation planning tool as well as a NOI. The work project sheets may be created as desired and necessary projects are identified. They may then be used in creating or updating your community hazard analysis, mitigation action plan, community projects, and various grant applications.

SAMPLE

NOI

RESPONSE LETTERS

**LIKLEY PROJECT
UNLIKELY PROJECT
INELIGIBLE APPLICANT OR PROJECT**

**(INSERT ON LETTERHEAD)
(SAMPLE LIKELY)**

Dear Applicant:

RE: DR-(insert disaster #) HMGP Hazard Mitigation Team Report

The Hazard Mitigation Grant Program (HMGP) is a 75/25 cost-share program designed to help fund projects that will reduce losses due to natural and man-made hazards. It is a competitive application process with limited funds available.

Thank you for the mitigation *NOTICE OF INTEREST* (team report) submitted by your organization. Based upon the published state priorities and funds available, we assess that funding is likely to be available for your proposed project(s); we urge you to apply. We have provided you an application package for your proposed project(s). The application packet is also available electronically upon request.

If you wish to present an official application, please forward the *ORIGINAL AND ONE COPY OF THE APPLICATION AND DOCUMENTATION* to this office for processing not later than (insert application deadline date).

The State Mitigation staff will be moving out of the (insert city name) Joint Field Office on (insert date). The State will continue to run weekly HMGP conference calls every (insert conference call information). To enter the conference call, dial 512-(insert #) and enter the PIN (insert #) followed by the # sign when prompted. Your application should be sent to the State Headquarters at:

Texas Department of Public Safety, Governor's Division of Emergency Management
ATTN: Greg Pekar, State Hazard Mitigation Officer
5805 N Lamar Blvd
P.O. Box 4087
Austin, Texas 78773-0226 (512) 424-2429 or FAX (512) 424-2444

If you have questions before (insert date and DPO information). After that time, please call Mitigation Grants Officer, Hildy Soper, at the Austin Office at 512-424-2454.

Sincerely,

(insert name of GAR or alternate GAR)
Governor's Authorized Representative (GAR)

**(INSERT ON LETTERHEAD)
(SAMPLE UNLIKELY)**

Dear Applicant:

RE: DR-(**insert disaster #**) HMGP Hazard Mitigation Team Report

The Hazard Mitigation Grant Program (HMGP) is a 75/25 cost-share program designed to help fund projects that will reduce losses due to natural and man-made hazards. It is a competitive application process with limited funds available.

Thank you for the mitigation *NOTICE OF INTEREST* (team report) submitted by your organization. Based upon the published state priorities and funds available, we assess that funding is unlikely to be available for your proposed project(s); however, you may still apply. We have provided you an application package for your proposed project(s). The application packet is also available electronically upon request.

If you wish to present an official application, please forward the *ORIGINAL AND ONE COPY OF THE APPLICATION AND DOCUMENTATION* to this office for processing not later than (**insert application deadline date**).

The State Mitigation staff will be moving out of the (**insert city name**) Joint Field Office on (**insert date**). The State will continue to run weekly HMGP conference calls every (**insert conference call information**). To enter the conference call, dial **512-(insert #)** and enter the PIN (**insert #**) followed by the # sign when prompted. Your application should be sent to the State Headquarters at:

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P.O. Box 4087
Austin, Texas 78773-0226 (512) 424-2429 or FAX (512) 424-2444

If you have questions before (**insert date and DPO information**). After that time, please call Mitigation Grants Officer, Hildy Soper, at the Austin Office at 512-424-2454.

Sincerely,

(**insert name of GAR or alternate GAR**)
Governor's Authorized Representative (GAR)

**(INSERT ON LETTERHEAD)
(SAMPLE INELIGIBLE)**

Dear Applicant:

RE: DR-(insert disaster #) HMGP Hazard Mitigation Team Report

The Hazard Mitigation Grant Program (HMGP) is a 75/25 cost-share program designed to help fund projects that will reduce losses due to natural and man-made hazards. It is a competitive application process with limited funds available.

Thank you for the mitigation *NOTICE OF INTEREST* (team report) submitted by your organization. Based upon the published state priorities and funds available, we assess that your project and/or your organization is ineligible for funding. Please contact the one of the POCs below to learn the details as to why this is the case. We have provided you an application package for your revised project(s), if any. The application packet is also available electronically upon request.

If you wish to present a revised application, please forward the *ORIGINAL AND ONE COPY OF THE APPLICATION AND DOCUMENTATION* to this office for processing not later than (insert application deadline date).

The State Mitigation staff will be moving out of the (insert city name) Joint Field Office on (insert date). The State will continue to run weekly HMGP conference calls every (insert conference call information). To enter the conference call, dial 512-(insert #) and enter the PIN (insert pin #) followed by the # sign when prompted. Your application should be sent to the State Headquarters at:

Texas Department of Public Safety, Governor's Division of Emergency Management
ATTN: Greg Pekar, State Hazard Mitigation Officer
5805 N Lamar Blvd
P.O. Box 4087
Austin, Texas 78773-0226 (512) 424-2429 or FAX (512) 424-2444

If you have questions before (insert date and DPO information). After that time, please call Mitigation Grants Officer, Hildy Soper, at the Austin Office at 512-424-2454.

Sincerely,

(insert name of GAR or alternate GAR)
Governor's Authorized Representative (GAR)

STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 3

HAZARD MITIGATION SECTION
FIELD STANDING OPERATING PROCEDURES

Hazard Mitigation Section Field Standing Operating Procedures

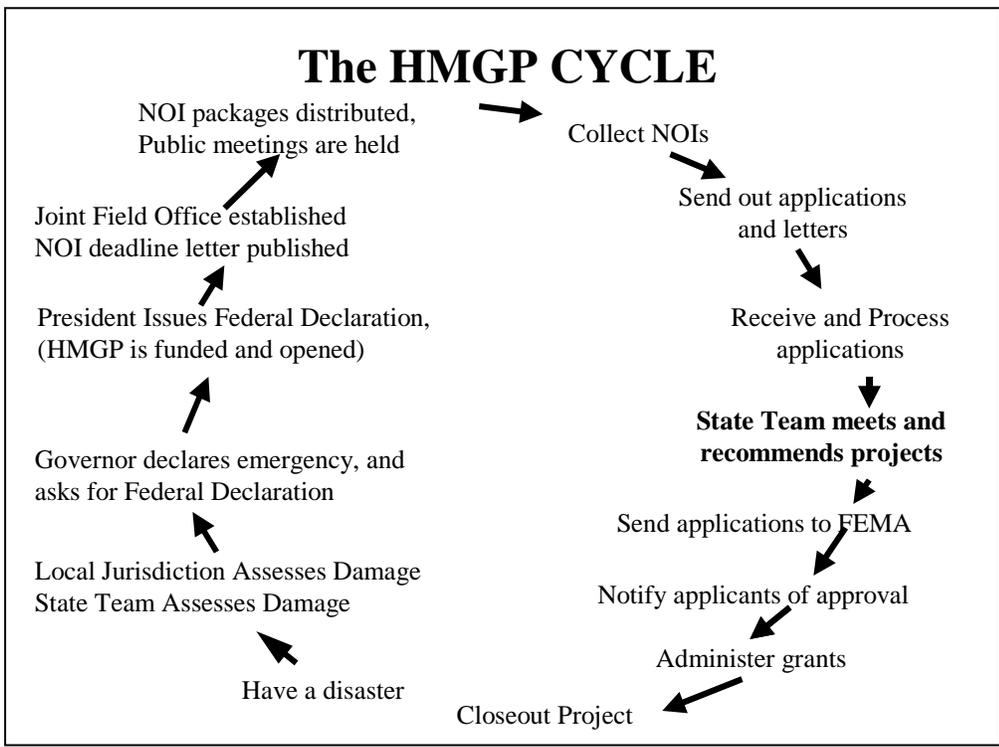
(SOP)



April 2004

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The above diagram delineates the HMGP cycle. This Field SOP will concern itself with the disaster event, through the collection of NOIs, the phases that normally take place in the field.

1. The mission of the Mitigation Staff during a disaster is to:

- Provide the Governors Authorized Representative with information as requested.
- Determine why the damage occurred (Damage Assessment)
- Advertise to Eligible applicants the availability of the Grant
- Populate the Quicklook 1 Spreadsheet (the primary field staff tool, which is both a guide to what the State desires to know and a record of what has occurred.)

Responsibilities:

GAR - (Governors Authorized Representative) The Governors’ personal representative in the Joint Field Office (JFO). Upon consultation with the assigned Disaster Project Officer (DPO), establishes State Deadlines for receipt of Notices of Intent (NOIs).

SHMO - (State Hazard Mitigation Officer) may deploy to the JFO initially, but normally manages the disaster from, and attends meetings in, the State Operations Center (SOC). Requests management funds and places the HMGP availability notices in the Texas Register. Maintains rosters of available Disaster Reservists. Assigns the DPO for the disaster and requests and assigns Mitigation Specialists and Disaster Reservists needed for the JFO, based upon the size of the event. Normal distribution is one specialist/reservist per 30 jurisdictions impacted but this may vary with distance and population density.

JFO Disaster Project Officer (DPO - normally the Mitigation Grants Officer) The SHMO assigns one of the Mitigation Grants officers as the Disaster Project Officer (DPO). The DPO duties include:

- Estimates of JFO mitigation staff, space, and supply requirements for the GAR

- Sets up Mitigation Area in the JFO
- Recommends any updates needed for the State Admin Plan filled with FEMA for each disaster
- Attends daily/weekly staff meetings in the JFO.
- Writes the daily/weekly Mitigation Sitrep for the JFO
- Gives mitigation staff their geographic assignments
- Reviews Outlook Journal entries for completeness and insures the Outlook .pst file is transferred back to Austin or Houston at the closing of the JFO
- Each week, reviews the Quicklook 1 spreadsheet to insure coverage of impacted jurisdictions and input of data. The Grants officer will not go home each Friday until the Quicklook 1 is filled.
- Speaks at the FEMA-State meeting
- Publishes Individual Talking Points letter for use in Disaster Recovery Centers (DRCs)
- Recommends HMGP target dates for potential sub grantee notifications and NOI deadlines to the GAR
- Attends public meetings as required (see attached ‘Community Meeting Guidelines’)
- Chairs the State Hazard Mitigation Team meeting that selects NOIs.
- Recommends the JFO mitigation section closure date to the GAR
- The DPO will further insure that the **Minimum Hazard Mitigation Field Library** is loaded and transported to the JFO:
 - CFR 44
 - Annex A
 - Texas Property Acquisition Handbook
 - FEMA Property Acquisition Handbook
 - DEM 21
 - Texas Hazard Mitigation Plan
 - FEMA 301 ICC Coverage
 - State Directory
 - HMGP Desk Reference
 - Texas Hazards Analysis
 - OMB Cir A-87
 - Texas Maps
 - Electronic Documents
 - a. HMGP Application
 - b. Texas Property Acquisition Handbook
 - c. Example HMGP deadlines document
 - d. Individual HMGP talking points
 - e. FEMA State meeting talking points
 - f. Example likely, unlikely, and ineligible NOI return letters.
 - g. Blank Quicklook 1 Spreadsheet
 - h. Standard HMGP Briefing (.ppt)
 - i. FEMA benefit cost modules and Yellow Book

Community Meeting Guidelines
V1.1

1. Principles:

- You are there to make the local officials look good, never say or imply that they are less than fully competent.
- Never get emotional, even when citizens get angry with you.
- Don't be afraid to say "I don't know, I will get back to you".
- Don't say much, you are there to backup the local officials when the citizens ask questions they don't know the answer to.
- Try and keep the length under 2 hours, tempers fray in longer meetings.

2. Day Prior:

- Contact the POC for the jurisdiction. Confirm date and time and location.
- Get or review the building layout or agenda for the meeting.
- Gently quiz the POC on their knowledge of HMGP procedures, make sure they know what they are talking about.
- Determine who (from the jurisdiction) will be taking citizen information..

3. Day Of:

- Plan to arrive 30 minutes early
- Wear your State Issued shirt
- Bring two dozen business cards
- Speak little, the local POC should do most of the talking.

4. Things to watch out for:

POC has no real plan or agenda, they just know "we are having a community meeting". When this happens, suggest the agenda/layout shown at the end of this document. The speakers should be from the jurisdiction office, but sometimes the IA speaker may be from FEMA. The citizens receive a general briefing covering all the subject areas, then go only to the table they are interested in.

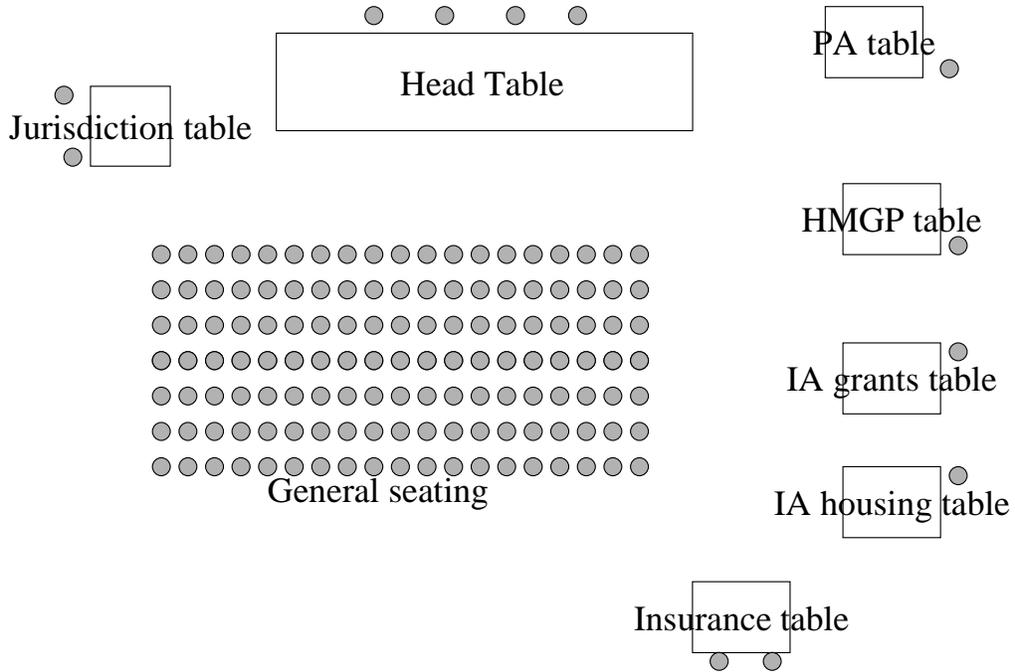
Citizens believe signup = buyout offer. Gently point out that the city will have more homes that need to be bought than they have money for, the city will have to decide which homes they will buy.

Citizens believe they are 'entitled' to receive a buyout offer. See above.

The Citizen who was not substantially damaged in the last federal declared disaster, but wants to participate because "my house always floods", must wait until they are substantially damaged, meanwhile, urge their city to adopt a repetitive loss provision in their NFIP bylaws.

If a Citizen tries to give you their contact information, gently point them at the city official who is taking that information for later contact.

Hand out your cards only to PNP and taxing jurisdiction officials.



Agenda

<i>MC Intro</i>	<i>10 min</i>
Mayor/Judge	5 min
IA program, general	20 min
NFIP	5 min
Insurance	10 min
HMGP general	10 min
PA general	10 min
Tables open	1 hour

STATE OF TEXAS

HAZARD MITIGATION

ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 4

HMGP APPLICATION PACKAGE

**Hazard Mitigation Grant Program
(HMGP)**



Comprehensive
Application
Package

The completed application should be mailed to:

State Hazard Mitigation Officer
Division of Emergency Management
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0226

Phone: (512) 424-2429
FAX: (512) 424-2444

STATE OF TEXAS

HMGP Project Application Package

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STATE OF TEXAS HAZARD MITIGATION GRANT PROGRAM

HMGP APPLICATION FORMAT

GENERAL INFORMATION

The Federal Emergency Management Agency (FEMA) places great emphasis on mitigation through the Hazard Mitigation Grant Program (HMGP). Cost-effective hazard mitigation measures identified through floodplain management review and other means may be eligible for grants. Federal contributions can be up to, but not exceed, 75% of the cost of the hazard mitigation measures approved for funding. Due to limited funding, the local applicant should be prepared to pay for a minimum of 25% of the project. All costs will be shared between Federal and local governments.

Law designates the State as the grantee for the receiving and awarding of HMGP funds by FEMA. The State will determine eligible applicants; recommend projects for funding; sub grant the funds to local jurisdictions for FEMA approved projects; account for the use of all HMGP funds; monitor the progress and completion of all projects; and provide a point of contact to coordinate project matters. FEMA is the final approving authority for all projects selected for funding.

PROCESS

Application for funding is a two-phased process, first prospective applicants will submit a Notice of Interest (NOI). The State will screen the NOIs for eligible projects and eligible applicants, and will reply back to interested applicants. Once an eligible applicant has submitted an eligible project on a NOI, they will be invited to submit a full application. NOIs are normally due approximately 30 days after the declaration, and applications are normally due 60 days after that, but these times vary for each disaster. The State will publish a letter, detailing the deadlines for each disaster.

ELIGIBILITY CRITERIA

THE FOLLOWING ENTITIES ARE ELIGIBLE TO APPLY FOR THE HAZARD MITIGATION GRANT PROGRAM:

1. State and local governments;
2. Private non-profit organizations or institutions that own or operate a private non-profit facility, as defined under State and Federal law;
3. Indian tribes or authorized tribal organizations.

AND THEY MUST HAVE:

1. A State and FEMA approved Mitigation Action Plan
2. A current emergency management plan that meets the requirements for a basic level of planning preparedness as defined in *the Preparedness Standards for Texas Emergency Management* (DEM-100 available on the Governor's Division of Emergency Management website).

FOR A PROJECT TO BE ELIGIBLE FOR THE HMGP, IT MUST:

1. Be in conformance with the State Hazard Mitigation Plan as a requirement of the FEMA-State agreement;
2. Have a beneficial impact, whether or not located in the designated disaster area;

3. Be environmentally sound in accordance with the National Environmental Protection Act (NEPA);
4. Solve a problem independently or constitute a functional portion of a solution where by there is assurance that the project as a whole will be completed. Projects that merely identify or analyze hazards or problems are not eligible;
5. Be cost-effective, i.e will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area should future disasters occur. Both costs and benefits will be computed on a net present value basis, and using 7% as the discount rate.
6. Substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. The applicant must demonstrate this by documenting that the project:
 - a. Addresses a problem that is repetitive, or a problem that poses a significant risk if left unsolved;
 - b. Is determined to be the most practical, effective, and environmentally sound alternative after consideration of a range of options.
7. Must be able to be completed within two years of the approval date.

APPLICATION ITEMS

To have projects considered for funding, applicants must provide the information requested by the HMGP Checklist. There are 14 items on the checklist. There are six general types of applications: **Planning, Acquisition, Relocation, Retrofit, Structural, and Initiative**. Each type has specific information requirements and may not require all 14 items on the checklist to be completed.

1. Completed State Project Application;
2. Completed Federal Application SF 424 and assurances;
3. Completed State Construction Assurances;
4. A Narrative Statement describing the specific mitigation measures for which funding is being requested;
5. A signed statement by the applicant's agent or chief elected/executive/financial official, certifying that the jurisdiction is able to meet the financial obligations of at 25% or more cost share under this program;
6. Proposed Work Schedule;
7. HMGP Agent Designation
8. Certifications Regarding Lobbying
9. Disclosure of Lobbying Activities
10. Completed Environmental and Historical Considerations Questionnaire
11. NEPA Coordination, letters to seven Federal and State Agencies with interest in NEPA
12. Environmental Justice Statement (Executive Order 12898)
13. Cost Effectiveness Study with DEM coversheet
14. Acquisition & Elevation Project requirements:
 - a. electronic spreadsheet with property data
 - b. Substantial Damage Certification (if requesting B-C waiver)
 - c. FIRM map with properties plotted
 - d. photos
 - e. 90-91 PA Worksheet, page 1

Types of Projects:

1. Planning Grants

Planning grants require only items 1,2,4,5,6,7,8, and 9 above. Planning grants can be given only for the development of Comprehensive Mitigation Action Plans that meet both State and FEMA approved standards or for the development of new building codes & standards. Plans that cover wide regions are preferred. The Narrative Statement for a planning grant must contain specific information concerning the populations and locations covered. Please see the DEM web site at: www.txdps.state.tx.us/dem/mitigation_planning_requirements_04172003.htm for details.

2. Acquisition

Regular Acquisition. Acquisition is the purchase of flood prone residential or commercial property. Structures on the property are razed, and the land is returned to the floodplain. Acquisitions are the most commonly funded mitigation project, and consistently rate high in the State's mitigation strategy. They permanently solve the problem, are not subject to maintenance budget cuts by subsequent administrations, reduce flooding in remaining neighborhoods, can be done quickly, and are not affected by increasing flood heights due to upstream development. The acquired land, with an open-space deed restriction, becomes the property of the jurisdiction. The jurisdiction can then make use of the property, or lease the land out, for uses compatible with the open space deed restriction. Common uses are: linear parks, RV campgrounds, golf courses, storage of mobile property, and certain flood control projects. The demolition of existing structures should be done with a Public Assistance grant, if PA is available to the jurisdiction, or with re-assigned flood insurance money. See table on following page for flowchart.

Regular Acquisition grants normally require items 1,3,4,5,6,7,8,9,10,11,12,13, and 14. Regular Acquisition projects that are cost-effective do not need to include item 14b. The jurisdiction will submit item 2, only when and if their project is selected by the State. See the 'Texas Property Acquisition Handbook' under separate cover, for additional instructions on buyouts.

Fast-Track Acquisition. Fast-Track acquisitions are a special category of acquisition that can be done very quickly due to some standing FEMA rules. In Fast-Track, the most difficult and time-consuming portion of the application process, the benefit-cost ratio calculation, is waived, along with some of the NEPA coordination. Fast Track acquisition applications can only contain properties that are:

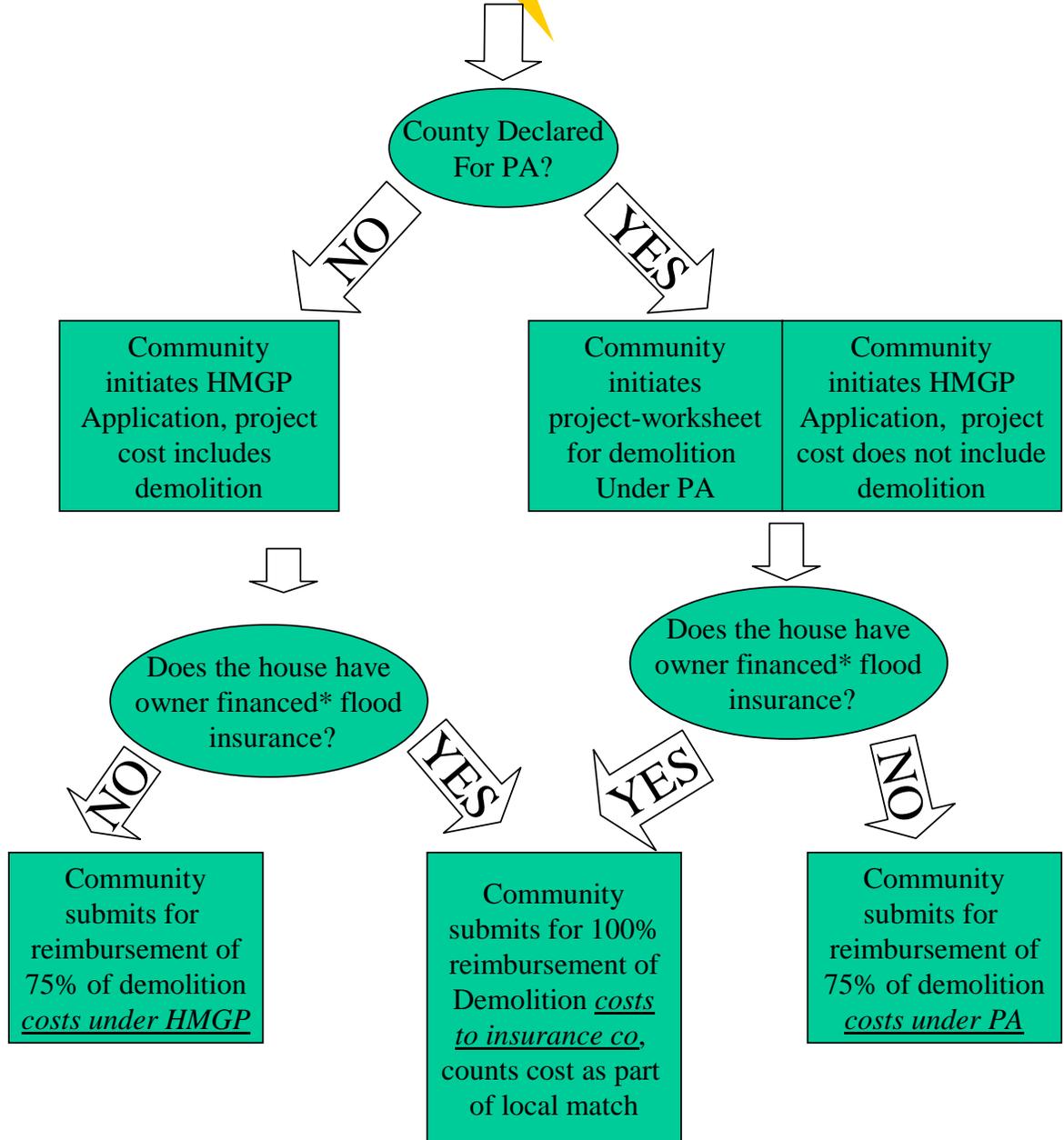
1. Substantially damaged in the incident period,
2. Located within a FEMA mapped 100 year floodplain,
3. Owner-occupied¹, and
4. Less than 45 years old.

Fast Track acquisition applications require items 1,2,3,4,5,6,7,11,12, and 14 on the checklist. Additionally, for item #11, Fast-Track requires only one letter, to the State Historical Preservation Officer. The State will not offer the opportunity for Fast-Track in all declarations, and the deadlines for Fast-Track applications will be different from Regular Applications.

¹ Normally substantiated by checking for a homestead exemption in the property tax records

Use of PA for Demolition of HMGP Project

Disaster Event, Subsequent HMGP Acquisition application



* Not purchased by FEMA individual grant in previous disaster

3. Relocation and Elevation.

These projects require all items on the checklist except 14b, and 14e. The vast majority of frame homes built in Texas are slab-on-grade. It is almost never cost effective to elevate or relocate these homes above or out of the 100 year floodplain, especially if they have even one side with a brick facing. Relocations of manufactured homes or pier-and-beam are more commonly cost effective. In an elevation or relocation project, the jurisdiction sponsors the homeowner's elevation of their home, selects the contractor, and pays the contractor. In many of these projects, the homeowner will donate the 25% match himself or herself, then recoup part of it from their flood insurance.

4. Retrofit.

Retrofit projects involve a wide array of projects that 'harden' structures or utility systems to withstand natural events without damage. Examples are: adding hurricane shutters to windows, replacing window glass with high-strength lexan glass, replacing commercial 'code' roofs with wind resistant engineered roofs, replacing wooden utility poles with high strength poles, or adding frangible links to crosspieces, elevating electrical switch boxes out of flood-prone basements, and elevation of record archives. The addition of emergency generators to public utilities may be cost effective, but must be balanced against the benefits of hardening the power distribution system instead. Wet and dry floodproofing of public or commercial structures is an eligible project; floodproofing of residential structures is not. Retrofit projects require items 1,2,3,4,5,6,7,8,9,10,11,12, 13, and 14d.

5. Structural

Structural Projects are normally new or improvements on drainage or retention projects. If the project requires new dirt to be disturbed, it may take as long as two years for the required Environmental Assessment to be completed. The benefit-cost study to support drainage projects also tends to be a formidable undertaking. Tornado shelters are a special category of structural project. Because they are inside the envelope of a building, they are eligible for a quick approval of the NEPA requirements, and they have proven to be cost effective over many areas of the state. In order to be eligible, the shelter must be constructed to an approved FEMA design. The construction of both individual and community shelters are eligible projects. In individual shelter programs, the individual normally donates the 25% match. Group shelters are often requested in schools or businesses, not owned by the local government, and for those type of shelters, an agreement showing how the local government will gain access to the structure, in perpetuity, will be a required attachment to the scope of work. FEMA has developed a simple tornado B-C module that works very well in calculating the b-c of tornado shelters; it is available upon request. Structural projects require checklist items 1,2,3,4,5,6,7,8,9,10,11,12, and 13.

6. Initiative

The congressional rules of the HMGP allow the State to waive the required benefit-cost ratio for 5% of the available HMGP funds. The State normally does this for projects for which it is impossible to write a benefit-cost study, such as public information campaigns, warning projects, and radio communication systems for operation centers.

SUGGESTIONS

Here are a few tips, which might help in preparing your application:

1. Refer to this package. There is a lot of information in the package that will help guide you through the process.
2. Be aware that there will probably be more applicants than available money; therefore, it is critical that you thoroughly document your project to be competitive for the funding. This is especially true for floodplain and environmental issues and the cost/benefit information of your project; therefore, the Environmental Considerations and Cost-Effectiveness questionnaires must be *very detailed*.
3. When writing the narrative portion of your application, be very clear and concise. The better the description and documentation of your project, the better your chances for funding.
4. Carefully follow the procedures in the Texas “Property Acquisition Handbook” for all property acquisition projects.

Even though this is a 75-25 cost-share program, due to the shortage of available funding you may have to provide more than 25% of the funding. Please remember that we need a *signed statement by a person authorized to commit funds*, stating that you can commit monies to the project.

Attached is a package of materials for your information. Additional helpful information is available on the various websites listed throughout this document and by contacting the Mitigation Section of the Governor’s Division of Emergency Management.

Some final thoughts: HMGP funds cannot be used as a substitute or replacement for project funds that are available under other Federal authorities, except under limited circumstances in which there are extraordinary threats to lives, public health or safety, or improved property. Also, HMGP funds may be packaged or used in combination with other Federal, State, local, or private funding sources when appropriate to develop a comprehensive mitigation solution, though HMGP funds cannot be used as a match for other Federal funds.

An Application Checklist is included in this application package. Use this Checklist to ensure your application is complete prior to submission. Please refer questions to the State Hazard Mitigation Officer.

Remember that the timely submission of a complete and accurate application is your responsibility. State staff will provide guidance and assistance as possible, but incomplete and/or inaccurate applications will cause delays and jeopardize your community’s participation and receipt of federal funds. You are responsible for compliance with all applicable Federal, State, and local laws and regulations pertaining to administration and management of this grant.

IT IS VERY IMPORTANT TO REMEMBER that your application will be viewed by a person who has never been to your community and your goal is for that person to “see” and understand the need for, scope of, and value of your project to your community.

Section II

Instructions

&

Forms

**Hazard Mitigation Grant Program
Application Checklist**

DR

JURISDICTION: _____

The following items must be completed and correctly assembled in the application:

1	2 Copies of entire application		
2	Completed State Project Application		
3	Completed Federal Application SF-424 and Assurances for Construction projects		
		FF 2016	
		FF 2016 A	
		FF 2016 C	
4	Narrative of Scope of Work (Explain the proposed project and provide a timeline for completion)		
5	Certification that jurisdiction can meet the 25% cost share requirement.		

6	Proposed work schedule		
7	HMGP Agent designation		
8	Certification Regarding Restrictions on Lobbying (form)		
9	Disclosure of Lobbying Activities (form)		
10	Completed Environmental and Historical Considerations Questionnaire		
11	Letters to/from :		
	State Historical Officer (SHPO) with list of properties of historical interest or constructed in 1956 or earlier.		
	US Fish & Wildlife		
	US Army Corp of Engineers		
	Texas Parks & Wildlife		
	TCEQ		
	General Land		
	US Department of Interior		
	Additional Letters or Comments		

12	Environmental Justice Certification (Executive Order 12898). If applicable, a plan for addressing requirements must be included with application.		
13	Flood Insurance Rate Map (FIRM) w/location by address of each property to be acquired and/or project.		
14	Completed Detailed Cost Effectiveness Data Worksheet (Except for Acquisition of Substantially Damaged Properties in the Floodplain)		
15	Photos: Before, During, and After if possible		
16	Database (on diskette) *Acquisition Only		
17	Letter: Floodplain Managers Certification for Substantially Damaged Properties (Acquisition Only)		

ITEM 2: STATE APPLICATION

State Application Instructions

Following paragraph numbers match the blocks on the form.

1. List the county in which the project will take place, or be headquartered in.
2. List the full and correct name of the jurisdiction; example: City of Crystal City instead of Crystal City.
3. This is a code that identifies in which county the project will take place. Go to <http://www.tnris.state.tx.us/ResearchCenter/fipscodes.htm> to find the FIPS code for your county.
4. This is the mailing address to which you wish correspondence to be mailed, not the project location.
5. Name, position, e-mail, business phone, and fax number for the project point of contact.
6. The name of your project. The first word should be one of the six types of projects. Example: Structural, rebate construction of 20 individual tornado shelters. Use this same name on the federal 424.
7. List at least one measure. This measure must also be addressed in your benefit cost study.
8. Fill in the data. Check math carefully.
9. Block 9 can be no larger than 75% of block 8.
10. Assume a 6-month approval period. Projects that will take longer than two years to complete will normally not be selected by the State.
11. Check the appropriate box on this partial checklist. Not every box will be checked, based upon the type of project. When meeting the NFIP requirement, the determining factor is the location of the project, rather than the location of the home office or headquarters.
12. Signature, in blue ink, of the senior elected official in the jurisdiction. For school districts and private-non-profit agencies, this can be the executive director.
13. The title of the individual signing the document.

HAZARD MITIGATION GRANT PROGRAM

05/94

PROJECT APPLICATION

Applicants, please fill in sections 1 - 13 only.

Texas Division of Emergency Management

1. PROJECT COUNTY:

5. POINT - OF - CONTACT

2. NAME OF APPLICANT: (CITY, AGENCY, ETC.)

PHONE:

3. FIPS CODE:

FAX No.

4. ADDRESS: (STREET, CITY, ZIP)

6. DESCRIPTION OF PROJECT / SCOPE OF WORK:

7. LIST ALTERNATIVE MEASURES CONSIDERED:

8. ESTIMATED PROJECT COST: \$

THIS SECTION FOR STATE USE ONLY

9. FEMA FUNDING REQUESTED: \$

DISASTER DECLARATION NUMBER:

10. PROPOSED PROJECT: *START DATE*

DATE RECEIVED:

ENDING DATE:

APPLICATION #: RANK:

11. ATTACHED DOCUMENTATION (REQUIRED PRIOR TO FINAL APPROVAL):

STATE RECOMMENDATION

APPLICATION FORM

Yes

No

RECOMMENDED

NARRATIVE STATEMENT

Yes

No

NOT RECOMMENDED

SIGNED FINANCIAL CERTIFICATION

Yes

No

INELIGIBLE

ENVIRONMENTAL QUESTIONNAIRE

Yes

No

COMMENTS:

BENEFIT COST ANALYSIS

Yes

No

SF424

Yes

No

PARTICIPANT IN NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Yes

No

12. SIGNATURE:

SHMO SIGNATURE:

13. TITLE:

DATE:

DATE:

ITEM 3. SF-424 AND FEDERAL ASSURANCES

Download the form from http://www.fema.gov/xls/ofm/sf_424.xls. This is a standard form used by many different applicants for financial assistance. Please see Mitigation Job Aide #2 ftp://ftp.txdps.state.tx.us/dem/mitigation/instructions_sf424.pdf for instructions on filling out this form.

The 424 must be accompanied by federal assurances. Download them at: http://www.fema.gov/xls/ofm/ff_2016.xls Note the tabs on this document. You will need to print three of the forms. Print, check the appropriate boxes and sign the 20-16 summary. The same person who signs the 424 will need to sign this form. You will need to print and attach the 20-16A if you have a planning grant, or public information campaign; use the 20-16B for everything else.

State Assurances

Download the form from ftp://ftp.txdps.state.tx.us/dem/mitigation/texas_assurances.pdf. Only construction projects need attach this form. Read the form and insure your agency/jurisdiction is in compliance. The same person who signed the 424 should sign it. Acquisition projects are considered construction projects.

ITEM 4. NARRATIVE STATEMENT

Your narrative statement should not exceed one page. Describe your proposed mitigation measure, why you are doing it, what alternatives you considered,

ITEM 5. COST SHARE CERTIFICATION

This is normally a letter, on agency or jurisdiction letterhead, containing words to the effect: I certify that (name) jurisdiction is able to meet the 25% cost share, or more, of the (identified) project. The words **'or more'** are very important. This says that the jurisdiction/agency is committing to completing the project, even if they experience cost overruns that cannot be covered by the grant. This letter must be signed by an individual who is authorized to commit the agency/jurisdiction to financial obligation (i.e. sign checks). (**Appendix 6**)

ITEM 6. PROPOSED WORK SCHEDULE

Explain the proposed work schedule, broken down into work elements. Insure that your schedule shows that your project plan indicates completion within two years. Do not submit projects that cannot be completed within two years of final project approval. (**NOTE: This application time schedule will be considered the project master time schedule and all quarterly reports will be compared to this master when rating project performance. To be valid a time schedule must have a minimum of two measures scheduled for each quarter.**)

ITEM 7. HMGP AGENT DESIGNATION

Use the form ftp://ftp.txdps.state.tx.us/dem/mitigation/project_officer_form_10162002.rtf to designate who the primary and secondary contact will be. The same person who signed the State

application will need to sign this form, which designates who can act in their behalf. In addition to the chief-elected official themselves, these are the only people with whom the State will

communicate concerning the project. You may choose a contractor for one or both of these positions. If the designated agent changes during the course of the project, you will need to re-submit this form. **(Appendix 6)**

ITEMS 8 & 9. LOBBYING CERTIFICATION AND DISCLOSURE

All applicants will need to print and fill out the 20-16C (located in the tabs below the SF 424) http://www.fema.gov/xls/ofm/ff_2016.xls . Only attach the SF LLL if you have had lobbying activities. (Normally, only private non-profit agencies have lobbying to disclose. There is no signature on this form, only check blocks and addresses).

ITEM 10. ENVIRONMENTAL AND HISTORICAL REQUIRED INFORMATION

Projects funded under the Hazard Mitigation Grant Program (HMGP) must comply with certain environmental requirements. Coordination with all appropriate agencies and individuals is very important. The first step is to determine if the individual project is categorically excluded from the need to prepare an environmental document. The types of projects that do not need the environmental analysis are those that will not result in any physical change to the environment. Such projects include:

- Development of Mitigation Action Plans
- Public education programs and training activities
- Studies that involve no commitment of resources other than manpower and funding
- Technical assistance activities such as warning systems and other projects which do not change the geographic “footprint”

If it is determined that a project meets the categorical exclusion (CATEX) criteria, provide a brief explanation describing the project and why there will be no impact to the environment.

All other projects should include an environmental analysis to aid in the compliance with environmental requirements. Other State agencies such as the Texas Commission on Environmental Quality or the Texas Historical Commission may have information pertinent to the potential environmental impacts of the project. Phone records or letters of response should be included in the submittal package. Information provided in this analysis should be as complete and thorough as possible to expedite approval.

TIPS:

- “Yes” or “no” answers will not be sufficient,
 - Both beneficial and adverse impacts must be addressed
 - On separate paper, a letter in paragraph fashion must address the following issues
 - All issues must be addressed. If the subject of the paragraph does not apply to your project, do not just write ‘not applicable’. Explain in a sentence or two why you believe the subject is not applicable.
1. Need for the proposed action: What is the problem? Discuss in general terms why the project is needed and provide some history on the importance of solving this particular problem.
 2. Description of the proposed action, including location (if applicable), all actions associated with implementing the mitigation project, and timing of project implementation.

TIP: This is where you initially sell your project be clear, complete and accurate.

Provide a complete description, including maps, photos, and/or diagrams as appropriate. Aerial photography of the project area is particularly effective in displaying project features in relation to landform and occurring vegetation. Include acreage or linear feet of area that will be affected, estimated quantities of material, current land use, and a clear statement of the scope of the project.

The entire project may not require an environmental analysis, but all aspects of the project should be discussed. Discuss the relationship between the elements of the project that do and do not require the environmental analysis.

3. Alternatives considered, including the “no action” alternative.

Be as specific as possible in listing the alternatives. The “no action” alternative must be included. Do not discuss impacts of the alternatives here; simply define what other types of solutions were considered.

4. A discussion of existing resources in the project area.

Provide a brief description of the project area. Include natural and historic resources, significant cultural or social issues, and land use concerns. It is important to note the existence of any special resources in this section, such as endangered species, historic or archaeological sites, wetlands, etc.

5. An analysis of the environmental effects of the proposed project and alternatives.

This is the major section of the environmental analysis. Provide as much background information on the existing conditions as necessary to assist in the evaluation of the potential impacts. It is important to include information on the impacts of the alternatives as well as the proposed project. **Documentation, such as letters, permit applications, or copies of actual permits, should be included as attachments.**

A. LAND USE AND SOCIOECONOMIC ISSUES:

- 1) Determine whether or not the proposed project is consistent with land use in the area.
- 2) Identify and describe effects of the relocation of any structures due to the project.
- 3) Describe how the project might have a significant effect on the economic activities of the area.
- 4) Describe the project effects on any parks or recreational areas.
- 5) Does the proposed activity or project require a Coastal Zone Consistency Determination? Indicate how the project is consistent with the State coastal zone management plan.
- 6) Identify the project effects on any prime and unique farmlands, or farmlands with statewide or local importance.
- 7) Is the project located in a floodway or floodplain? If so, hydrologic analysis may be required. For documentation, attach a letter from the chief elected official or

floodplain administrator stating that the community participates in the National Flood Insurance Program and that the requirements of your floodplain management ordinance will be implemented regarding this project; and if any structures will be

- 8) built as part of the project, state what steps will be taken to ensure that the 100-year flood elevation requirements will be met.

B. AIR AND WATER QUALITY ISSUES:

- 1) What effect will the project have on air quality?
- 2) Will the project require any dredging and/or disposal of any material (including construction) in any wetlands or waterways? Does the project require a Corps of Engineers (USACE) Section 11 and/or Section 404 permit? The Nationwide Permit Program under 33 CFR 330.5 automatically covers some activities. Those discharges not covered require more formalized authorizations. Please consult the regulation or call the appropriate Corps office for more information. NOTE: If you need to call the USACE office to obtain the above information, please provide the date and the name and phone number of the person contacted.
- 3) Describe the project scope of work activities that will modify streambeds and banks or remove streambed or bank material in the project area.
- 4) How will the project affect any declared current wild and scenic river or any river being studied for inclusion as a wild and scenic river?

C. NATURAL RESOURCES ISSUES:

- 1) Describe the vegetation communities present in the project area, emphasizing the identification (species) and quantification (acreage) of dominant vegetation cover types (vegetation map of project area). Also, identify sensitive ecosystems which occur in the project area, such as springs, natural waterways, floodplains, riparian vegetation corridors, wetlands, bays, estuaries, native grasslands, etc.
- 2) Describe areas within the project area defined as wetlands by the U.S. Army Corps of Engineers.
- 3) Describe the occurrence of threatened or endangered species (or their habitats) as listed by the U.S. Fish and Wildlife Service and the Texas Natural Heritage Program. The 'Green Book' published by the FEMA environmental staff for each disaster can be of great use in this.
- 4) Identify public use and open space areas in the vicinity of the proposed project, such as parks, natural areas, wildlife preserves and management areas, and designated wild and scenic areas. Identify areas of high recreational significance, such as hiking trails, river systems used by float or canoe enthusiasts, or areas known for high quality hunting and fishing.

D. ARCHAEOLOGICAL AND HISTORICAL ISSUES:

- 1) Identify historical resources likely to be impacted by the proposed project.
- 2) Contact any local historical societies or authorities to determine if the project site is located in any area of archaeological, cultural, or historical significance.
- 3) Contact the Texas Historical Commission **NOTE:** a letter from the State Historical Preservation Officer (SHPO) is required on all project applications.

E. FOR ACQUISITION PROJECTS:

- 1) Describe the infrastructure in the area; typical lot size, type of wastewater discharge (septic or community plant), and neighborhood drainage method (none, roadside ditch, underground storm sewer, swales, and presence of retention features). Identify the type of local drainage systems the neighborhood systems discharge into. (fully concrete lined, open channel with rock stabilization, sculpted grass lined channel, unmodified native stream)
- 2) Identify the degree of disturbance of occurring native vegetation, especially trees, and the degree to which residential landscaping has modified vegetation and landform throughout the community.

F. HAZARDOUS MATERIAL ISSUES:

- 1) Discuss any hazardous materials present including any underground storage tanks, hazardous building materials present, or hazardous waste sites.
- 2) Do the same on each alternative project considered in **ITEM 10. , #3** of the application.

G. PUBLIC INVOLVEMENT ISSUES:

Depending on the type of project, there may be minimal public notification (e.g., newspaper announcement) or there may be considerable public involvement (e.g., public hearings or town hall or neighborhood meetings). The level of public notification should be included in the documentation, including dates and copies of any notices.

ITEM 11. NEPA Coordination Letters

Identify who was contacted in the development of the project and in the preparation of the environmental analysis. As mentioned above, documentation of the coordination is critical to the processing of your application. This may consist of phone contact records, letters, or meeting minutes. The types of agencies or groups that should be contacted will vary depending on the type of project and potential environmental impacts.

TIP: We recommend that you coordinate with agencies early in the application process so that you can take advantage of that particular agency's expertise, and identify, as early as possible, any potential problems.

Letters of review, comments, and/or requirements should be attached to the application package. Response correspondence from agencies should also be attached. As a minimum, letters to the following agencies, asking if they have interest in your proposed project, **are required**. Appropriate agencies for coordination include:

- A. Texas Parks and Wildlife Department for impacts to endangered and threatened species and critical habitat as well as fish and wildlife conservation issues.
- B. Texas Historical Commission for impacts to historic and archaeological resources. This agency has information on properties currently listed on the National Register of Historic Places as well as properties being considered for local, State, and Federal listing. A letter from the **STATE HISTORICAL PRESERVATION OFFICER (SHPO)** is mandatory for the application submission of all projects, and the list of addresses involved must be incorporated in the body of the letter not attached.
- C. General Land Office for compliance with Coastal Zone Management programs. A ‘favorable’ comment from the GLO is required for final approval of projects that take place in the Coastal Management Zone.
- D. Texas Commission on Environmental Quality for compliance with floodplain management regulations, including construction impacts on floodways and floodplains.
- E. U.S. Department of Interior for potential impacts to identified or proposed wild and scenic rivers or other wilderness areas.
- F. U.S. Army Corps of Engineers to identify potential impacts on wetlands or waters of the U. S.; USACE may require a permit for construction in navigable waters or a permit for discharge of material into waters of the U.S.
- G. U.S. Fish and Wildlife Service to identify threatened or endangered species or their habitats (under Endangered Species Act - Section 7 consultation).
- H. U. S. Environmental Protection Agency for potential impacts to air and water quality. The project could require discharge or other permits.
- I. Appropriate Local Departments or Agencies for local permit requirements, significant resources, or construction impacts.

The project application may be accepted before the agencies have responded, but may not be funded until the letters have been returned, and any issues resolved. **NOTE: The information provided will be analyzed at both the State and regional FEMA levels to determine if there will be significant environmental impacts resulting from the proposed project. See Appendix 7 – FEMA Public Assistance and Hazard Mitigation Grant Program Environmental Considerations and Contacts for additional guidance.**

ITEM 12. Environmental Justice Statement

Environmental Justice has nothing to do with the environment; rather, it has to do with equal treatment of disproportionately low income or minority populations. Presidential Executive Order (EO) 12898 requires Federal Agencies, which includes FEMA, to identify and address any disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on low income and minority populations. HMGP projects that change land use practices or remove structures from flood risk areas may also contribute to a reduction of available, affordable housing in the disaster-affected area. If this situation has a disproportionately

high and adverse effect on the low income or minority population, additional actions are required to correct this imbalance and insure that environmental justice is achieved.

The most common environmental justice issue encountered is lack of local affordable housing during a buyout program. The pre-flood real estate value of the home that is bought out is insufficient to purchase a comparable home in the local area. When this occurs, the jurisdiction must provide additional funding, in cash or property, which will bring the offering price up to equitable, local, housing prices. This additional payment is not an eligible project cost.

As a means to comply with EO 12898 requirements, all HMGP applications must include an Environmental Justice Statement signed by the authorized agent or chief elected/executive official that answers the following:

1. Are there concentrations of low income or minority populations in or near the HMGP project?
2. Will the HMGP project result in a disproportionately high and adverse effect on low income or minority populations?
3. What action(s) will be taken to insure achievement of environmental justice for low income and minority populations?

ITEM 13. Flood Insurance Rate Map (FIRM)

The FIRM with the location by address of each property /project must accompany the application to identify it's location in relationship to the floodplain or floodway.

ITEM 14. Cost Effectiveness Study

With three exceptions, all HMGP projects must be accompanied by a cost-effectiveness study. The exceptions are:

- A Mitigation Action Plan
- An Acquisition project totally comprised of structures that were certified as Substantially Damaged² in the disaster event, and which are in a FEMA mapped floodplain.
- Projects requested under the 'Initiative' category.

It is a Federal requirement that all Hazard Mitigation Grant Program (HMGP) projects be cost-effective, meaning that the project benefits (avoided future losses) are higher than the project costs. Project costs and benefits will be computed on a net present value basis; net present value is defined as the total value of benefits over a project's life, discounted by a rate determined by the Office of Management and Budget. **(The Benefit Cost Coversheet is located in Appendix 6).**

ITEM 15. PHOTOS

Photos are one of the best tools for recording the before, during and after aspects of a project. All projects are subject to reviews and audits during the project term and for the duration of the record keeping requirements. Photos may also be requested to verify progress reports.

ITEM 16. PROPERTY DATABASE

For acquisition and elevation projects the information required database (provided on a diskette) is completed and submitted with the application.

ITEM 17. SUBSTANTIAL DAMAGE CERTIFICATES

The floodplain manager or building permit office in the jurisdiction normally issues the Substantial Damage Certificate or Certification Letter. This letter is required for substantially damaged properties in acquisition projects.

STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 5

HMGP FORMS

- 1) Sample Financial Certification Letter**
- 2) Project Officer Designation**
- 3) Benefit Cost Coversheet**
- 4) Sample Environmental Justice Statement**
- 5) Engineering Check List**
- 6) Certificate of Completion**
- 7) Demolition Certificate**
- 8) Quarterly Report**
- 9) Payment Request Form**
- 10) Extension Request Guidance**

FORM # 1

SAMPLE OF A SIGNED FINANCIAL CERTIFICATION LETTER

City of FloodSurge

City Hall, 3333 Lost Boys Ave. Floodsurge, Texas 76510-4567

A town so lively, even the river can't stay in it's banks

_____ 2004

This is to certify that the Town of Floodsurge is liable and has ready access to the funding for 25% or more of the attached acquisition project, with a total project cost of

_____ dollars.

Signed,

Slick Weasel
Chief Financial Officer
City of Floodsurge

FORM # 2

**PROJECT OFFICER DESIGNATION
For
HAZARD MITIGATION GRANT**

Date

Subgrantee: _____

Local Government or eligible Agency/Organization

Hazard Mitigation Grant Program (HMGP) Project Number: _____

Pre-Disaster Mitigation Program (PDM) Project Number: _____

I designate my Project Officer for this grant as follows:

Primary Project Officer	Secondary Project Officer
Name	Name
Organization	Organization
Official Position	Official Position
Mailing Address	Mailing Address
City, State, Zip	City, State, Zip
Daytime Phone	Daytime Phone
Fax Number	Fax Number
Email	Email
<p>The above Primary and Secondary Project Officers are hereby authorized to execute and file application for this mitigation project on behalf of this organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or otherwise available. Designated Project Officers are authorized by the below Certifying Official to represent and act for this organization in all dealings with the State of Texas for all matters pertaining to this grant, and will serve as the single point of contact with the designated State Project Officer.</p>	

Signature of Mayor, Judge, or Executive Director

Date

Printed Name of above Authorized Official

FORM # 3

Texas State Benefit-Cost Study Coversheet.
(this coversheet to be attached to the face of any benefit-cost study submitted for HMGP or PDM)

The benefit-cost for this project is _____ to 1.

Date: _____

1. The Benefit-Cost study method I have chosen to use is: (check one)

- The FEMA Very Limited data module.
- The FEMA Limited data module.
- The FEMA Full data module.
- A different benefit-cost method of my choosing.

2. If not using one of the FEMA modules, the method used in my benefit-cost study involves:
(check one, if applicable)

- Method 1, I will extrapolate data from past losses into the future.
- Method 2, I will compare the structures design or elevation to expected loads or flood heights.

3. If using the FEMA Limited, or Very Limited data module, or Method 1 of my own choosing, the loss frequency is _____ years³.

4. I have checked and to the best of my ability to determine, the attached benefit-cost study is mathematically correct. Additionally, all figures used are supported by foot-notes and attached documentation.

Name of Person Preparing

³ This is a number, not a range of numbers. Example: 5 years or 6.7 years, not 'frequently' or 'every 5 to 7 years'

SAMPLE OF ENVIRONMENTAL JUSTICE STATEMENT

City of FloodSurge

City Hall, 3333 Lost Boys Ave. Floodsurge, Texas 76510-4567

A town so lively, even the river can't stay in it's banks

____ 2004

This is to certify that a study of housing prices was conducted by the city and found that alternate housing of similar quality and similar price is available within 5 miles of the target neighborhoods.

Signed,

Sue Tyrant
City Administration Office

FORM # 5

HAZARD MITIGATION GRANT PROGRAM ENGINEERING CHECKLIST

Project Title:

Applicant:

Project Number:

Project Location:

Grant Number:

<u>Yes</u>	<u>No</u>	<u>Attached</u>	<u>Overall Project Information</u>
		<input type="checkbox"/>	How was this project identified?
<input type="checkbox"/>	<input type="checkbox"/>		Will this project change effective BFE's, floodplain or floodway boundaries?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Has a flood study been prepared?

What level of planning has been completed?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Conceptual – General layout, flow capacity, due diligence study, and quantity estimate
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Preliminary – 35% plans with survey, plan and profile sheets, grade lines and potential conflicts identified
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Final Plans – 100% complete plans and bid documents
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Has a Conditional Letter Of Map Revision (CLOMR) been prepared? <input type="checkbox"/> Prepared <input type="checkbox"/> Submitted <input type="checkbox"/> Approved

STRUCTURAL ELEMENTS

- 1) Check “Yes” for those elements that are proposed in this project,
- 2) list the number of each type of proposed structural element,
- 3) provide one copy of the corresponding “Structure Check List” for each proposed structure.

<u>Yes</u>	<u>No</u>	<u>Number</u>	<u>Structure Type</u>	<u>Page</u>
<input type="checkbox"/>	<input type="checkbox"/>		Detention / Retention	2
<input type="checkbox"/>	<input type="checkbox"/>		Diversion	2
<input type="checkbox"/>	<input type="checkbox"/>		Berm / Floodwall	3
<input type="checkbox"/>	<input type="checkbox"/>		Flap Gate / Flood Gate	3
<input type="checkbox"/>	<input type="checkbox"/>		Channelization	4
<input type="checkbox"/>	<input type="checkbox"/>		Bridge / Culvert	4

HAZARD MITIGATION GRANT PROGRAM ENGINEERING CHECKLIST

Project Title:

Applicant:

Project Number:

Project Location:

Grant Number:

DETENTION / RETENTION CHECK LIST

Fill out this section for each element for this project

Name/Description of Element: _____ Number _____ of _____

Drainage Area: _____ sq. mi. Type of Structure: Detention Retention

Does any portion meet the state definition of a Dam? Yes No

Design Storm: _____ Classification _____

	Design Storm	100-Year
Peak Inflow (cfs)		
Peak Outflow (cfs)		
Storage Volume (ac-ft)		

Sizing Method: Computer Model (HEC-1, HEC-HMS, TR-20, etc):

Modified Rational Method Other:

Immediate downstream maximum non-damaging discharge: _____ cfs

DIVERSION CHECK LIST

Fill out this section for each element for this project

Name/Description of Element: _____ Number _____ of _____

Drainage Area: _____ sq. mi. Type of Structure: Off Channel Storage Other:

Design Storm: _____

Peak Inflow: _____ cfs Diverted Flow: _____ cfs Remaining Flow: _____ cfs

Diversion is proposed by: Gravity Pumping

Proposed pump _____ Number: _____ Size: _____ gpm

Description of sizing method: is _____ is not attached

Immediate downstream maximum non-damaging discharge: _____ cfs

HAZARD MITIGATION GRANT PROGRAM ENGINEERING CHECKLIST

Project Title:
 Applicant:
 Project Number:

Project Location:
 Grant Number:

BERM / FLOODWALL CHECK LIST

Fill out this section for each element for this project

Name/Description of Element: _____ Number _____ of _____
 Type of Structure: Berm Floodwall Other:

Design Storm: _____ Proposed Material: Earthen Concrete Other:

	Drainage Area (sq. mi)	Design Discharge (cfs)	100-year Discharge (cfs)
Water side			
Land side			

Minimum Freeboard: Average: _____ ft Upstream End: _____ ft Downstream End: _____ ft

- Internal Drainage Plan Yes No Attached
- Geotechnical Report Yes No Attached
- Hydraulic Study Yes No Attached
- Proposed Pumps Yes No Description Attached

Immediate downstream maximum non-damaging discharge: _____ cfs

FLAP GATES / FLOOD GATES CHECK LIST

Fill out this section for each element for this project

Name/Description of Element: _____ Number _____ of _____

Design Storm: _____ Hydraulic Study Yes No Attached

	Drainage Area (sq. mi)	Design Discharge (cfs)	100-year Discharge (cfs)
Water side			
Land side			

Upstream Pool Elevation: _____ ft. msl. Lowest Finished Floor of Adjacent Structures: _____ ft. msl.

Pool elevation determined by: Computer Model (HEC-1, HEC-HMS, TR-20, etc):
 Modified Rational Method Other:

HAZARD MITIGATION GRANT PROGRAM ENGINEERING CHECKLIST

Project Title:
 Applicant:
 Project Number:

Project Location:
 Grant Number:

BRIDGE / CULVERT CHECK LIST

Fill out this section for each element for this project

Name/Description of Element: _____ Number _____ of _____

Method used to size the proposed structure (e.g., HEC-2, HEC-RAS, WSPRO, HY8): _____

Dimensions: Culvert Set #1 barrels foot span by foot rise Material:
 Culvert Set #2 barrels foot span by foot rise Material:
 Culvert Set #3 barrels foot span by foot rise Material:

Upstream Flowline: Downstream Flowline: High Chord: Low Chord:

Total cross sectional area below low chord: sq. ft. Drainage Area: sq. mi.

Design Storm: Structure Capacity: cfs at Headwater Elevation: ft. msl.

	Design Storm	100-Year
Peak Discharge (cfs)		
Tail Water (ft msl)		
Headwater (ft msl)		

Immediate downstream maximum non-damaging discharge: cfs

CHANNELIZATION CHECK LIST

Fill out this section for each element for this project

Name/Description of Element: _____ Number _____ of _____

Proposed material: Earthen/grass lined Concrete Gabion Lined Other:

Drainage Area: sq. mi. Design Storm:

Design Peak Discharge: cfs 100-Year Peak Discharge: cfs

Channel Capacity: cfs with feet of freeboard without freeboard

Sizing Method: Computer Model (HEC-2, HEC-RAS, etc):
 Hand Calculation (Manning's Equation or other):

Immediate downstream maximum non-damaging discharge: cfs

MITIGATION GRANT

CERTIFICATE OF COMPLETION

SUBGRANTEE: _____

PROJECT NUMBER: _____

HMGP NUMBER _____

PDM NUMBER _____

FINAL PROJECT COST _____

FEMA SHARE AUTHORIZED _____

FEMA SHARE SPENT _____

DATE PROJECT COMPLETED _____

SUBGRANTEE ID NUMBER _____

CERTIFICATION

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL WORK AND COSTS CLAIMED ARE ELIGIBLE IN ACCORDANCE WITH THE GRANT CONDITIONS, ALL WORK CLAIMED HAS BEEN COMPLETED, AND ALL COSTS CLAIMED HAVE BEEN PAID IN FULL.

SIGNED:

APPLICANT'S AUTHORIZED REPRESENTATIVE

TITLE:

DATE:

DEMOLITION CERTIFICATE

(Jurisdiction Name All Caps)

THIS IS TO CERTIFY THAT THE PROPERTY IDENTIFIED BELOW IS LOCATED IN _____ COUNTY AND HAS BEEN INSPECTED TO DETERMINE COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE STAFFORD ACT, SECTION 404, PROPERTY ACQUISITION AND DEMOLITION POLICIES AS ADMINISTERED BY THE STATE OF TEXAS AND IT'S REPRESENTATIVES.

PROPERTY LOCATED AT

Address: _____

LAT - _____

LONG - _____

DATE

LOCAL CERTIFYING OFFICIAL

TITLE:

MITIGATION JOB AIDE #4**TEXAS MITIGATION GRANT PROGRAMS QUARTERLY REPORT (NARRATIVE)****1. Purpose**

On having your mitigation project approved, you will receive a project approval letter. Along with the letter you will receive a number of documents, among them will be a Quarterly Report for your project. A blank version of this form can also be downloaded from our web site at <http://www.txdps.state.tx.us/dem/documents.htm - mitigation>

The Texas Mitigation Grant Programs Quarterly Report (Narrative) is used to provide a simple, time saving way to share information about, identify problems with, list accomplishments concerning, and identify assistance needed for you to complete your project. The report is also designed to provide Jurisdictional and Local Project Officer information to the State, and should be updated as conditions change.

2. Requirements

Submitting accurate and timely Quarterly Reports is a condition and grant program requirement. Failing to submit the report can result in non-payment of requested funds and/or withdrawal of funds by FEMA and the State.

3. Submission and Deadlines

It is recommended that you contact your State Project Officer (identified on your Project Approval Letter) and get a copy of the initial report emailed to you, or download a blank copy from our website and transcribe the data from the paper copy of the initial report attached to your Project Approval Letter. This will allow you to use the initial report as the basis for building, submitting, and filing your report electronically. The preferred method of submission is an attachment emailed to your State Project Officer. Of course, you may also mail or fax your report if you do not have access to email. Once your project is approved, your Quarterly Report is due to your State Project Officer each quarter through completion of your project. The due dates for Texas Mitigation Grant Programs Quarterly Report (Narrative) are as follows:

- 1st Quarter (Oct–Dec) due January 15
- 2nd Quarter (Jan–Mar) due April 15
- 3rd Quarter (April–June) due July 15
- 4th Quarter (July–Sept) due October 15

4. The Report

A copy of the report is attached at the end of this job aide with numbers in parentheses () designating the items referred to in the following list. An asterisk * designates information provided by the state on your initial report.

- (1) “Date” (This should be the date you completed the report)
- (2*) “Funding Source”
- (3) “Quarter” (This is the period of time covered by your report. For instance, if you are sending in a quarterly report covering the months of October thru December, you should check the “1st” box)
- (4*) “Disaster” or “FEMA Grant” number
- (5*) “Project” or “PDM Project” number
- (6*) “Subgrantee Name” (Organization receiving the grant)
- (7) “Point of Contact” (Per Project Officer Designation form on file. If change occurs, indicate on the report, and also submit a new designation form)
- (8 and 9) (As changes occur, report them to your State Project Officer).
- (10*) “Amount Obligated” (Federal share of money designated for project)
- (11*) “Date Obligated”
- (12*) “Period of Performance Completion Date” (End of projected Performance Period entered on application)
- (13*) “Project Start Date”
- (14) “Federal Funds Paid to Date” (This is to be filled in by you and should be the Federal funds you have received as reimbursement payments from the State)
- (15) “Narrative Report” (Self-explanatory)
- (16) “Problems/Delays Encountered and Reasons Why” (During the report period, identify, if any, problem(s) that may have delayed or complicated your efforts to complete your project)
- (18) “Percent of work completed” (This is not a precise number, but a reasonable approximation of the amount of the project that has successfully been completed)

(19, 20, 21, 22) These are only to be completed if you are doing an acquisition project

(23) “Change of Scope/Extension Date” (Date of an approved major change in the projects scope of work of, or extension of the projects performance period)

(24) “Do you anticipate”
(25, 26, 27) (Check yes or no)

(28) “Project Close Date” (To be filled in when known)

(29) “Final Cost of Project” (To be filled in when known)

A copy of the Quarterly Progress Report form is located on the following page

Texas Mitigation Grant Programs

Quarterly Report (Narrative)

(1) Date: _____

(2*) Funding Source (FMA, HMGP, or PDM): HMGP 1st 2nd 3rd 4th

(3) Quarter:

(4*) Disaster Number (HMGP): FEMA-____-DR-____ (5) Project Number: _____

Or

FEMA Grant Number (FMA /PDM): _____ PDM Project Number: _____

(6*) Sub-grantee Name: _____

(7) Point of Contact: _____

(8) Project Description: _____

(9) POC's Phone Number: _____

(10*) Amount Obligated: _____

(11*) Date Obligated: _____

(12*) Period of Performance Completion Date: _____ (13*) Project Start Date: _____

(14) Federal Funds Paid to Date: _____

(15) **Narrative Report:** Please describe: 1) specific activities achieved during this quarter; 2) comparison of actual accomplishments to the planned objectives established in the application; 3) reasons for slippage if objectives are not being met; and 4) an analysis and explanation of possible cost overruns/under runs, scope changes or extensions. If acquisition, elevation or a relocation project, please include addresses of structures mitigated.

(16) **Problems/Delays Encountered and Reasons Why:**

(17) State Comments/Actions

(18) Percent of work completed: _____

FOR ACQUISITION PROJECTS ONLY:

Record the number of structures:

(19) Acquired	(20) Demolished	(21) Still to be Purchased	(22) Still to be Demolished

(23) Change of Scope/Extension Date: _____

Do you anticipate:

(24) a) cost overrun/underrun next quarter?

Yes **No**

(25) b) a change in the Scope of Work?

Yes **No**

(26) c) an extension of performance period?

Yes **No**

(27) Project Close Date: _____

(28) Final Cost of Project: _____



DIVISION OF EMERGENCY MANAGEMENT

Office of the Governor

RICK PERRY
Governor

Mailing Address:
PO Box 4087
Austin, Texas 78773-
0220

Contact Numbers:
512-424-2138 Duty Hours
512-424-2277 Non-Duty
Hours
512-424-2444 Fax

Physical Address:
5805 N. Lamar
Blvd.
Austin, Texas 78752

STEVEN McCRAW
Director
Office of Homeland Security

JACK COLLEY
State Coordinator

SAMPLE MISSING QUARTERLY REPORT LETTER

Date

Jurisdiction
Point of contact

Your jurisdiction has failed to meet it's deadline for the last quarterly report on project (#), due on (date). Your ability to request reimbursement on project cost is suspended, effective the date of this letter.

Payments may resume after you have submitted the delinquent report. You are reminded that two consecutive quarters showing no progress on the project, may result in the termination of your project approval and the withdrawal of funding.

If you have any questions concerning this please contact the State Hazard Mitigation Officer, Mr. Gregory Pekar, 512-424-2429.

Closing,

Signed by the State Coordinator



GOVERNOR'S DIVISION OF EMERGENCY MANAGEMENT

Office of the Governor

RICK PERRY
Governor

STEVEN McCRAW
Director
Office of Homeland Security

Mailing Address:
PO Box 4087
Austin, Texas 78773-0220

Contact Numbers:
512-424-2138 Duty Hours
512-424-2277 Non-Duty Hours
512-424-2444 Fax

Physical Address:
5805 N. Lamar Blvd.
Austin, Texas 78752

JACK COLLEY
State Coordinator

April 7, 2005

Mr. Kenneth Pryor
City Manager
City of Edna
126 West Main
Edna, TX 77957

RE: Payment Request 1 – DR-1479-016

Dear Mr. Pryor:

This letter is in reference to your request dated March 31, 2005, for reimbursement for the installation of a standby generator. We have reviewed the documentation and have processed reimbursement in the amount of \$26,358.00. These funds will soon be available for your use.

If you have any questions please contact your state project officer Hildy Soper at 512-424-2454 or via email at Hildy.Soper@txdps.state.tx.us.

Sincerely,

Greg Pekar
Mitigation Section Administrator

CC: DEM Auditor
 Joe D. Hermes, Mayor



**TEXAS
DEPARTMENT
OF PUBLIC SAFETY**

**DIVISION OF
EMERGENCY
MANAGEMENT**

**QUARTERLY
HAZARD MITIGATION
PROJECT PAYMENT REQUEST**

1. GRANTEE

TEXAS DEPARTMENT OF PUBLIC SAFETY

2. PROJECT
NUMBER ASSIGNED

3. SUB-GRANTEE (Name and complete address, including zip code)

4. EMPLOYER I.D. NO.

5. TOTAL APPROVED
FEMA SHARE

6. FINAL REPORT
 YES
 NO

7. FEDERAL FISCAL
YEAR

2004

8. PERFORMANCE PERIOD
From:
To:

9. Period Covered This Report
From:
To:

STATUS OF REPORT

10. QUARTER DATE ENDING	(a) Quarter 1 12/31/03	(b) Quarter 2 03/31/04	(c) Quarter 3 06/30/04	(d) Quarter 4 09/30/04	(e) TOTAL
a. Total Salaries	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
b. Total Benefits	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
c. Total Salaries & Benefits (a + b)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
d. Total Travel Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
e. Total Reproduction/Distribution Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
f. Total Other Itemized Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
g. Total Project Costs (c + d + e + f)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
h. Sub-Grantee Share of Project Cost @ 25%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
i. Federal Share of Project Cost @ 75%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

DETAILED EXPLANATION OF EXPENSE ITEMS REPORTED IN 10a THROUGH 10f

11. REMARKS: Attach itemized list of project expenses (examples shown below, use additional pages if needed) **CAPITAL EXPENDITURES MUST BE APPROVED IN ADVANCE**

12. **CERTIFICATION:** *I certify to the best of my knowledge and belief that this report is correct and complete. That all project work was contracted through a competitive bid process and verification of all bids may be required for successful application and completion of the project.*

TYPE OR PRINT NAME AND TITLE	SIGNATURE OF AUTHORIZED REPRESENTATIVE	TELEPHONE NO. (include area code & extension)	DATE SIGNED

HMGP Payment Request Form, February 14, 2002

Procedure for Completing Quarterly Hazard Mitigation Payment Request Worksheet

This form is being implemented to track expenses specific to project costs approved by FEMA and related to Hazard Mitigation by the Texas Department of Public Safety (TXDPS), Governor's Division of Emergency Management (GDEM), Hazard Mitigation Section (HMIT).

The following is a summary of the guidelines required for the successful completion of this form. This form is in Microsoft Excel format and the numerical fields will calculate values. Please remember to make a copy for your records and send via email to Oralie Huggins at Oralie.Huggins@txdps.state.tx.us

This form will be completed on a quarterly basis and submitted to your State Mitigation Project Officer **NO LATER THAN 30 DAYS FROM THE END OF THE QUARTER. ALL PROJECT COSTS ARE SUBJECT TO AUDIT AND MUST BE VERIFIED OR VERIFIABLE BY TXDPS OR THOSE PROJECT COSTS MAY BE DENIED.**

Instructions

While filling out this Worksheet, the following is a step by step instruction checklist on reporting the information necessary to receive payment:

- #1 – Grantee is the Texas Department of Public Safety and will remain the same and not change under this program – **DO NOT CHANGE.**

- #2 – Project Number is the Number assigned to the Project by Texas Department of Public Safety (TXDPS) Division of Emergency Management (DEM)
- #3 – Sub-Grantee is the applicant Jurisdiction/Agency. An authorized contact name, and complete address, including zip code is required.
- #4 – Employer Identification Number (EID) is the assigned Federal Tax Number for the Entity, Jurisdiction or Agency.
- #5 – Total approved FEMA share is the approved amount provided by FEMA that equals to 75% share paid for the project. This figure will be provided to you prior to commencement of project work
- #6 – Final Report indicates whether this is a final report or an interim report. Place an “X” in the appropriate box.
- #7 – Indicates the Federal Fiscal Year which ends on September 30th.
- #8 – Indicates the Performance Period. This is the period of time allocated for project completion. Fill in the period when work was preformed until work is completed.
- #9 – Indicates the Period Covered by this Report or the Quarter being reported.
- #10 – Indicates the segregated costs considered in this Project Analysis and Payment Request.
 - #10 a – Is the Total **BASE** salaries per employee with full employee name & supervisors name **NO OVERTIME OR FRINGE BENEFITS SHOULD BE INCLUDED.**
 - #10 b – Fill in the Benefits Costs incurred during the quarter. These include all fringe rates paid by employer: health insurance, overtime, vacation time, 401k, etc.
 - #10 c – Is a calculated field based on #10 a & b and includes Total Salaries and Benefits Costs.
 - #10 d – Is Total Travel Costs. For example: for mileage: miles x \$0.345 per mile = \$0.00; or for airfare for staff: copies of tickets, rental vehicles: receipts, etc.
 - #10 e – Is the Total Reproduction and Distribution Costs (printing related). For example, public notices in newspapers, training materials for public and staff, etc.

PLEASE NOTE THAT THE ABOVE COSTS MUST BE ITEMIZED AND VERIFIED.

 - #10 f – Is the Total of all Itemized Costs not covered in 10a through 10e. **These Costs must be itemized and reported in detail in space provided in Section 11.**
 - #10 g – Is the Total of all Project Costs: (10 c + d + e + f) this is a calculated field and includes the sub-total of all Salaries and Benefits.
 - #10 h – Is a calculated field based on 25% of #10 g and includes the Sub-Grantee Share of the project cost based on the approved amount in Section 5 of form.
 - #10 i – Is a calculated field based on 75% of #10 g and includes the Federal Share of the project cost based on the approved amount found in Section 5 of form.
- #11 – Fill in any and all remarks pertinent to the Project Costs. This space is intended for explanation of any Project Costs as well as inclusion of supporting documentation. Examples are shown below, use additional pages if needed. Additional, third party documentation may be referenced and sent seperately (See #12)
- #12 – Fill in the Certification.
 - #12 a - **Read the Certification Statement. By signing your name, you attest to these facts as presented and these are subject to all Federal & State laws.**
 - #12 b - Type or Print your Name and Title.
 - #12 c - Sign – Must be a Signature of an Authorized Representative (See Section #3 of these instructions) .
 - #12 d - Fill in Telephone Number including area code and extension if necessary of the Authorized Representative.
 - #12 e - Fill in the Date Signed. **MUST NOT EXCEED 30 DAYS OF THE END OF THE QUARTER AND MUST BE SUBMITTED WITHIN THOSE 30 DAYS.**

· Please Note: All participants are encouraged to fill out this sheet in excel and email to their TXDPS Project contact. A copy of this request should also be kept for your records for audits. Questions regarding this form may be directed to Oralia Huggins, Audit Section Administrator at 512-424-2439.

Form #10

EXTENSION REQUEST JUSTIFICATION

Requests for time extensions to the Performance Period will be considered but will not be granted automatically and must be supported by adequate justification in order to be processed. The justification is a written explanation of the reason or reasons for the delay; an outline of the remaining project funds available to support the extended Performance Period; and a description of performance measures necessary to complete the project. Without the justification, extension requests will not be processed. Listed below are examples of the areas that should be addressed in order to complete the review of Extension Requests.

1. REQUEST: (NOTE: FIANCIAL AND PROGRESS REPORT MUST BE CURRENT)

- a. The request should be submitted 60 days prior to the expiration date of the Performance Period (per the Grant Articles of Agreement).
- b. “After” the expiration date of the Performance Period extensions must provide the reason that the Grantee did not request an extension “prior” to the Performance Period expiration date.

2. REASON FOR DELAY:

- a. Identify the status of the project. If several projects have been approved, the status of each project included in the extension must be identified.
- b. Give a brief description for delay in completion of the project within the Performance Period. Identify the circumstance(s), e.g. NAPA review, lack of match, unavailable contractors, etc., and if appropriate why this circumstance(s) caused the delay.

3. BUDGET:

- a. Identify the remaining funds, both FEMA and match, available for the extended period.
- b. Outline how the remaining funds will be used. If several projects are included in the extension, provide the budget associated with each project.
- c. Identify the source for additional funding, if remaining FEMA funds will not support the extension period.

4. PLAN FOR COMPLETION:

- a. Identify the Objectives necessary to complete the project.
- b. Identify completion dates for each of the Objectives.
- c. List the position/person responsible for oversight of the completion of the project.

- 5. PROJECT COMPLETION DATE:** (1) Identify the projected completion date for the Grant Award.
(2) Identify the initial grant award performance period and previous extensions.

- 6. NO CHANGE TO THE SCOPE OF WORK:** Provide a certification that the project will be completed within the extended Performance Period without modifications to the approved scope of work or that FEMA will approve changes of scope/modifications to projects prior to implementation.

Timeline for Requesting an Extension of Performance Period Developed by the FEMA Region VI Mitigation Division

Requests for performance period extension are requests made and concurred with by the State Grantee to FEMA to extend the period for the availability of funds, usually for sub-grants.

It should be understood that performance period extensions should:

- be rare;
- be dependent upon the existence of unusual circumstances;
- not be considered automatic, and;
- not be considered the norm.

Region VI is providing a timeline that State Grantees should follow when working with their Sub-grantees to properly manage the last 6 months of a grant. By following this timeline, extensions requests can be timely and accurately submitted. In some cases, the need for the extension may also be avoided.

120 Days Before the End of the Performance Period

The State Grantee should review the quarterly financial and performance reports submitted by each Sub-grantee for a grant that will soon be closing. Upon reviewing this information and comparing it to the Sub-grantee's approved Statement of Work and Work Schedule, the State should be able to determine if:

- work is progressing and will completed;
- delays are occurring;
- past performance reports accurately describe the progress and if all reports have been submitted, as required.

Contact should be made with those Sub-grantees that appear to be behind their Schedule of Work to determine the current status of the funded project and to encourage completing the project within the performance period.

90 Days Before the End of the Performance Period

For those sub-grantees identified by the State Grantee as potential extension candidates, the State should again contact the Sub-grantee. If the State Grantee believes that an extension review is warranted, the Sub-grantee should be asked to provide the State Grantee the following information no later than 75 days before the end of the performance period:

1. Request for Extension;
2. Justification/Reason for Delay;
3. Revised Budget;
4. Plan for Completion;
5. Project Completion Date;
6. Assurances of No New Work.

For greater details on the 6 elements above, please see the "Extension Request Justification" form.

75 Days Before the End of the Performance Period

The State Grantee will review the Sub-grantee request(s) to ensure that the information provided is a) accurate; b) justified; and c) is supported by the State Grantee when requesting an extension from FEMA.

60 Days Before the End of the Performance Period

In accordance with the Grant's Articles of Agreement, the State Grantee will submit a request in writing for an extension request no later than 60 days before the end of the performance period. This correspondence should be provided to the FEMA Regional Assistance Officer with a cc: to the Program Manager. Information requirements include:

1. State support for the extension;
2. Grant Funding Source (HMGP, PDM, or FMA);
3. Grant Number or Disaster Number;
4. Sub-grant project name;
5. Sub-grant project number;
6. Requested time extension (justified for no more than 1 additional year), and;
7. Attachment(s) detailing the Justification bullets listed above for each sub-grant that an extension is being requested.

By abiding to these procedures, this will ensure that FEMA has adequate time to:

- review your request package for completeness;
- compare it with guidance, regulations and/or policy for eligibility;
- review previously submitted quarterly reports for the grant/sub-grant;
- coordinate with the Regional Assistance Officer;
- contact your office if additional information is needed, and;
- provide an Agency decision on your request.

Second Requests for Extension

For any requests for second extension, please follow the directions above, including acknowledging that previous extensions have been provided. Strong justification for the delay will be needed, which must be well documented. The total performance period length may be no more than 5 years. Both the Regional Program Manager and Assistance Officer must agree with your written request. Only then will the Region formally submit your request to FEMA Headquarters for review and concurrence.

STATE OF TEXAS
HAZARD MITIGATION
ADMINISTRATIVE PLAN

Appendix 6

**Property Acquisition Handbook
For Local Jurisdictions**

STATE OF TEXAS

PROPERTY ACQUISITION HANDBOOK

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EXHIBITS

- Exhibit A - Letter to Property Owner
- Exhibit B - Statement of Determination of Compensation
- Exhibit C - Agreement
- Exhibit D - Warranty Deed
- Exhibit E - Certification of Inspection and Possession
- Exhibit F - Property Owner Acquisition Case File Checklist
- Exhibit G - Subgrantee’s Quarterly Progress Report
- Exhibit H - Acquisition Purchase Process for Local Government Applicants
- Exhibit I - Property Demolition/Disposal Management Process

PROPERTY ACQUISITION HANDBOOK STATE OF TEXAS

1. INTRODUCTION:

A. Grantee:

The Texas Governor's Division of Emergency Management (GDEM) enters into a FEMA-State agreement in order to obtain funding to acquire flood damaged property to be demolished and removed from the floodplain and to convert the land use into perpetual open space. GDEM represents the state and is designated as the Grantee in the HMGP process.

B. Sub-Grantee:

GDEM in turn, has entered into a cooperative grant agreement with various communities in which the communities are authorized to acquire certain flood damaged real property. These cooperative grant agreements contain certain provisions and require that the acquisitions be made in a manner that is consistent with the requirements of the Grant and of the Federal Emergency Management Agency Section 404 regulations. Local governments are applicants, and those with projects recommended for funding by the state are designated as Sub-Grantees.

C. Strategy:

Funding available to Texas under FEMA's Hazard Mitigation Grant Program (HMGP) for a Federally-declared disaster will be "locked" at a fixed amount, determined as 7.5% of FEMA funds expended for the Individual and Public Assistance programs (minus administrative costs). Because these HMGP funds are usually sufficient to cover only a small portion of the desired acquisition projects, the State uses a competitive application process and a prioritized acquisition strategy to ensure that the most desirable projects are funded. These strategy guidelines may be found in the document titled "State of Texas Strategy Guidelines for HMGP Projects" and in the notice of interest package given to local governments.

D. Notices of Interest:

Immediately following a disaster declaration, the State Hazard Mitigation Unit will distribute information on the HMGP and "Notice of Interest" forms to officials of affected jurisdictions. If the jurisdiction wishes to pursue HMGP funding, the Notice of Interest Form should be completed and returned to the Hazard Mitigation Unit by the announced deadline (normally 30 days following the declaration). The purpose of the Notice of Interest is for the jurisdiction to declare its interest in pursuing HMGP funding and to provide the Hazard Mitigation Unit with a broad description of the proposed project, an estimated project cost, and a contact person.

E. Grant Applications:

Upon receipt of all Notices of Interest Forms, the Hazard Mitigation Unit evaluates the proposed projects for eligibility under FEMA and State guidelines and then forwards the HMGP application packages to qualifying applicants. In compiling an application, the jurisdiction should use a consistent method of pre-disaster, estimated fair market value property valuation, and separate the properties into the categories described in the State strategy. The number of classes of properties determines the length of time the community may be involved in the acquisition process.

NOTE: Project expenses incurred for projects that are not approved, are not reimbursable. For projects that are approved, reimbursable expenses may not be incurred previous to the completion of the environmental assessment.

Jurisdictions must provide their completed HMGP applications to the Hazard Mitigation Unit by the announced deadline (normally 60 days following the application package distribution date). Extensions to the deadline may be requested and granted on a case-by-case basis, but slippages may delay all projects and compress the time available for project execution. Following receipt of all applications, the interagency State Hazard Mitigation Team (SHMT) will be convened to review, score, and rank the applications. The SHMT's project ranking recommendations are then submitted to the Governor's Authorized Representative (GAR) for the final assessment of those projects to be included in the State HMGP application to FEMA. FEMA will review the State's application and grant HMGP funds to the State for FEMA approved projects. The State will then grant the FEMA approved funding to the subgrantees for project execution.

NOTE: The local jurisdiction (not the State) will conduct all transactions with property owners. The State Hazard Mitigation Unit will provide assistance on hazard mitigation matters to subgrantees as requested.

F. Information Requirements:

Competition for funds is very intensive, so the more information provided the better. This provides a clear picture of the project and greatly facilitates its review and scoring of project applications. Each property owner must carefully complete the "Property Description and Damage Report". Additional information requested are photographs of the structure (front and side view if possible); video of area, if available; aerial photos of subdivision, if available; legal property description (as found at the courthouse); copy of plat (individual/subdivision); flood maps with property marked; map of jurisdiction, showing location of property, and a letter of certification from the local floodplain Manager certifying that substantially damaged structures (by address) in the floodplain will not receive permits to rebuild/restore to pre-flood conditions.

G. Application Database:

Because of the comprehensive information requirements for each individual piece of property to be acquired, GDEM has developed a database to assist in the management of projects. Applicants will use this database or a database entry record for submission of their projects. Use of this database will greatly simplify and expedite the application process. A copy of the current database on disk will be provided by GDEM. The electronic file is in Access or Excel and called 't properties modified'.

H. Cost Estimation:

Total estimated project cost must be based on the cumulative costs per structure. Costs for each individual structure includes estimated pre-flood market value; closing costs (legal fees for title and lien search, appraisal etc.); demolition / removal costs, to include environmental abatement; and relocation costs up to \$5,250.00 for renters (if renter-occupied 90 days prior to beginning of negotiations); flood and private insurance claims payments and applicable federal grant payments for this disaster will be deducted from the appraisal value to prevent **duplication of benefits**. Costs associated with public use of vacated property, such as development into a park cannot be included in acquisition project costs.

I. Voluntary Participation:

Property owner's participation in property buyouts funded through the HMGP **MUST BE** on a voluntary basis. If property owner chooses to reject offer, then property will be dropped from any future consideration for HMGP acquisitions, and the Jurisdiction is forbidden from using its power of condemnation to acquire the property while the HMGP project is open. Subgrantee must inform property owners of these facts, as well as what it believes to be the fair market value of the property and how that value was determined.

J. Tenant Relocation Assistance:

Acquisition of property through the HMGP is voluntary, and property owners are not entitled to assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). However, certain displaced tenants in rental property are entitled to relocation assistance under the URA. The actual amount of URA assistance will vary, but will not exceed the amount prescribed by law, which is \$5,250.00. The cost for providing relocation assistance to authorized tenants can be paid directly by the subgrantee and credited as part of the 25% local match requirement, or the URA amount can be added to the cost of the individual rental property to be acquired. This method would increase the cost of the structure to be purchased through a 75%/25% FEMA to local cost share.

If rental property is included in your application, the state will provide you with additional instructions concerning computation of URA requirements.

K. Adjusted Project Costs:

Applications, even when approved by FEMA, are to be based on estimated project costs. Adjustments to project costs based on actual expenses, actual appraisal values, etc., are possible but must be approved by GDEM before funds are spent. Projects approved by FEMA are based on a fixed amount of money for an applicant to purchase a fixed number of structures at an identified cost per structure. If any of these factors change, you must have GDEM approval before funds are committed. The more accurate the estimates are, the fewer adjustments will be required, and consequently, the faster this process can be completed.

L. Project Execution:

Upon notification by GDEM Hazard Mitigation Unit that a project is approved, jurisdictions must post the public notice required for work in the floodplain, (send a copy to GDEM), then begin the property acquisition process such as initiating appraisals, in accordance with the quarterly measures as identified on the project application. Jurisdictions may request advances of FEMA-share funds only. To insure funds are available for scheduled closing, GDEM must receive a request for funds 25 days prior to the closing date. Requests for funds need to identify each property by address, the offer amount, and associated closing costs. Close accounting of expenditures is necessary if in-kind costs are to be used as all or part of the 25% local cost share. Quarterly Project Reports must be submitted by all subgrantees to the Hazard Mitigation Unit to allow progress tracking. **QPR's are due to GDEM fifteen (15) working days after the end of the quarter.** Upon project completion, all projects will be audited.

NOTE: It is the Applicants responsibility to ensure that the application submitted is on time, complete, and correctly assembled with all required documentation. Therefore, an Application Checklist is provided to assist in compiling a complete submission. Failure to provide the required information identified in the checklist will cause undue delay in forwarding the Application to FEMA. HMGP is a very competitive grant program and an incomplete application delays processing and could jeopardize award of funds.

2. **SUMMARY OF THE ACQUISITION PROCESS:**

A. The first step is the commitment of an applicant jurisdiction to actively participate in the project. The second step is to actively involve all local property owners to commit fully to participate in this voluntary process. A Property Acquisition Package for Property Owners should be copied and provided to all property owners that will potentially be participants in the buy out program. The package contains information and a number of documents to be completed by property owners to insure their property is considered and included in the project application.

- B. The acquisition process begins with establishing a value to be used as a basis for compensating each property owner included in the project. Once this value is established, any flood insurance payments, or FEMA Housing Assistance (HA-home repairs grant) received by the owner of the property will be deducted from this value to arrive at an amount of compensation for the property. This provision for deductions **only** applies if the money received was not put back into the structure as repairs! The property owner must provide proof for repair invoices marked paid or other receipts.
- A. The jurisdiction must provide each property owner with:
- a document that explains the acquisition process and the specific amounts used to determine compensation
 - a proposed “Statement of Determination of Compensation “ as shown in Exhibit B – indicating agreement in a determined price between the owner/seller of the property, and the community/purchaser.
- D. A process must be available to each property owner to appeal the amount of compensation either by challenging the basis for the value of the property or the various deductions from the value used in determining the amount of compensation.
- E. When a property owner signs the Agreement for Sale of their property and it is accepted by the community, the community will provide the property owner with a fully executed copy of the offer. If an offer is to be made that will exceed the amount budgeted for acquisition, the State must approve it before a fully executed agreement is returned to the property owner. (Exhibit C)
- F. A title search must be conducted to determine ownership of the property and to identify any encumbrances to the property that will have to be resolved prior to conveyance of a deed to the property. The title report is to be reviewed by all parties to insure that the owner will be able to convey *fee simple title* to the property (clear of any encumbrances). If the property owner can convey clear title to the property, a closing will be arranged.
- G. At the closing, the property owner will execute a Warranty Deed in a form that is acceptable to the State of Texas and the Federal Emergency Management Agency. The property owner will be required to pay any and all encumbrances against the property including real property taxes pro-rated to the date of closing, and will then receive the net proceeds from the sale. The property **must** be **vacant** on the date of closing. (Exhibit D)
- H. After the closing, the title company will provide a complete title package to the community which will include, at a minimum, a Final Title Insurance Policy, copy of the recorded Warranty Deed, copy of the closing statement and a copy of the checks for all disbursements made at closing. Copies of the Closing Statement (Settlement Statement) should be sent to GDEM for recording in their database.

3. ELIGIBLE PROPERTY:

- A. Because of the large number of properties that may be damaged and the limited funding resources available, certain criteria are established to identify those properties to be included in the approved listing.
- B. Only those properties included in the approved listing provided with the cooperative grant agreement are eligible to be acquired. Only that land that is directly associated with the damaged residence will be purchased. Property not on the FEMA Flood Map or that was substantially repaired, may not be eligible for purchase. Eligibility requirements must be resolved by GDEM before being included in project application. **(NOTE: Properties may not be substituted for any reason after the disaster application deadline.)**

4. DETERMINING BASIS FOR COMPENSATION:

- A. Initial offers will be made to homeowners based on **pre-flood fair market value**
- B. Several methods may be used to determine the fair market value. Remember to refer to the approved data base list as the basis for your actions. **County Appraisal District (CAD) values should not be used to determine pre-flood fair market value.**
 - 1) If the **Market Survey Data values** were used as the estimated fair market value, a “certified” appraisal must be procured by the jurisdiction prior to contracting for sale. If the homeowner accepts, begin closing procedures. If the homeowner rejects the offer, the homeowner can pay for a counter-offer appraisal. Appraisals must be conducted by an independent, certified residential appraiser. Both appraisals are to be sent to GDEM for decision.
 - 2) If the values on the application is based on certified appraisals; each must be reviewed by a competent authority and certified by the applicant for accuracy to ensure that each was conducted by an independent, certified appraiser. If equal to or less than the estimated value on the buy out list, close. If higher, the properties must be submitted to GDEM for acceptance or rejection.
 - 3) If any method other than 1 or 2 above, such as a homeowner estimate, was used to arrive at the value shown on the application, an appraisal by an independent licensed appraiser must be done. If the appraisal is equal to or less than the fair market value approved on the buy out list and is accepted by the homeowner, begin the closing process based on the appraised value. If the value is higher than the list shows, the property must be submitted to GDEM for acceptance or rejection.
 - 4) If a property owner obtained appraisal is greater than the appraisal value obtained by the jurisdiction the two can be submitted to GDEM for resolution. GDEM will contract for an appraisal reviewer to evaluate both sets of

documents and in turn provide a recommendation back to the applicant concerning an appropriate course of action.

- C. In determining what property to be included in the fair market value estimate, care should be taken to include only that land and those improvements that were owned by the property owner at the time of the flood. In making this determination the community should determine the title owner of the parcel and use the deeds by which the title owner acquired the damaged residence to determine the land to be acquired. Jurisdictions cannot purchase vacant land or contiguous parcels unless the land or parcels are included in the title deeds of the damaged residence. Acquisition from a contract purchaser is permitted so long as the contract purchaser can deliver acceptable title to the property. Where an owner purchased a property **after** the date of the flood and wishes to sell the property to the community, that new owner will only be entitled compensation to the amount that the original owner was entitled to **or** the amount paid by the new owner, whichever is less. A Jurisdiction may not buy out a home owner whose residence is located on public or Jurisdiction owned land.

5. PRESENTING THE AGREEMENT FOR SALE OF REAL PROPERTY:

- A. A letter signed by a community official should be prepared for each property owner. It is recommended that this letter be presented to each owner and its contents explained at a meeting between the community representative and the owner. This letter should inform the owner that the property is eligible for purchase and that the community has made a determination of compensation to be paid for the property. The owner should be advised that **the purchase is voluntary and that there is no obligation on the owner's part to sell the property to the community**. The owner should be further advised of any appeal rights that may exist. The owner will be given fourteen (14) days to make a decision regarding the sale of the property. A sample letter is attached as **Exhibit A**.
- B. A Determination of Compensation that identifies the owner of record, description or property to be acquired, associated improvements, amount of compensation and the basis for amount of compensation should be presented to the owner at the meeting. The amount of compensation will be the value estimate, less any insurance payment for structural damage, less any Housing Assistance (home repairs grant), plus a reimbursement for repairs actually performed for which receipts are provided. This Determination of Compensation will identify the method of determining the value estimate and be signed by a community official. The Determination of Compensation form is attached as **Exhibit B**.
- C. An **Agreement for Sale** should be presented at the meeting with the property owner, and the terms and conditions should be explained to the property owner. The **Agreement** will identify the owner as "**Seller**" and will identify the property to be purchased by legal description. A street address may also be included.
- D. The amount of compensation will be identified as well as the basis for determining the amount of compensation. The owner will agree to convey free and clear title at owner's expense and further agrees not to remove any further fixtures or

components of the property. If any fixtures or components of the property are removed by the owner, the community may invalidate the sale or deduct the fair market value of such fixtures or components removed by the owner. The owner and jurisdiction must negotiate the fair market value of the fixtures; This most commonly happens with heirlooms such as stained glass windows, or sinks brought from 'the old country', but can be done with any portion of the structure. When the signed and witnessed Agreement for Sale is returned by the property owner, the jurisdiction will sign accepting the **Agreement** and provide a fully executed copy to the property owner and send a copy to GDEM. Counter offer Agreements or agreements for amounts in excess of the approved budget amount will not be fully executed without State review and approval. The **Agreement for Sale** form is attached as **Exhibit C**.

6. APPEALS FROM PROPERTY OWNERS:

- A. If an owner disagrees with the **Fair Market Value** estimate used in determining the amount of compensation, he/she may obtain a second appraisal at his/her expense in an effort to justify a higher amount of compensation. The appraiser selected by the owner must be acceptable to the community and the appraisal report will be submitted to the community by the owner. The owner's appraisal will be reviewed against the standards used by the community in obtaining its appraisal and sent to GDEM for review and recommendation. If approved, a revised **Agreement for Sale** will be prepared increasing the amount of compensation. If the community rejects the owner's estimate of value or it is rejected by GDEM, the owner may elect to sign the original **Agreement for Sale** and accept the amount originally determined by the community.
- B. If the owner disagrees with the amounts deducted for insurance, or Housing Assistance (home repairs), the owner must submit documentation disputing those deductions. If revisions are made as a result, the community will prepare a revised **Agreement for Sale** for submission to the owner.
- C. The property owner may be entitled to reimbursement for safety repairs made under the IA program **after** the disaster. Reimbursement should be limited to the cost of permissible life and safety items costs included in an insurance payment, or Housing Assistance grant. The amount of the insurance, Housing Assistance not offset by authorized repair costs will be deducted from the compensation to be paid. The total reimbursement cannot exceed the amount of compensation from the insurance, or HA-Housing Assistance grant.

7. TITLE SEARCH

- A. The title company should search the title of the property and provide a commitment to insure. The commitment should identify (a) the owner of record, (b) title deed, (c) easements, restrictions and out conveyances, and (d) liens, mortgages, and other encumbrances.
- B. The title company should provide copies of any document referenced in the title commitment.
- C. The community should review the title commitment to ensure that the property owner is the owner of record and can convey free and clear title to the property.

8. PREPARATION OF THE DEED OF CONVEYANCE:

- A. The community will prepare a **Warranty Deed** to be signed by the owner at closing. This deed will identify the property owner as **Grantor**, the legal description of the property to be conveyed and the actual purchase price of the property. A jurisdiction official must sign the **Warranty Deed** accepting the land use restrictions (deed restriction) contained therein. A sample Warranty Deed is attached as **Exhibit D**.
- B. All Properties purchased must be deed-restricted and dedicated to the public domain in perpetuity for low-impact or conservation use.

9. CLOSING AND SETTLEMENT:

- A. A closing will be conducted by a title company. The title company should use the HUD-1 form "**Settlement Statement**". The title owner will execute a **Warranty Deed** conveying **fee simple title** to the community and a community official must sign the deed accepting the land use restrictions. The title company will disburse the proceeds of the sale to the owner as follows: (a) all mortgages, liens, judgments, taxes, assessments and other encumbrances will be paid from the sellers proceeds, and (b) the balance of the proceeds will be paid to the seller. The seller will be responsible for any costs of obtaining and recording releases from liens or mortgages and the community will pay all other closing costs.
- B. The community must inspect the property to determine that it is vacant before the closing takes place. The **Certificate of Inspection and Possession form** is provided as **Exhibit E**. The property will not close until the inspection is performed and the executed certificate is produced at the closing or before the **Warranty Deeds** are executed and settlements dispersed.

10. POST CLOSING ACTIVITIES:

The title company shall provide the community with a complete title package that includes (a) final title insurance policy that insures the community as having free and clear title to the property, (b) recorded warranty deed, (c) the signed closing statement, and (d) copies of disbursement checks.

11. RECORD KEEPING AND REPORTING

- A. The community will maintain a case file for each property in the project that contains all the various required documents and supplemental information related to each individual property considered for buy out. The **Property Owner Acquisition Case File** checklist form is attached as **Exhibit F**.
- B. The community will provide a quarterly status report to the State's Governor's Division of Emergency Management that contains the following information: (1) Total number of properties acquired, (2) total number of properties demolished, (3) Number of properties still to be purchased, (4) Number of properties still to be demolished, (5) Total amount of funds expended to date, (6) percent of project completed, (7) note any accomplishments, (8) note any problems encountered, and (9) note any assistance required. A sample **Quarterly Progress Report** is attached as **Exhibit G**.
- C. The community will follow the instructions and guidelines as provided in the **Hazard Mitigation Grant Acquisition Purchase Process** and checklist at **Exhibit H**.
- D. The community will follow the instructions, guidelines, and checklist for Demolition provided in **Hazard Mitigation Grant Property Demolition Management Process** at **Exhibit I**.

EXHIBIT A

(Community Letterhead)

(Date)

(Owner's Name)

(Street Address)

(City, State)

RE: Parcel No.

(Address of Property)

Dear (Owner) :

I am authorized to enter into negotiations with property owners in **(Name of community)** whose property was damaged by flooding for the purpose of purchasing such property. Title to such property, if purchased, would be transferred to the **(name of community)**. The property purchase can only be accomplished through voluntary sale by you.

_____ is authorized to represent the City in negotiating for your property. Our agent will explain rights and options under this program to you as well as present you the (1) Statement of Determination of Compensation and (2) Offer to Sell and handle any negotiations concerning this property.

Based upon information provided to me, I have found that your property is eligible for purchase.

The information concerning your property and the pre-flood fair market value of your property as of **(date of value estimate)** was estimated. The appropriate amount of compensation of your property was determined and is documented in the enclosed "Statement of Determination of Compensation."

You should carefully review the enclosed "Statement of Determination of Compensation" and "Offer to Sell Real Property" and consider one of the following options which are available to you:

- (1) Make an Offer to Sell Real Property for the amount specified in the determination of compensation.

If you wish to sell your property for the amount specified in the Determination of Compensation, please sign and return to the agent the enclosed Offer to Sell Real Property in triplicate no later than two weeks after receipt. Once all signed copies are returned to the agent, one copy will be executed and returned to you. Upon receipt and approval of the title work, the transaction may proceed to closing.

- (2) Reject this invitation to make an Offer to Sell.

If you wish to reject this invitation and you do not want to continue negotiation for the sale of your property, then please notify the agent of your decision. This must be in writing and within 14 days of the offer. The acquisition process for your property will be terminated at this point. This is a voluntary program intended to provide you a fair market value for your property. The power of eminent domain will not be used to acquire this property should you choose not to voluntarily participate in this buy out.

- (3) Contest the amount specified in the Determination of Compensation.

If you believe that the amount of compensation specified in the Determination of Compensation does not adequately reflect the fair market value of your property and you still desire to continue negotiations, then you may contest the determination by:

- (a) retaining at your own expense a qualified appraiser, acceptable to the negotiator, to perform a second appraisal;
- (b) notifying the agent of your decision and having the appraisal performed within fourteen (14) days from the time this invitation to make an offer to sell has been presented to you; and
- (c) forwarding the second appraisal once completed to the agent for review or accepting as reasonable the amount offered in the initial Determination of Compensation.

Upon receipt of the second appraisal, the agent will either accept, reject or modify the estimate of fair market value and may revise the Statement of Determination of Compensation and the Offer to Sell Real Property. The revised documents will be mailed to you with further instructions.

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Once the new invitation and the amended document are received, you may execute the original or amended Offer to Sell Real Property, mail the offer to the agent or you may terminate the transaction.

If you have made health and safety code repairs to your property using some of your insurance proceeds and were not reimbursed by any other federal, state or local agency, you may be eligible for reimbursement. At the meeting, please present all paid receipts (invoices, canceled checks, etc.) to the agent. If approved, the offer will be adjusted to reflect the repairs.

I know that this is an important decision for you. Therefore, our agent will meet with you personally to present this information and to answer any questions you may have in this matter. All inquiries should be directed to _____ at _____.

As mentioned previously, you will have two weeks after receipt of this material to sign the Offer to Sell Real Property. We would like to proceed with the process for property purchase as soon as possible; therefore, we would appreciate your early consideration of this matter.

I hope we will be able to negotiate the purchase of your property in order to provide you the opportunity to move to a safer location.

Sincerely,

Enclosures

EXHIBIT B

STATEMENT OF DETERMINATION OF COMPENSATION

- I. Property Location: (Name of Community): Parcel No.
- II. Legal Description: Premises known as (Address of Property), and being further described in Exhibit A.
- III. Owner (s) of Record: (Names of Owners)
- IV. Interest to be acquired: Fee Simple
- V. Improvements: A single-family residence containing _____ square feet of living area. Interior consists of _____ rooms including _____ bedrooms and _____ bath. Exterior is _____. Other improvements include: _____. The lot size was estimated to be _____ Square Feet.
- VI. Amount of Compensation: \$.00. This amount is based on an estimated value of \$.00 from which an insurance payment of \$.00 a Housing Assistance Grant payment of \$.00 and an EMR Grant payment of \$.00 have been deducted, and a reimbursement of \$.00 for certain repairs for which receipts were provided have been added. It is believed to be full compensation for the property and is not less than the fair market value of the property.
- VII. Description of Appraisal Technique: The amount of compensation disregards any increase in the fair market value of the property caused by the project. If appropriate, the amount of compensation is based upon an appraisal, which utilized the Market Data approach for studying the property in the light of its own characteristics and location in relation to the sales of other similar sites in the same general area.

The estimated fair market value of this property is estimated as of (date). This estimate does not reflect any economic depreciation to the property that might have occurred as a result of flooding or mudflows which took place in (date). The definition of Market Value used was:

"The amount of cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy."

This property was studied considering its highest and best use, which is for single-family residential use.

(Date)

(Title)

EXHIBIT C

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, by and between the (Insert name of Community), acting by and through the (Insert name of body), hereinafter referred to as the CITY/COUNTY, and (Insert name of seller), hereinafter referred to as the SELLER.

WITNESSETH:

THAT, the CITY/COUNTY is acting under a federal grant from the Texas Department of Public Safety, Governor's Division of Emergency Management (GDEM) and /or Texas Department of Housing and Community Affairs (TH&CA) to purchase certain property in Texas in which the SELLER owns a parcel of land known as_____ and further described in Exhibit A which is attached hereto and made a part hereof.

The Seller represents that the above referenced property was damaged by flood, that the Seller qualifies for the assistance being granted and that the Seller understands that there is NO OBLIGATION TO SELL THE PROPERTY UNDER THIS PROGRAM, BUT THE SELLER DOES SO VOLUNTARILY, AND THAT POWER OF EMINENT DOMAIN WILL NOT BE USED TO ACQUIRE THIS PROPERTY, IF SELLER CHOOSES TO WITHDRAW FROM VOLUNTARY PARTICIPATION IN THIS PROGRAM.

The parties agree as follows:

1. The (CITY/COUNTY) agrees to pay the SELLER for said property the sum of (Insert amount of compensation) and no/100 dollars (\$.00) payable at settlement after the acceptance of this agreement and preliminary approval of the Seller's title; provided the Seller can execute and deliver a good and sufficient general warranty deed conveying marketable title to said property in fee simple, clear of all liens and encumbrances.
2. The SELLER acknowledges that the price to be paid for the property is the pre-flood fair market value of \$ **(Insert amount of appraisal value)** with deductions in the amount of \$ **(Insert amount of Insurance)** for any flood insurance payment received by the SELLER for structural damage and \$ **(Insert amount of HA deduction)** for any Housing Assistance program (HA) (structural repairs) and/or any \$ **(Insert amount of ONA deductions)** Other Needs Assistance (ONA) for which SELLER cannot document as expended on repair of the damaged structure, and a reimbursement of \$ **(insert reimbursement amount)** for certain repairs for which receipts were provided have been added.
3. It is understood by all parties that the proceeds from the sale shall first be applied to all liens on the property, including real estate taxes, which are due and payable to the date of settlement. It is further understood that the Hazard Mitigation Grant Program funds being used for the purchase of the property, cannot and will not duplicate benefits

received for the same from any other funds. The SELLER will return any disaster aid money received if it amounts to duplicity of benefits.

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4. The SELLER agrees that it will execute all necessary documents to transfer fee simple title to the property to the CITY/COUNTY and also agrees to execute now and in the future, any and all documents required by the CITY/COUNTY, GDEM and/or TH&CA to complete this transaction and to comply with County, State or Federal Regulations.
5. The SELLER will not, without notification to the CITY/COUNTY, remove any property considered a portion of the real estate without prior written notice to the CITY/COUNTY and providing appraisals of such properties. The value of the property so removed, as finally determined, will be deducted from the purchase price, if the purchase price has not as yet been paid in full or be repaid by the SELLER within ten (10) days after removal if the purchase price has been paid to the SELLER. The value of the property removed will be solely determined by the CITY/COUNTY and must be negotiated prior to removal.
6. The SELLER understands that no fixtures, materials or improvements to the real estate may be removed from the premises, and, because of legal liability reasons, the CITY/COUNTY will not permit any materials to be salvaged at this time or at the time of demolition. Any violation of this agreement may result in changing the fair market value of the structure.
7. The SELLER understands this is a voluntary transaction and that SELLER is not entitled to relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and will not claim any such benefits.
8. The SELLER acknowledges that it has had an opportunity to review this contract and that it has had an opportunity, if it so chooses, to contact an attorney of it's choice to review this Agreement and the SELLER enters into this Agreement fully understanding the nature thereof and saves and holds harmless the CITY/COUNTY as a result of this Agreement or anything incident to the sale of the referenced real property.

This agreement is binding upon the heirs, executors, successors and assigns of all parties.

DATED this day of , A. D., 20____.

Witness

SELLER (s)

Subgrantee's Approval

EXHIBIT D

WARRANTY DEED

THIS DEED, made this _____ of _____, 20__ by and between (Insert name of owner), ("Grantor") having an address at (Insert address of property) in the (Insert name of Community) ("City/County"), and its successors and permitted assigns ("Grantee").

WITNESSETH:

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identified the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program), ("HMGP"), including the acquisition and relocation of flood damaged property; and

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of flood damaged buildings, to demolish and remove the buildings, and convert the land use into perpetual open space; and

WHEREAS, the Texas Governor's Division of Emergency Management Agency ("GDEM") has made such application and has entered into a FEMA-State Agreement dated _____; and

WHEREAS, the (Insert name of Community), acting by and through the (Insert name of body), hereinafter referred to as the Council/Commissioners Court, has entered into a cooperative grant agreement with GDEM dated _____, ("Grant Agreement"), and herein incorporated by reference as Exhibit 1 in which the Council/Commissioners Court is authorized to acquire certain flood damaged, real property; and

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), and the Grant Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity, and

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), and the Grant Agreement dictate that no future disaster assistance from any Federal Source will be sought or provided for any purpose with respect to the property; and

WHEREAS, the Council/Commissioners Court has determined that it is necessary in order to promote the public interest for the purposes provided in the Act to acquire fee simple title to this certain real property owned by the Grantor;

NOW, THEREFORE, the Grantor, for and in consideration of the sum of (Insert amount of Compensation and No/100 Dollars (\$.00), in hand paid, does voluntarily convey and warrant unto the said Grantee the real estate ("land") described in Exhibit 2 which is attached hereto and made a part hereof.

The Grantor releases and quitclaims unto the Grantee all right, title and interest which Grantor may have in the banks, bed and waters opposite to or fronting upon said land, and in any way abutting or adjoining said lands, and in any means of ingress and egress appurtenant thereto.

This conveyance is expressly subject to rights outstanding in third parties for existing easements for public roads and highways, public utilities, railroads and pipelines.

The said Grantor, covenants that the Grantor has the right to convey the said land; that the Grantor has done no act to encumber the same; that the said Grantee shall have quiet and peaceful possession of the same, free and clear from any and all encumbrances; that Grantor will warrant generally the property hereby conveyed; and that he, the said Grantor, will execute such further assurances of the said land as may be requisite and Grantor hereby releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Texas.

The Grantee accepts this conveyance and, by causing its duly authorized representative to sign this instrument on its behalf, agrees to hold the herein described real estate subject to the terms of the Stafford Act regulations promulgated there under (44 C.F.R. 206.434), as they read now or may be amended in the future, and the Grant Agreement, which documents the regulations include, among other provisions, the following conditions and restrictions:

1. The Grantee agrees that the land shall be used only for purposes compatible with open space, recreational, or wetlands management purposes;
2. The Grantee agrees that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that is open on all sides and functionally related to the open space use;
3. The Grantee acknowledges that no future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;
4. The Grantee agrees that it shall convey the property or any interest therein, only to another public entity and only with prior approval from GDEM and the Regional Director of FEMA.

Such conveyance shall be made expressly subject to the above-referenced conditions and restrictions, which shall run with the property in perpetuity.

WITNESS the following signature and seal on this day and year first above written.

(Witness) Grantor

(Witness) Grantor

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ACCEPTED BY: (Insert name of Community)

By: _____
(Title)

STATE OF (State)
COUNTY OF (County)

I, _____, a Notary Public hereby certify that _____ personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand this _____ day of _____, 20__.

My commission expires:

STATE OF (State)
COUNTY OF (County)

On this _____ day of _____, 20__, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of _____, a said instrument was signed and sealed in behalf of

said _____, by authority of the _____, and the
said _____ acknowledged said instrument to be the free act and deed as said
_____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my
office in the County and State aforesaid, the day and year first above written.

_____ My Commission
Expires: _____
Notary Public (Seal)

The address of the Sub-Grantee is:

This deed was prepared at the direction of the Federal Emergency Management Agency, Washington, DC.

EXHIBIT E

Certificate of Inspection and Possession

I,

_____, hereby certify that on the _____ day of _____, 20____, I made a personal examination and inspection of that certain tract or parcel of land situated in the City of _____, County of _____, State of Texas, designated as Tract No. _____, proposed to be acquired by the State of Texas, and the United States of America in connection with the Section 404 Project, for FEMA Disaster _____-DR, from _____ (who shall be referred to as vendor).

1. That I am fully informed as to the boundaries, lines and corners of said tract, that I found no evidence of any work or labor having been performed or any materials having been furnished in connection with the making of any repairs or improvements on inquiry of the above-named vendor (and of the occupants of said land) and ascertained that nothing had been done on or about said premises that would entitle any person to a lien upon said premises for work or labor performed or materials furnished.

2. That I also made inquiry of the above-named vendor (and of all occupants of said land) as to his (their) rights of possession and the rights of possession of any person or persons known to him (them) and neither found any evidence nor obtained any information showing or tending to show that any person had any rights of possession or other interest in said premises adverse to the rights of the above-named vendor, State of Texas or the United State of America.

3. That I was informed by the above-named vendor (and by all other occupants) that to the best of his (their) knowledge and belief there is no outstanding unrecorded deed, mortgage, lease, contract or other instrument adversely affecting the title to said premises.

4. That to the best of my knowledge and belief after actual and diligent inquiry and physical inspection of said premises there is no evidence whatever of any vested or accrued water rights for mining, agricultural, manufacturing or other purpose; nor any ditches or canals constructed by or being used thereon under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on said lands; and that there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for said land.

5. That to the best of my knowledge and belief based upon actual and diligent inquiry there is no outstanding right whatsoever in any person to the possession of said premises nor any outstanding right, title, interest, lien or estate, existing or being asserted in or to said premises except such as are disclosed and evidenced by the public records.

6. That said premises are now wholly unoccupied and vacant.

Dated this _____ day of
_____ 20____.

Approved: _____

EXHIBIT F

PROPERTY OWNER ACQUISITION CASE FILE CHECKLIST

(FEMA-_____-DR)

Jurisdiction_____

Owners Name_____

Property Address _____

Mailing Address_____

- ___ Identification of the subject property and property owner (s)
- ___ Evidence and date of receipt of preliminary acquisition notice
- ___ Signed Privacy Act Statement
- ___ Completed Property Description and Damage Report
- ___ Signed Property Appraisal Permission and Release
- ___ Duplication of Benefits Certification
- ___ Completed Insurance Claim/Payment Forms
- ___ Copies of any Grant or Assistance Payments or SBA Loans
- ___ Receipts for temporary lodging, repairs, and other post disaster expenses.
- ___ Recent property appraisals, pictures, or insurance inventories, etc.
- ___ Copy of written Agreement for Sale (signed by authorized representative) including statement that sale is voluntary, eminent domain power will not be used, non-applicability of URA, and summary statement of the basis for the determination of just compensation based upon pre-flood fair market value, and date of delivery to owner.
- ___ Documentation of "second" appraisal, if applicable, submitted by homeowner to contest project appraisal, with review appraiser certification.

- _____ Copy of any appeal filed and corresponding response.
- _____ Copy of signed purchase contract
- _____ Copy of settlement statement and evidence that owner received net proceeds due from sale (copy of payment checks)
- _____ Copy of completed Parcel Information Form and attached closing summary data demonstrating offer price, deductions, payments, cash to owner, etc., and date submitted to GDEM.
- _____ Copy of Certification of Inspection and Possession.
- _____ Evidence of Warranty Deed with restriction guaranteeing property to be maintained in open space in perpetuity
- _____ Title Insurance Policy
- _____ Document conveying property, with recording stamp
- _____ Evidence of demolition and reuse of parcel with latitude and longitude readings

Staff File Review: Initials _____ Date _____

EXHIBIT G

Texas Hazard Mitigation Grant Programs

Quarterly Report (Narrative)

Date: _____

Funding Source (FMA, HMGP, or PDM): HMGP 1st 2nd 3rd 4th
Quarter:

Disaster Number (HMGP): **FEMA-____-DR-__** Project Number: _____
or
FEMA Grant Number (FMA /PDM): _____ PDM Project Number: _____

Sub-grantee Name: _____ Point of Contact: _____

Project Description: _____

Amount Obligated: _____ Date Obligated: _____

Period of Performance Completion Date: _____ Project Start Date: _____

Federal Funds Paid to Date from SMARTLINK: _____

Narrative Report: Please describe: 1) specific activities achieved during this quarter; 2) comparison of actual accomplishments to the planned objectives established in the application; 3) reasons for slippage if objectives are not being met; and 4) an analysis and explanation of possible cost overruns/underruns, scope changes or extensions. If acquisition, elevation or relocation project, please include addresses of structures mitigated.

Problems/Delays Encountered and Reasons Why:

State Comments/Actions

Percent of Work Completed: _____

FOR ACQUISITION PROJECTS ONLY: Record the number of structures:

Acquired	Demolished	Still to be Purchased	Still to be Demolished

Change of Scope/Extension Date: _____

Do you anticipate: Yes No

- | | | |
|---|--------------------------|--------------------------|
| a) cost overrun/under run next quarter? | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |
| b) a change in the Scope of Work? | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |
| c) an extension of performance period? | <input type="checkbox"/> | <input type="checkbox"/> |

Project Close Date: _____

Final Cost of Project: _____

TEXAS MITIGATION GRANT PROGRAMS QUARTERLY REPORT (NARRATIVE)

1. Purpose

On having your mitigation project approved, you will receive a project approval letter. Along with the letter you will receive a number of documents, among them will be a copy of the Quarterly Report for your project. A blank version of this form can also be downloaded from our web site at

<http://www.txdps.state.tx.us/dem/documents.htm> - mitigation

The Texas Mitigation Grant Programs Quarterly Report (Narrative) is used to provide the information needed to verify all accomplishments to date and detail the assistance needed for you to complete your project as committed. The report is also designed to provide Jurisdictional and Local Project Officer information to the State, and should be updated as conditions change.

2. Requirements

Submitting accurate and timely Quarterly Reports is a requirement of the grant program. Failing to submit the report can result in non-payment of requested funds and/or withdrawal of funds by FEMA and the State.

3. Submission and Deadlines

It is recommended that you contact your State Project Officer (identified on your Project Approval Letter) and get a copy of the initial report emailed to you, or download a blank copy from our website and transcribe the data from the paper copy of the initial report attached to your Project Approval Letter. This will allow you to use the initial report as the basis for building, submitting, and filing your report electronically. The preferred method of submission is an attachment emailed to your State Project Officer. Of course, you may also mail or fax your report if you do not have access to email. Once your project is approved, a Quarterly Report is due to your State Project Officer each quarter until receipt of the final audit and project closure letter. The due dates for Texas Mitigation Grant Programs Quarterly Report (Narrative) are as follows:

- 1st Quarter (Oct–Dec) due January 15
- 2nd Quarter (Jan–Mar) due April 15
- 3rd Quarter (April–June) due July 15
- 4th Quarter (July–Sept) due October 15

4. The Report – a copy of the report is attached at the end of this job aide with numbers in parentheses () designating the items referred to in the following list. An asterisk * designates information provided by the state on your initial report.

(1) “Date” (This should be the date you completed the report)

- (2*) “Funding Source”
- (3) “Quarter” (This is the period of time covered by your report. As shown on the Quarterly date list above, a quarterly report covering the months of October thru December, would be reported by January 15th and indicate the project information for the 1st Quarter. The fiscal year begins October 1st.)
- (4*) “Disaster” or “FEMA Grant” number
- (5*) “Project”
- (6*) “Subgrantee Name” (Organization receiving the grant from the State)
- (7) “Point of Contact” (Per Project Officer Designation form on file. If change occurs, indicate them on the report, and also submit a new designation form)
- (8 and 9) (As changes occur, report them to your State Project Officer).
- (10*) “Amount Obligated” (Federal share of money designated for project)
- (11*) “Date Obligated” the date indicated on the project approval letter.
- (12*) “Period of Performance Completion Date” (End of projected Performance Period entered on application)
- (13*) “Project Start Date”
- (14) “Federal Funds Paid to Date” (This is to be filled in by you and should be the Federal funds you have received as reimbursement payments from the State)
- (15) “Narrative Report” (Self-explanatory)
- (16) “Problems/Delays Encountered and Reasons Why” Identify, for this report period, any problem(s) that may have delayed or complicated your efforts to complete your project as committed. This item must be completed any time the project progress no longer complies with the time lines submitted on the NOI
- (18) “Percent of work completed” This is not a precise number, but a reasonable approximation of the amount of the project that has been successfully completed
- (19, 20, 21, 22) These are only to be completed if you are doing an acquisition project
- (23) “Change of Scope/Extension Date” The date of the last approved major change in the project scope of work, or an approved extension of the project performance period
- (24) “Do you anticipate” Items (25, 26, 27) Check yes or no – if yes be sure the issue is discussed in item (16)
- (28) “Project Close Date” (To be filled in when known)
- (29) “Final Cost of Project” (To be filled in when known)

[A copy of the Quarterly Progress Report form is located on the following page] (5/6/03)

Texas Mitigation Grant Programs

Quarterly Report (Narrative) (1) Date:

(2*) Funding Source (FMA, HMGP, or PDM): HMGP 1st 2nd 3rd 4th

(3) Quarter:

(4*) Disaster Number (HMGP): **FEMA- -DR-** (5) Project Number:

Or

FEMA Grant Number (FMA /PDM): PDM Project Number:

(6*) Sub-grantee Name: (7) Point of Contact:

(8) Project Description: (9) POC’s Phone Number:

(10*) Amount Obligated: (11*) Date Obligated:

(12*) Period of Performance Completion Date: (13*) Project Start Date:

(14) Federal Funds Paid to Date:

(15) Narrative Report: Please describe: 1) specific activities achieved during this quarter; 2) comparison

of actual accomplishments to the planned objectives established in the application; 3) reasons for slippage if objectives are not being met; and 4) an analysis and explanation of possible cost overruns/under runs, scope changes or extensions. If acquisition, elevation or a relocation project, please include addresses of structures mitigated.

(16) Problems/Delays Encountered and Reasons Why:

(17) State Comments/Actions

(18) Percent of work completed:

FOR ACQUISITION PROJECTS ONLY: Record the number of structures:

(19) Acquired (20) Demolished (21) Still to be Purchased (22) Still to be Demolished

(23) Change of Scope/Extension Date:

Do you anticipate: Yes No

(24) a) cost overrun/underrun next quarter?

Yes No

(25) b) a change in the Scope of Work?

Yes No

(26) c) an extension of performance period?

(27) Project Close Date: (28) Final Cost of Project:

Exhibit H

Hazard Mitigation Grant Program **Acquisition Purchase Process for** **Local Government Applicants**

Initial Actions

1. Applicant will establish a non-interest bearing account for managing and accounting for all transactions which are part of acquisition purchase and property disposal/demolition project. For direct deposit transactions the jurisdiction must send an original signed “Direct Deposit Authorization” form to your assigned project office. This process takes 14 days to become effective.
2. Applicant will establish and maintain auditable records capability using Generally Accepted Accounting Principles, during the acquisition project life cycle.
3. Applicant will ensure that the special account records include disbursement journal and copies of checks.
4. Applicant will provide their vendor ID, the special account’s location and number, manager/disbursing authority, and auditor identification to the State Hazard Mitigation Officer (SHMO).

Prepare Offerings

1. Applicant must verify and have a certified appraisal or procure one for each property.
2. Applicant’s agent (who will make offers and administer the project) will prepare the initial Statement of Determination of Compensation and Agreement for Sale.
3. Applicant will open and place records in Individual Owner Acquisition Case File Records.
4. Applicant will begin submitting Subgrantee’s Quarterly Progress Reports to their state project officer.
5. Applicant will prepare draft Demolition/Disposal Plan for their state project officer’s review and approval.

Offerings

1. Applicant will provide the demolition/disposal plan to their state project officer before doing their first demolition.
2. Applicant or their agent will prepare updated Statement of Determination of Compensation & Agreement for Sale.
3. Applicant or their agent will collect supplemental documentation, revise Agreement for Sale, and update case files.
4. If no changes to offering, Applicant or their agent will set closing date.
5. If there are changes or an appeal to the offer, Applicant or their agent will review with property owner and set new offering date, if warranted.
6. Appeal procedures will be followed if property owner contests the offer.
7. Copies of final accepted offers will be sent with the request for funding to your state project officer, before scheduling a closing or submitting a title commitment request.

Closings

1. In scheduling closings, allowance must be made for the cash transfer from the State to Applicant arriving prior to the scheduled closings. Cash transfers from Grantee to Subgrantee must be requested in writing at least 25 calendar days in advance of closing dates. A minimum period must also be established locally to provide for deposits in the special account and disbursements to the title company and/or closing agent. Closing dates, however, may require rescheduling if funds are delayed.
2. The applicant or their agent will forward appropriate closing documents to their state project officer, the documents should arrive not later than 10 workdays after closing.
3. Applicant or their agent will ensure that the property is vacant on day of closing and provide documentation, verifying vacancy before the closing can proceed.

Demolition's/Disposals

1. The demolition/disposal of improvements to the acquired property must be completed within 90 days after closing; clock begins as of closing.

1. The demolition/disposal plan must be reviewed and approved by your assigned State Project Officer (SPO) prior to any demolitions.
2. If your buyout contains more than 4 asbestos contained homes, the Texas Department of Health is required to be notified. You can go to their website for the rules at www.tdh.state.tx.us/beh/asbestos.
3. If there is a well on the property, this well must be plugged according to Texas State Law and Edwards Aquifer Authority (EEA) regulations. “Any water well drilled into the Edwards Aquifer that remains unused for 180 days or more must be properly plugged and abandoned by a certified water well plugging contractor. All work must be documented and a copy sent to your state project office.

Completion Activities

1. Applicant will complete required reports and record documentation, retain record sets, and send copies to their state project officer.
2. An audit will be conducted by a state auditor and results provided to the State Mitigation Section Financial specialist.
3. Project cost reconciliation will be accomplished on all outstanding account allocations, including matching funds.
4. Applicant will close the special account only after all disposal/demolition and reconciliation actions are completed and provide copies of required account records to the state project officer.

PROPERTY ACQUISITION CASH MANAGEMENT DOCUMENTATION CHECKLIST

Program Fund Source: _____ Project No.: _____

<u>ITEM</u>	<u>ACTION</u>	<u>DATE</u>	<u>Documentation Required To GDEM/SPO</u>
Applicant non-interest bearing special account	Applicant establishes non-interest bearing special account		
1-A. Account Information	Provide account information to SPO(at least 25 workdays prior to first appraisals.		Yes
1-B. Special Account Records	Special account records implemented		
1-C. Special Account Transactions	Record all transactions including advance funds received from state		
1-D. Records Disposition	Provide complete records and audit at end of project, after account close		Yes
Documentation for Offering	Provide as Required		
2-A. Appraisal Values or Approved Certified Independent Appraisal	Provide NLT 25 work days prior to offerings (initial offering or final offering)		Yes
2-B. Statements of dollar damage to property, Flood Insurance paid/pending claims, HA, ONA, and paid receipts for unreimbursed emergency repairs	Provide prior to offering of 25 workdays prior to final offering		Yes (Full documentation to SPO for appeal action, otherwise only copy of accepted offer is needed by GDEM for disbursement action)
2-C. Copy of Offerings	Provide SPO with request for funding and disbursement		Yes
3. Demolition / Disposal Plan	Provide to SPO prior to first offering		Yes (Required for Review)

<u>ITEM</u>	<u>ACTION</u>	<u>DATE</u> <u>Began/Completed</u>	<u>Documentation</u> <u>Required To</u> <u>GDEM/SPO</u>
4. Closing Documents (as indicated)	Provide 10 workdays after closing to SPO		Yes
A. Settlement Sheets	Provide NLT 10 workdays after closing		Yes
B. Escrow Reports	Provide NLT 10 workdays after closing		Yes
5. Subgrantee's Monthly Status Report	Provide monthly (with final report NLT 30 days after all required actions completed)		Yes
6. Case File Record Checklist	Provide with final /summary copy after completion of all actions		Yes (also indicate location for retention and storage of case files)
7. Accounts & Matching funds Reconciliation	Must be accomplished prior to closing Special Account		Yes
*8. Audit Report	Due NLT 60 days from last demolition/disposal completion(may be performed by an independent auditor or GDEM staff).		Yes

***Note:** This action is for a management audit of the applicant's special account only. All other audits will be under the Single Audit Act of 1996 requirement. (Ref 44 CFR, Part 14, and Appendices)

Exhibit I

Hazard Mitigation Grant Program **Property Demolition/Disposal Management Process**

Demolition/disposal is defined as: Structures are demolished, including slab-on-grade and underground utilities; debris removed and disposed of under all applicable current laws and statutes.

Initial Actions

1. Applicant will use the non-interest bearing special account, set-up for the “404” property acquisition project, to manage and account for all transactions, including those which are part of property demolition/disposal.
2. Applicant will maintain financial records following Generally Accepted Accounting Principles, State/County contracting guidelines, and applicable Federal/State policies for contracted demolition/disposal.
3. Applicant will continue to ensure that the special account records include a disbursement journal and copies of checks for all demolition/disposal activities.
4. Applicant will prepare a demolition/disposal plan and submit it to the assigned State Project Officer (SPO) for review and approval. The plan consists of the proposal for contract (if contracting is the selected method), In-Kind proposal (if applicable), source of funding for demolition/disposal, contract award criteria, method and procedure of contractor payment, performance and liability (bonding) guidelines, regulatory compliance guideline references (including environmental regulations), inspection and audit criteria (as applicable).
5. After the above is accomplished and plan information is provided to the SPO for review, contracting activities can continue.
6. In most cases, the expenses associated with demolition/disposal will come from local matching funds. Funding for appropriate Federal/State programs may be used. Accountability and categorization criteria is provided below.
 - a. In-Kind costing used to compute matching funds for demolition/disposal will be \$3,000.00. This In-Kind cost figure will be used as the demolition allowance. If the cost of property demolition/disposal will exceed the basic allowance, the exceptions will be presented to GDEM for resolution. Documentation will be the same as for Public Assistance (PA) projects actual expense.

- b. Any monies identified as State overpayments resulting from matching fund reconciliation will be returned to the State's Hazard Mitigation Grant Program disbursing agent (Governor's Authorized Representative (GAR)).

Salvage

The community may either itself sell the salvage materials resulting from the clearing of the lots, or give the salvage to the demolition contractor as a part of their fee. If the community sells the salvage itself, by its normal bid or sales process, the value of the salvage must go towards reducing the overall project costs. If the salvage is given to the contractor, the community has no further interest in it; the contractor may sell the salvage for whatever they can get to increase their profit.

After Offerings

1. Applicant will begin required actions for solicitation, award, and start of demolition/disposal contract(s). See checklist for documentation flow. (As applicable)
2. Applicant will implement In-Kind procedures. (As applicable)
3. If no changes to offerings, applicant will prepare preliminary schedule of demolition/disposal based on scheduled closing date(s) plus an allowance period for possible closing delays.
4. If changes or appeals to offerings occur, Applicant will tentatively reschedule demolition/disposal start dates to coincide with new closing dates.
5. Applicant will provide changes to demolition/disposal plan to SPO as schedule updates.

After Closings

1. Applicant will ensure and certify that each property is vacant on day of closing.
2. Ninety (90) days from the date of closing all demolition/disposal of property must be completed. As part of the demolition requirements the **latitude and longitude** readings (decimal degrees) from the center of the cleared property are required. This information must be printed on the demolition certificate and submitted to GDEM. The Demolition Certificate is sent to you with your award letter.

Completion Actions

1. After all demolition/disposal actions are completed, the Applicant will complete all required reports and update property record documentation. Reports will be retained in property record sets for a minimum period of 3 years after financial audit of project, and copies sent to the appropriate agencies and the SPO.
2. A reconciliation and administrative audit will be accomplished on the project account, participant share allocations, and matching fund assessments.
3. Applicants will complete remaining actions and will provide copies of required records and reports, per guidance and regulation, to the SPO and other responsible agencies.
4. An independent audit (A-128) of the project will be performed under the auspices of the Single Audit Act of 1996 guidance.

PROPERTY DEMOLITION / DISPOSAL MANAGEMENT DOCUMENTATION CHECKLIST

JURISDICTION: _____ FEMA PROJECT NO.: _____

<u>ITEM</u>	<u>ACTION</u>	<u>DATE</u> <u>Began/Completed</u>	<u>Documentation</u> <u>Required to GDEM/SPO</u>
1. Documentation for disposal	Provide to DPO AS Required		
A. Demolition / Disposal Plan	Provide to DPO 45 workdays prior to first possible demolition / disposal and prior to any bid action or offer to property owner		Yes
B. Cost Estimates for Demolition and Disposal	Provide cost schedule / table update to DPO prior to closing or NLT 10 work days after final closing		Yes
C. Copy of Proposal for Bid (If contracted) (Include selection Criteria)	Provide to DPO 15 workdays prior to bid solicitation		Yes (info only)
2. Pre-Demolition / Disposal Checklist	Provide to DPO prior to demolition / disposal		Yes
3. Report of Bid Openings	Review prior to contract award		Yes (info only)
4. Copy of Demolition / Disposal contract(s)	Provide to DPO NLT 10 workdays after award		Yes
5. Case File Record Checklist	Provide to DPO monthly with final / summary copy after completion of all actions		Yes
6. Copy of Inspection Report(s)	Place in case file with closing documents.		Yes
7. Subgrantee's Monthly Status Report	Provide to DPO monthly with final report NLT 30 days after all required actions completed.		Yes

STATE OF TEXAS

HMGP ADMINISTRATIVE PLAN

Property Acquisition Package for Property Owners

This package should be provided to all property owners that desire to participate in the acquisition program to buy out structures in flood prone areas. This is a voluntary program funded through the Hazard Mitigation Grant Program (HMGP) and requires a 75%/25% cost sharing between the Federal government and your local community. If you desire to participate in this process, you should complete the attached forms, retain a copy for your records, and send the original to the designated local government representative responsible for the HMGP.

THIS PACKAGE INCLUDES:

**DISASTER VICTIM INFORMATION NEEDS
DISASTER VICTIM INVENTORY CHECKLIST
PRIVACY ACT STATEMENT
PROPERTY OWNER CHANGE OF ADDRESS FORM
PROPERTY APPRAISAL PERMISSION AND RELEASE
PROPERTY DESCRIPTION AND DAMAGE REPORT
DUPLICATION OF BENEFITS CERTIFICATION**

DISASTER VICTIM INFORMATION NEEDS

REASON FOR GATHERING INFORMATION: After any catastrophic event like a flood, fire, hurricane, or tornado, you may be overwhelmed with requests for information from those who are trying to help you. You may also have many questions for those agencies. This information package will help you gather and organize the valuable papers and other documents needed to provide you with assistance.

TYPES OF INFORMATION: The various types of information you need to gather include valuable documents, insurance information, receipts, and correspondence (including records of payment) from Federal, State, local, and private agencies providing assistance. Examples of valuable documents include deeds, loan papers, records of paid-off loans (releases), other personal financial records, wills, divorce papers, custody papers, etc.. A checklist is provided to help you gather and inventory the documents required to be presented.

POSSIBLE USES OF INFORMATION: Some of the documents and information addressed above will be required by your insurance company, bank, mortgage company, taxing authority, and loan company. Much of this information will aid in negotiating with government agencies such as the Federal Emergency Management Agency (FEMA), Texas Department of Human Services (TDHS), United States Small Business Administration (SBA), emergency management agencies, and your local health, safety, and engineering agencies (permit, code compliance, and inspections, etc.). The types of assistance include:

Repair or relocation loans

Home loans

Grants for repair of real property or repair/replacement of personal property

Housing assistance

Elevation grants (floods)

Buy outs of damaged property

Individual assistance grants and loans

If you find that you are missing or have lost (due to the disaster) some of the documents and information listed ask for help or directions from the authorities providing you this package. **Please complete the forms provided.**

Note: Please provide a copy of the requested information and also keep a copy for your personal records.

Disaster Victim Inventory Checklist
--

FEMA Disaster No.: _____ **-DR-TX**

NOTE: Please keep copies of these forms for your personal records

<u>ITEM</u>	<u>Please Check</u>	<u>Date</u>
1. Privacy Act Statement	_____	_____
2. Property Appraisal Permission and Release	_____	_____
3. Property Description and Damage Report	_____	_____
4. Property Owner Change of Address Form	_____	_____
5. Duplication of Benefits Certification	_____	_____
6. Warranty deed (When available)	_____	_____
7. Insurance claim forms (When available)	_____	_____
8. Copies of any grant or assistance payments or SBA Loans. (As available)	_____	_____
9. Receipts for temporary lodging, repairs, and other post disaster expenses. (As available)	_____	_____
10. Recent property appraisals, pictures, or insurance inventories, etc. (As available)	_____	_____
11. Offer for sale from community	_____	_____
12. Agreement for sale (when available)	_____	_____
13. Copies of correspondence relating to offers, compensation, appeals, etc.	_____	_____

Property Owner(s) or Individual: _____

Property and Personal Address(es): _____

Privacy Act Statement

I/We, the undersigned, hereby grant my/our permission for the Federal Emergency Management Agency (FEMA) and the Texas Department Of Public Safety, Governor’s Division of Emergency Management, to publish through public notice the information listed below pertaining to my real property which is being considered for post-disaster action by

Community

Number, Street

Lot, Subdivision

Community, State, ZIP

This information will be used to notify the public that FEMA and the State of Texas is considering some mitigation action regarding the above property under Section 404 of the Stafford Act, as amended.

Further, I/we hereby grant FEMA and the State of Texas permission to disclose flood insurance coverage and claim information to officials of (community) _____ for the purpose of aiding in their planning and decision-making regarding any further mitigation or assistance actions affecting my property under the Stafford Act, Section 404, as amended and the National Flood Insurance Program (NFIP).

Date

Flood Insurance Policy Number

Owner(s) Name(s) (Please Print)

Flood Insurance Policy Provider

Signed

Five Digit Insurance Company Code

Signed

Property Owner Change of Address Form

The undersigned requests the Federal Emergency Management Agency (FEMA) and the Texas Department Of Public Safety, Governor’s Division of Emergency Management, to change the address below as indicated. Please indicate changes by lining out the incorrect information and writing the correction alongside.

This request for change of address is only for records maintained by FEMA, DEM, and the local jurisdiction.

Number, Street

Lot, Subdivision

Community, State, ZIP

Date

Owner(s) Name(s) (Please Print)

Signed

Signed

Please mail to:

Property Appraisal Permission and Release

I/We, the undersigned, hereby grant my/our permission for the local jurisdiction, through the Federal Emergency Management Agency (FEMA) and the Texas Department of Public Safety, Governor's Division of Emergency Management, to authorize the appraisal of the real property described below to determine the pre-disaster fair market value. Determination of the degree of damage and eligibility for various forms of assistance will be based on the determined value.

Number, Street

Lot, Subdivision

Community, State, ZIP

This information will be used by FEMA and the State of Texas in considering forms of assistance under Section 404 (PL 93-288 as amended by PL 100-707) the Stafford Act and the Hazard Mitigation and Relocation Assistance Act (PL 100-707 as amended by PL 103-181).

Further, I/we hereby grant FEMA and the State of Texas permission to identify and disclose any Federal or State administered disaster assistance and grants which may impact on the value and potential compensation for my/our property to (community) _____ for the purpose of aiding in their planning and decision-making regarding project applications and administration of measures covered under the Stafford Act, Section 404, as amended.

Date

Owner(s) Name(s) (Please Print)

Signed

Signed

PROPERTY DESCRIPTION AND DAMAGE REPORT

PLEASE USE A RED PEN TO FILL OUT FORM

NAME OF PROPERTY OWNER(S):
PROPERTY OWNERS SOCIAL SECURITY NUMBER:

PROPERTY OWNER(S) MAILING ADDRESS:

PHONE NUMBER (HOME):	PHONE NUMBER (OFFICE):
SUBDIVISION NAME	

ADDRESS OF DAMAGED PROPERTY:

LEGAL DESCRIPTION OF PROPERTY

DEED VOLUME NUMBER:		DEED PAGE NUMBER:	
TAX MAP NUMBER:		TAX MAP BOOK NUMBER:	
PLAT BOOK NUMBER:		LOT NUMBER:	
		TAX MAP PAGE NUMBER:	

DATE PROPERTY WAS PURCHASED (MONTH & YEAR)	
---	--

NAME OF FLOOD INSURANCE COMPANY (AGENT'S NAME):	
POLICY	

DESCRIPTION OF REPAIRS:
DESCRIBE ALL REPAIRS, IF ANY, THAT HAVE BEEN PROPERTY FROM THE LAST FLOOD.

USE OF STRUCTURE: (Check One)
Single Family <input type="checkbox"/>

TYPE OF RESIDENCE: (Check One)
Primary Residence <input type="checkbox"/>

TYPE OF HOME: (Check One)
One Story <input type="checkbox"/>

Multi Family	
Commercial (Specify Type)	
Industrial (Specify Type)	

Secondary Residence	
Rental	
Vacant Lot	
Other (Specify)	

Two Story	
Duplex	
Apartment Complex	
Manufactured Home	
Other (Specify)	

STRUCTURE DESIGN:(Check One)	
# of Finished Levels	
Basement	
Living Area:	
Sq. Ft.	
Age Of Structure	

FOUNDATION CONSTRUCTION: (Check One)	
Slab On Grade	
Block or Brick Walls/Piers	
Concrete Walls/Piers	
Wood Pile	
Other (Specify)	

EXTERIOR/WALL FRAMING (Check One)	
Block	
Brick	
Wood	
Other (Specify)	

PROPERTY DESCRIPTION AND DAMAGE REPORT

PLEASE USE A RED PEN TO FILL OUT FORM

ESTIMATED MARKET VALUE	
-------------------------------	--

ACTUAL MARKET VALUE	
----------------------------	--

LOCATION OF PROPERTY:(CHECK ONE)	
Floodway	<input type="checkbox"/>
Floodplain	<input type="checkbox"/>

SOURCE FOR MARKET VALUE (CHECK ONE)	
Home Owner Estimate	<input type="checkbox"/>
Appraisal	<input type="checkbox"/>
Market Survey	<input type="checkbox"/>

LEVEL OF DAMAGE: (CHECK ONE)			
More than 51% Damaged	<input type="checkbox"/>	Less than 50% Damage	<input type="checkbox"/>

DAMAGE DATA	MONTH AND YEAR OF DAMAGE (Last 3 Years)			
MONTH & YEAR	_____ 19	_____ 19	_____ 19	_____ 19
Depth of Flooding Above 1st Finished Floor (In Feet)				
Duration of Flood Limiting Access to Home:				
Number of Times Damaged:				
Do You Have Flood Insurance				
NFIP Number				
If Yes, Amount:				

What Were The Estimated Dollar Damage:

Structure Damage:			
Content Damage:			

What Was The Insurance Policy Coverage:

Structure Coverage:			
Content Coverage:			

What Were The Actual Claim Payments:

Structure Payments:

Content Payments:

Please Ckeck All That Apply:

	APPLIE D	RECEIV ED	AMOUNT
Disaster Housing Program Grant	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
State Individual & Family Grant	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
Emergency Minimal Repair Grant	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
Small Business Administration Loan	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____
Other	<input type="checkbox"/>	<input type="checkbox"/>	\$ _____

Pictures Of Property:

Copies Of Legal Description:

RESIDENTIAL VOLUNTARY PROPERTY ACQUISITION PROGRAM

DUPLICATION OF BENEFITS CERTIFICATION

The duplication of benefits under the residential voluntary property acquisition program is prohibited. This policy was developed in response to Federal regulations that dictate the use of the primary funds used to acquire property. The Federal Emergency Management Agency (FEMA) provides the following specific instructions in the Hazard Mitigation Grant Program Desk Reference, dated October 1999.

In the administration of HMGP grants for property acquisition, FEMA and the grantee should avoid any duplication of benefits with other forms of assistance. FEMA's policy on duplication of benefits for individuals and families is mandated by Section 312 of the Stafford Act and is set forth in 44 CFR 206.191. This section of FEMA regulations delineates a delivery sequence establishing the order in which the disaster relief agencies and organizations provide assistance to individuals and families. Programs listed later in the sequence are responsible for ensuring that they do not duplicate assistance which should be provided by a program listed earlier on the list (the program with primary responsibility).

In the case of flood-damaged property purchase programs, these are not listed in the delivery sequence and, therefore, are positioned after the eight listed programs. This means that all eight programs listed in the sequence at 44 CFR 206.191(d) are "primary programs" in relation to property purchase programs. The property purchase program is required to ensure that it does not duplicate assistance, which should be provided by any of the eight primary assistance programs

Certification of Funds Used

"Receipt of" and "pending receipt of" the following benefit amounts must be disclosed to your local official responsible for administering the program.

1. **SBA LOANS:** A property owner who has an SBA loan on the property being acquired will either be required to repay the loan to SBA, or roll it over to a new property at closing.
2. **FLOOD INSURANCE for STRUCTURAL REPAIRS:** That portion of a flood insurance payment that a property owner has received or is eligible to receive intended to cover structural repairs to the property being acquired will be deducted from the purchase price of the property. If flood insurance funds were reinvested into repairs to the property, then this amount will be credited back. Proof of reinvestment can be supplied through receipts for materials and/or labor, or through on-site verification.

3. FEMA HOUSING ASSISTANCE (HA): FEMA Housing Assistance received by the property owner will not be deducted if the property owner has used the grant for housing-related expenses. These can include: transient accommodations while an existing home is being elevated or relocated; combining it with other funds to make more substantial home repairs; minor home repairs made to make a home more livable prior to a buy out offer; down payment toward the purchase of a new home; moving expenses; closing costs; insurance; and deposits and a new home. Property owners may receive grants from FEMA as part of the Temporary Housing Assistance Program to quickly repair or restore owner-occupied primary residences to a habitable and safe condition.

Owner's Name

Property Address

I hereby certify that the SBA Loans, Flood Insurance for Structural Repairs, and FEMA Disaster Housing Assistance defined above were accurately reported and that the amounts not used for the purposes identified above were fully disclosed.

JURISDICTION REPORTED TO: _____

Owner

Date

Owner

Date

STATE OF TEXAS

HAZARD MITIGATION

ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 7

**DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY**

**PUBLIC ASSISTANCE
AND HAZARD MITIGATION GRANT PROGRAM**

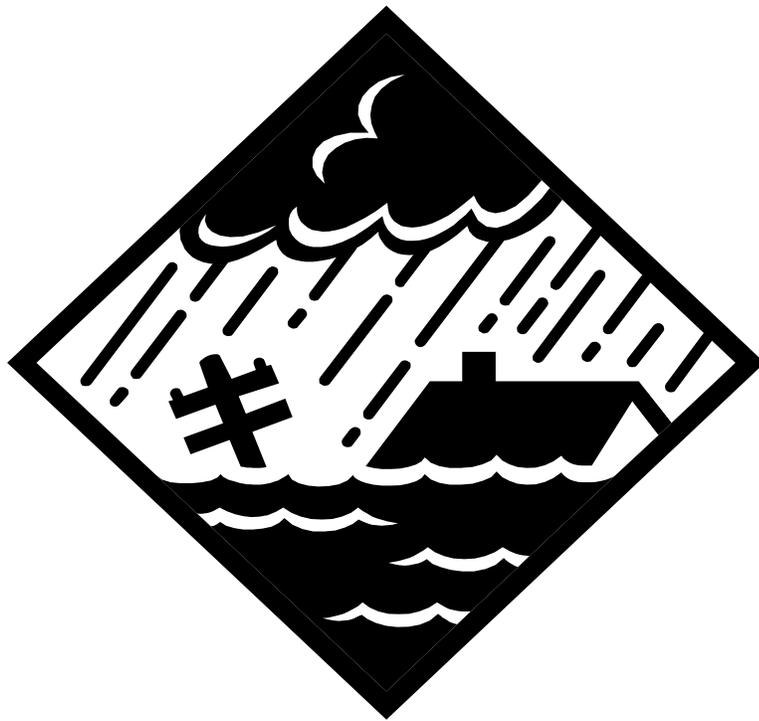
ENVIRONMENTAL CONSIDERATIONS AND CONTACTS



FEMA

**Department of Homeland Security
Federal Emergency Management Agency**

***PUBLIC ASSISTANCE
AND HAZARD MITIGATION
GRANT PROGRAM***



**ENVIRONMENTAL CONSIDERATIONS
AND CONTACTS
FEMA-1606-DR-TX
FEMA-3261-EM-TX**



Department of Homeland Security



Federal Emergency Management Agency

Northview Business Center

9001 I-H 35, Suite 101

Austin, Texas 78753

September 30, 2005

The Federal Emergency Management Agency (FEMA) and the Texas Governor's Division of Emergency Management are here to assist people and community's recovery efforts in the area struck by Hurricane Rita beginning on September 23, 2005, and continuing. This Briefing Package is designed to address the necessary federal and state regulations and guidelines to facilitate your application process for the Public Assistance and Hazard Mitigation Grant Programs. This is not intended to be inclusive of all possible applicable laws, but those routinely encountered in disaster recovery.

Part of our responsibility is to ensure that numerous state and federal environmental and historic preservation laws and Executive Orders are met. It is necessary for any applicant receiving FEMA and State assistance to obtain and comply with all applicable local, state and federal laws, requirements and permits. Please be aware that failure to comply may jeopardize federal funding.

We are available for technical assistance. If you have any questions or need assistance, please contact the Austin Joint Field Office (JFO) at 512-908-8700 and ask for the FEMA Environmental Liaison.

We look forward to working with you.

Donald R. Fairley, REM
Environmental Liaison Officer
FEMA, Region VI

Duke Mazurek
Texas State Coordinating Officer
Governor's Division of Emergency Management

ENVIRONMENTAL CONSIDERATIONS AND CONTACTS
FEMA-1606-DR-TX
FEMA-3261-EM-TX

The Federal Emergency Management Agency (FEMA) is here to assist communities in responding to and recovering from disasters. A part of FEMA's responsibility is ensuring compliance with numerous environmental and historic preservation laws and Executive Orders. It is necessary for any applicant receiving FEMA assistance to obtain and comply with all applicable local, state and federal laws, requirements and permits. Please be aware that failure to comply may jeopardize Federal funding. If you have any questions or need assistance, please contact:

- FEMA Environmental Specialists at (512) 908-8700

DEBRIS STAGING, STOCKPILING AND BURNING

Applicants who will be requesting Federal financial assistance need to complete the attached "Emergency Debris Management Site Certification Form, Hurricane Rita, FEMA-1606-DR-TX, FEMA-3261-EM-TX", and include the completed and signed form with their Project Worksheet. See page 17 for this form.

Any site used to store or stockpile debris must meet all requirements of the Texas Commission on Environmental Quality (TCEQ) and meet the requirements outlined on the Emergency Debris Management Site Certification Form. If you have any questions, contact your TCEQ regional office (see TCEQ Regions map on page 12) at:

- Keith Anderson, Region 10, Beaumont: (409) 898-3838, Fax (409) 892-2119
- Nicole Bealle, Region 12, Houston: (713) 767-3623, Fax (713) 767-3646, Main Office (713) 767-3500
- Henry Karnei, Jr., Region 13, San Antonio: (210) 403-4010, Fax (210) 545-4329, Main Office (210) 490-3096
- Brad Genzer, Region 14, Corpus Christi : (361) 825-3120, Fax (361) 825-3101, Main Office (361) 825- 3100
- Lorinda Gardener, Region 15, Harlingen: (956) 430-6023, Fax (956) 430-6052
- Rose Luna-Pirtle, Region 16, Laredo: (956) 753-4052, Fax (956) 791-6716

Debris Burning: Requests to burn debris must meet all local and state burning requirements, and be in compliance with the requirements in the TCEQ letter dated September 27, 2005, regarding outdoor burning of debris as a result of Hurricane Rita. All debris burning under authority of this letter **MUST** be completed by **December 1, 2005**. See attached letter on pages 10 and 11. Contact:

- Your local fire department
- For burning in rural areas, the Regional TCEQ office listed above.

Debris Removal for Watershed Protection: Requests for debris removal under the Emergency Watershed Protection program should be made to the Natural Resources Conservation Service (NRCS). Contact:

- Claude Ross at (254) 742-9822, Fax (254) 742-9848, or the local NRCS office in your area.

Household Hazardous Waste: Communities needing information and assistance to establish a household hazardous waste program may contact, TCEQ, at (361) 825-3100.

AIR QUALITY

Applicants must obtain and comply with all permits required by the Clean Air Act for disaster related activities and any non-disaster activity.

Asbestos Containing Materials (ACM): Demolition and renovation of any commercial or public structure, regardless of asbestos content, must be coordinated with the Texas Department of Health to obtain a "National Emission Standards for Hazardous Air Pollutants" (NESHAP) permit. The applicant is responsible for obtaining and complying with all permit requirements. See page 15 for information concerning asbestos removal of buildings. Contact:

- Texas Department of Health (800) 572-5548 toll free (see attached map on page 14 for your specific region)

TCEQ:

- Stuart Mueller, Region 10, Beaumont: (409) 898-3838, Fax (409) 892-2119
- Marsha Hill, Region 12, Houston: (713) 767-3610, Fax (713) 767-3761, Main Office (713) 767-3500
- Rick Hite, Region 13, San Antonio: (210) 403-4030, Fax (210) 545-4329, Main Office (210) 490-3096
- David Turner, Region 14, Corpus Christi: (361) 825-3113, Fax (361) 825-3101, Main Office (361) 825-3101
- Lorinda Gardner, Region 15, Harlingen: (956) 430-6023, Fax (956) 430-6052
- Rose Luna-Pirtle, Region 16, Laredo: (956) 753-4052; Fax (956) 791-6716

DRINKING WATER

Flooding and other disasters can seriously impact the quality of drinking water from both public water systems and from private water wells. Public water systems and other water suppliers are required to issue a "boil water notice" to all customers in the event that something happens where the water quality could be compromised. Under this notice, customers are advised to boil their water before consumption or use until such time that samples confirm that the water is safe. See page 16 for TCEQ recommendations.

Those with individual water wells must also be aware of the possible contamination of the water after flooding or other disasters. If it is either confirmed or suspected that the quality of the drinking water has been compromised, the well should be disinfected and sampled to assure that the water is safe to consume.

If there are any questions about this issue or the procedures outlined, people should contact either their local county or city health department listed on page 14. See page 12 to locate the TCEQ Region:

- Heather Ross, Region 10, Beaumont: (409) 898-3838, Fax (409) 892-2119
- Stephen Smith, Region 12, Houston: (713) 767-3581, Fax (713) 767-3691, Main Office (713) 767-3500
- Bobby Caldwell, Region 13, San Antonio: (210) 403-4020, Fax (210) 545-4329, Main Office (210) 490-3096
- Sinoel Contreras, Region 14, Corpus Christi: (361) 825-3112, Fax (361) 825-3101, Main Office (361) 825- 3100
- Irene Casares, Region 15, Harlingen: (956) 430-6025, Fax (956) 430-6052
- Rose Luna-Pirtle, Region 16, Larado: (956) 753-4052, Fax (956) 791-6716

SECTION 10 and 404 PERMITS

Section 404 of the Clean Water Act regulates the discharge of dredge or fill material into waters of the United States including navigable waters and wetlands. Section 10 of the Rivers and Harbors Act, applies to actions affecting navigable waters of the United States. The U. S. Army Corps of Engineers (USACE) administers both laws. See page 19 for the USACE Regulatory Boundaries. Examples of actions requiring permits include construction, demolition, and any dredging or filling in any part of surface water tributaries, including small streams, lakes, ponds, and wetlands. Obtaining permits (see attached permit on page 20) is the responsibility of the applicant. Unless it is an emergency action, i.e., immediate threat to life or property, obtaining permits must be done prior to executing any physical disturbance action. To obtain information, including securing permits for this disaster, contact:

- Terri Stinnett-Herczeg, USACE, Galveston District, Regulatory Branch, (409) 766-3991 Fax (409) 766-3931
- Lloyd Mullins, USACE, Corpus Christi Office, (361) 814-5847 ext. 123, Fax (361) 814-5912
- Presley Hatcher, USACE, Fort Worth District, Regulatory Branch, at (817) 886-1740, Fax (817) 886-6493, Main Office (817) 886-1731

BRIDGE PERMITS

Under Section 9 of the Rivers and Harbors Act, the General Bridge Act, and other statutes, the U.S. Coast Guard has jurisdiction over bridges that cross navigable waters of the United States. Permits for construction and certain types of repair activities are administered through the Bridge Administration Program. Obtaining permits is the responsibility of the applicant. Unless it is an emergency action, i.e., immediate threat to life or property, obtaining permits must be done prior to initiating construction activity. For emergency actions, a follow-up permit is required.

To obtain information regarding the need for permits, obtaining permits, and other project specific questions, contact:

- Marcus Redford, 8th U.S. Coast Guard District, at (504) 589-2965; FAX (504) 589-3063

These activities may also need a permit from the USACE.

FLOODPLAIN MANAGEMENT

Any new construction or repairs to damaged structures in a floodplain must comply with the community's floodplain management regulations. No repair or new construction can begin without approval of the local floodplain administrator. For specific information contact:

- Your local county or city floodplain administrator for specific information, or
- Mike Howard, TCEQ, (512) 239-6155, pager (512) 606-6319, Fax (512) 239-4770.
- Bruce Humphrey, TCEQ, (512) 239-3266, pager (512) 875-7318, Fax (512) 239-4770.

EXECUTIVE ORDER (EO) 11988, FLOODPLAIN MANAGEMENT AND EO 11990, PROTECTION OF WETLANDS

Any modification to a floodplain or wetland must comply with EO 11988 and EO 11990 and must also follow the eight-step process, including public notification, as identified in 44 CFR Part 9. Debris cannot be stored in a floodplain or wetland, even temporarily. To remove debris, conduct any type of demolition, repair or construction activity within a floodplain or wetland, contact:

- Your local county or city floodplain administrator if in a floodplain
- Terri Stinnett-Herczeg, USACE, Galveston District, Regulatory Branch, (409) 766-3991, Fax (409) 766-3931
- Lloyd Mullins, USACE, Corpus Christi Office, (361) 814-5847 ext. 123, Fax (361) 814-5912
- Presley Hatcher, USACE, Fort Worth District, Regulatory Branch, at (817) 886-1740, Fax (817) 886-6493, Main Office (817) 886-1731
- Edith Efling, USFWS, Clear Lake Office, (281) 286-8282, Fax (281) 488-5882
- Mary Orms, USFWS, Corpus Christi Field Office, at (361) 994-9005, ext 226, Fax (361) 994-8262
- Rusty Swafford, NMFS, Galveston, (409) 766-3699, Fax (409) 766-3575

Actions exempt from EO 11988 are debris removal, but not staging or storing, and repairs or replacements authorized under Section 406, of the Stafford Act, which are under \$5,000.

THREATENED AND ENDANGERED SPECIES

There are numerous species and/or critical habitat in the disaster area that are protected under the Endangered Species Act, including birds, mammals, fishes, reptiles, amphibians, and plants. If clean-up or construction activities are intended on undisturbed or unaltered land, or may potentially affect the water quality or quantity of a water shed, or if you believe any state or federal listed or proposed species may be affected (positively or negatively) by your actions, additional information can be obtained from:

- Celeste Brancel, Texas Parks and Wildlife (TPW), Environmental Review Coordination, for State-listed threatened and endangered species: (512) 912-7021, Fax (512) 912-7058
- U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) for Federally-listed threatened and endangered species:

- Edith Erling, USFWS, Clear Lake office, (281) 286-8282; Fax (281) 488-5882
- Mary Orms, USFWS, Corpus Christi Field Office, at (361) 994-9005, ext 226; Fax (361) 994-8262
- Rusty Swafford, NMFS, Galveston, (409) 766-3699, Fax (409) 766-3575

ACTIVITIES IN COASTAL AREAS

Coastal Zone Management Act

All federally funded projects must be consistent with the Texas Coastal Management Program (CMP). See map on page 13 for the Texas CMP. The Texas General Land Office (GLO) monitors and manages coastal zone actions in partnership with the federal government under the Coastal Zone Management Act. FEMA must provide consistency determination for projects within the Texas CMP boundaries. For information contact:

- Eddie Fisher, GLO, (512) 463-9215, Fax (512) 475-0680 or
- FEMA Environmental Specialist, (512) 908-8700, Fax (512) 980-8857

Permits must be obtained through the Local Beach/Dune Permitting Authority prior to any construction activity. Emergency actions must be coordinated as soon as possible. For permit information on any activity that may potentially affect coastal dunes and estuarine areas contact:

- Manuel Freytes, GLO, Corpus Christi Field Office at (361) 825-3036, Fax (361) 825-3040.
(For Calhoun, Jackson, Refugio, and Victoria Counties and shared responsibility with LaPorte Field Office for Matagorda County)
- Garry McMahan, GLO, LaPorte Field Office at (281) 470-1191, Fax (281) 470-8071
(Shared responsibility with Corpus Christi Field Office for Matagorda County).

Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA) protects ecologically sensitive coastal barriers along the Atlantic and Gulf coasts and is regulated by the U.S. Fish and Wildlife Service. This includes actions that have the potential to adversely affect fish, wildlife, and other natural resources associated with coastal barriers. Compliance with this Act will be coordinated by FEMA. Contact:

- FEMA Environmental Specialist, (512) 908-8700, Fax (512) 908-8857

HISTORIC PRESERVATION

There are numerous historic structures in the disaster area. They may be buildings, bridges, or roads. Many of these structures are not on the National Register of Historic Places, but may be eligible for the National Register, which is the trigger for concern under Section 106 of the National Historic Preservation Act. Any structure receiving federal assistance that was

built prior to 1961 or that otherwise has specific historic and/or cultural significance must be reviewed under Section 106 before conducting any demolition, construction, or repair activity.

Any structure or site with Recorded Texas Historic Landmark or State Archaeological Landmark designation must be reviewed before conducting any demolition, construction, or repair activity. Any previously undisturbed area that a proposed project receiving Federal assistance may impact, e.g., relocating a utility, road realignment, or a material borrow for construction, must be reviewed with the State Historic Preservation Officer for archeological concerns before initiating construction. See page 18 for the Ground Disturbance form. Plowing or other similar agricultural activities do not constitute a disturbance.

The Texas Historical Commission is the responsible agency and houses the State Historic Preservation Officer (SHPO). Contact:

- Bob Brinkman, (512) 463-8769 (primary point of contact), Fax (512) 475-3122, Email: bob.brinkman@thc.state.tx.us
- Ed Baker, (512) 463-5866 (for archeological issues); Fax (512) 463-8927 Email: ed.baker@thc.state.tx.us

To expedite review by the SHPO:

For all work that involves surface-level or subsurface ground disturbances, please submit:

- an accurate map of the project area (SHPO prefers a USGS topographic quad sheet whenever available)
- a brief description of all proposed work (include depth for subsurface impacts)
- NOTE - If any buried cultural materials are encountered after the work begins, (e.g. wells, cisterns, foundations, basements, prehistoric Indian artifacts, or human burials) cease work **immediately** and call the SHPO
- for architectural work that involves historic and potentially historic structures, (i.e. all buildings, bridges, or other structures built before 1961) please submit:
- a project scope describing the property/structure(s), age, exact location/address, and, if known, current and past use
- clear original photographs (no digital or photocopy images please)

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

Local government records can be significantly affected by flood and other disasters. While protection of human life is always the primary concern, state law requires that public records also be protected and preserved.

For additional information and assistance with detailed methods of recovery for vital records, contact:

- Texas State Library and Archives Commission at (512) 452-9242
- <http://www.tsl.state.tx.us>

DIVISION OF EMERGENCY MANAGEMENT (DEM)

The State of Texas administers the Public Assistance and Hazard Mitigation programs following a disaster. Points of contact are:

PUBLIC ASSISTANCE

During the response and recovery phases of this disaster, personnel can be reached at the Austin Joint Field Office (JFO) at:

- Kathy Woodard, DEM, State Public Assistance Officer, (512) 908-8770, Fax (512) 908-8858, Cell 512-977-4118, E-mail: Kathleen.Woodard@associates.dhs.gov

After closure of the Austin JFO, State DEM personnel can be contacted at:

- Kathy Woodard, DEM, State Public Assistance Officer, (512) 424-2876, Fax (512) 424-2444, Cell 512-426-4538, E-mail: Kathleen.Woodard@associates.dhs.gov

HAZARD MITIGATION

During the response and recovery phases of this disaster, personnel can be reached at the Austin Joint Field Office at:

- Hildy Soper, Mitigation Grants Officer for the State of Texas, (512) 977-4118, Fax (512) 908-8857; E-mail: hildy.soper@fema.gov

After closure of the Austin JFO, State DEM personnel can be contacted at:

- Hildy Soper, Mitigation Grants Officer for the State of Texas, (512) 424-2454, Fax (512) 424-2444; E-mail: Hildy.Soper@txdps.state.tx.us

REMINDER

In order to ensure federal funding and allow FEMA to provide monetary aid, applicants must obtain and comply with all local, state, and federal environmental and historic preservation laws, requirements, and permits. Our environmental specialists are ready to provide applicants with any assistance needed in order to ensure full compliance. Please be aware that failure to comply may jeopardize FEMA's ability to provide applicants with Federal funding.

For FEMA general environmental information also see the Internet addresses:

www.fema.gov

www.fema.gov/ehp/

www.fema.gov/regions/vi/env/env_index.shtm

ENVIRONMENTAL CONSIDERATIONS GENERAL GUIDANCE TO APPLICANTS

For PUBLIC ASSISTANCE and HAZARD MITIGATION GRANT PROGRAM

Numerous Federal environmental and historic preservation laws require compliance in order for applicants to receive ANY Federal funds for projects. The following are the laws that usually affect FEMA funded projects:

- National Environmental Policy Act (NEPA)
- Endangered Species Act
- National Historic Preservation Act
- Coastal Zone Management Act
- Solid Waste Disposal Act
- EO 11990 Wetlands Protection
- EO 11988 Floodplain Management
- EO 12898 Environmental Justice
- Clean Water Act (Section 404)
- Clean Air Act
- Sustainable Fisheries Act

Applicants are essentially allowed to complete the following work in accordance with specific policy guidance from FEMA:

- Emergency Actions (e.g. search and rescue, emergency care, issues of life safety)
- Debris Removal (not necessarily disposal or storage/staging)
- Repairs/restoration to pre-disaster condition (with no significant change in footprint to include the construction area), unless the structure was built before 1958
- Temporary repairs, unless the structure was built before 1958

Before the following actions can be taken, NEPA and other environmental and historic preservation considerations must be addressed:

- Debris disposal (other than to a permitted landfill).
- Any project where the footprint is different from the pre-disaster condition
- Projects with Section 406 mitigation
- Any project affecting a historic, or potentially historic, site or structure
- Any project affecting a threatened, endangered or proposed species
- Any project affecting a wetland
- Any project affecting a floodplain
- Any project with known or suspected environmental concerns

The following actions, whether approved by State or FEMA, must have an environmental review by FEMA prior to initiating construction:

- Improved projects
- Alternate projects
- Other projects in which the approved scope of work has been changed

September 27, 2005

The Honorable XXXXXXXX
XXXXXXX County Judge
XXXXXXX, TX

Dear Judge XXXXX:

Recently heavy rain and flooding in XXXX County have resulted in extensive amounts of storm debris that is in need of disposal. The Texas Commission on Environmental Quality (TCEQ) is providing this letter in an effort to expedite the approval of outdoor burning, as provided by 30 Texas Administrative Cod (TAC) Chapter 111, where necessary to alleviate large volumes of storm debris. **In addition to the approval provided by this letter, officials must comply with local fire codes and get approval from local fire authorities prior to burning.** Burning conducted in XXXX County, in accordance with the conditions of this letter, is authorized until December 1, 2005. If additional outdoor burning activities are required after this date, please contact the TCEQ XXXXX Region XX Office. Authorization to burn may be revoked by the Executive Director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

Under authority of 30 TAC § 111.215, “Executive Director Approval of Otherwise Prohibited Outdoor Burning”, the TCEQ is providing this letter to authorize county and municipal governments to burn brush, trees and other growth that is causing a detrimental health and safety condition provided the conditions of 30 TAC § 111.219 “General Requirements of Allowable Outdoor Burning” are followed. TCEQ is also authorizing the burning of lumber debris resulting from recent floods provided reasonable effort is made to separate these materials from materials that otherwise should not be burned such as treated wood, tires, plastics, insulation, and natural and synthetic rubber. The TCEQ will allow local authorities to burn within city limits provided all other provisions of 30 TAC § 111.219 are followed, including the distance requirement from homes and roads.

There may be circumstances in which burning within the provisions of 30 TAC § 111.219 are not practical. In these cases, the TCEQ regional office may be requested to authorize the necessary and prudent burning of storm debris on a case-by-case basis. Local authorities should contact the appropriate regional office to request authorization if they are not able to meet all the burn conditions listed in 30 TAC § 111.219 and this letter. These authorizations must, however, be consistent with the following:

- Burning activity may be approved at permitted landfills within permitted boundaries provided that this activity occurs on a site that has not been landfilled (virgin land);

- Burning of tires, shingles, paints/solvents, plastics, insulated wire, batteries, appliances, asbestos materials, and aerosol or pressurized containers should be avoided if burial options exist. **The following types of materials can not be included in any burn under any circumstances: compressed gas cylinders containing hazardous materials such as propane, acetylene, chlorine or any other hazardous material that may be injurious to public health and safety;**
- Distance to neighbors and structures should be evaluated to prevent occurrence of nuisance conditions or fire safety hazards;
- Burning should be authorized only during daylight hours;
- Debris should be separated into small piles, if possible;
- Materials to be burned should be reasonably dry to prevent excessive smoke ; and
- Burning of animal carcasses should be conducted using a trench burner, if possible.

Burning authorized by this letter shall not be utilized to circumvent the intent of the controls in the rule, or as a means to conduct illegal solid waste disposal, such as the burning of debris that was accumulated prior to this flooding event. The local authority conducting the burn must not create a nuisance condition or traffic hazard as prohibited by 30 TAC §§101.4 and 101.5 respectively.

TCEQ recommends that local governments collect debris not recommended to be burned and that these wastes be disposed of in appropriate permitted landfills or be recycled. Please contact XXXX, Air Section, Region XX, Regional Office at (xxx) xxx-xxxx if you have questions regarding the burning of flood debris.

Sincerely,

Don H. Thompson, Regional Director
Houston, Region 12 Office
Field Operations Division

Enclosures: Copy of applicable rules

TCEQ REGIONS

Region 1 - Amarillo
806/353-9251

Armstrong	Hemphill
Briscoe	Hutchinson
Carson	Lipscomb
Castro	Moore
Childress	Ochiltree
Collingsworth	Oldham
Dallam	Farmer
Deaf Smith	Potter
Donley	Randall
Gray	Roberts
Hall	Sherman
Hansford	Swisher
Hartley	Wheeler

Region 2 - Lubbock
806/796-7092

Bailey	King
Cochran	Lamb
Crosby	Lubbock
Dickens	Lynn
Floyd	Motley
Garza	Terry
Hale	Yoakum
Hockley	

Region 3 - Abilene
325/698-9674

Archer	Kent
Baylor	Knox
Brown	Mitchell
Callahan	Montague
Clay	Nolan
Coleman	Runnels
Comanche	Scurry
Cottle	Shackelford
Eastland	Stephens
Fisher	Stonewall
Foard	Taylor
Hardeman	Throckmorton
Haskell	Wichita
Jack	Wilbarger
Jones	Young

Region 4 - DFW
817/588-5800

Collin	Johnson
Cooke	Kaufman
Dallas	Navarro
Denton	Palo Pinto
Ellis	Parker
Erath	Rockwall
Fannin	Somervell
Grayson	Tarrant
Hood	Wise
Hunt	

Region 5 - Tyler
903/535-5100

Anderson	Marion
Bowie	Morris
Camp	Panola
Cherokee	Rains
Cass	Red River
Delta	Rusk
Franklin	Smith
Gregg	Titus
Harrison	Upshur
Henderson	Van Zandt
Hopkins	Wood
Lamar	

Region 6 - El Paso
915/834-4949

Brewster	Hudspeth
Culberson	Jeff Davis
El Paso	Presidio

Region 7 - Midland
432/570-1359

Andrews	Martin
Borden	Midland
Crane	Pecos
Dawson	Reeves
Ector	Terrell
Gaines	Upton
Glasscock	Ward
Howard	Winkler
Loving	

Region 8 - San Angelo
325/655-9479

Coke	Menard
Concho	Reagan
Crockett	Schleicher
Irion	Sterling
Kimble	Sutton
Mason	Tom Green
McCulloch	

Region 9 - Waco
254/751-0335

Bell	Limestone
Bosque	Lampasas
Brazos	Leon
Burleson	Madison
Coryell	McLennan
Falls	Milam
Freestone	Mills
Grimes	Robertson
Hamilton	San Saba
Hill	Washington

Region 10 - Beaumont
409/898-3838

Angelina	Polk
Hardin	Sabine
Houston	San Augustine
Jasper	San Jacinto
Jefferson	Shelby
Nacogdoches	Trinity
Newton	Tyler
Orange	

Region 11 - Austin
512/339-2929

Bastrop	Hays
Blanco	Lee
Burnet	Llano
Caldwell	Travis
Fayette	Williamson

Region 12 - Houston
713/767-3500

Austin	Harris
Brazoria	Liberty
Chambers	Matagorda
Colorado	Montgomery
Fort Bend	Walker
Galveston	Waller
	Wharton

Region 13 - San Antonio
210/490-3096

Atascosa	Karnes
Bandera	Kendall
Bexar	Kerr
Comal	Medina
Edwards	Real
Frio	Uvalde
Gillespie	Wilson
Guadalupe	

Region 14 - Corpus Christi
361/825-3100

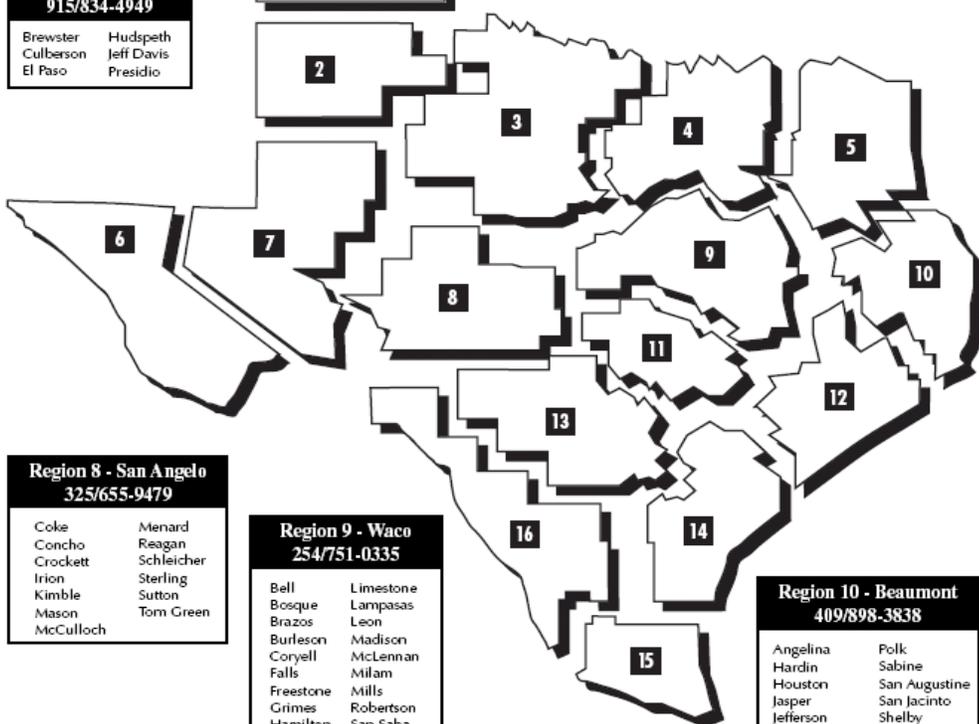
Aransas	Kleberg
Bee	Lavaca
Calhoun	Live Oak
De Witt	Nueces
Goliad	Refugio
Gonzales	San Patricio
Jackson	Victoria
Jim Wells	

Region 15 - Harlingen
956/425-6010

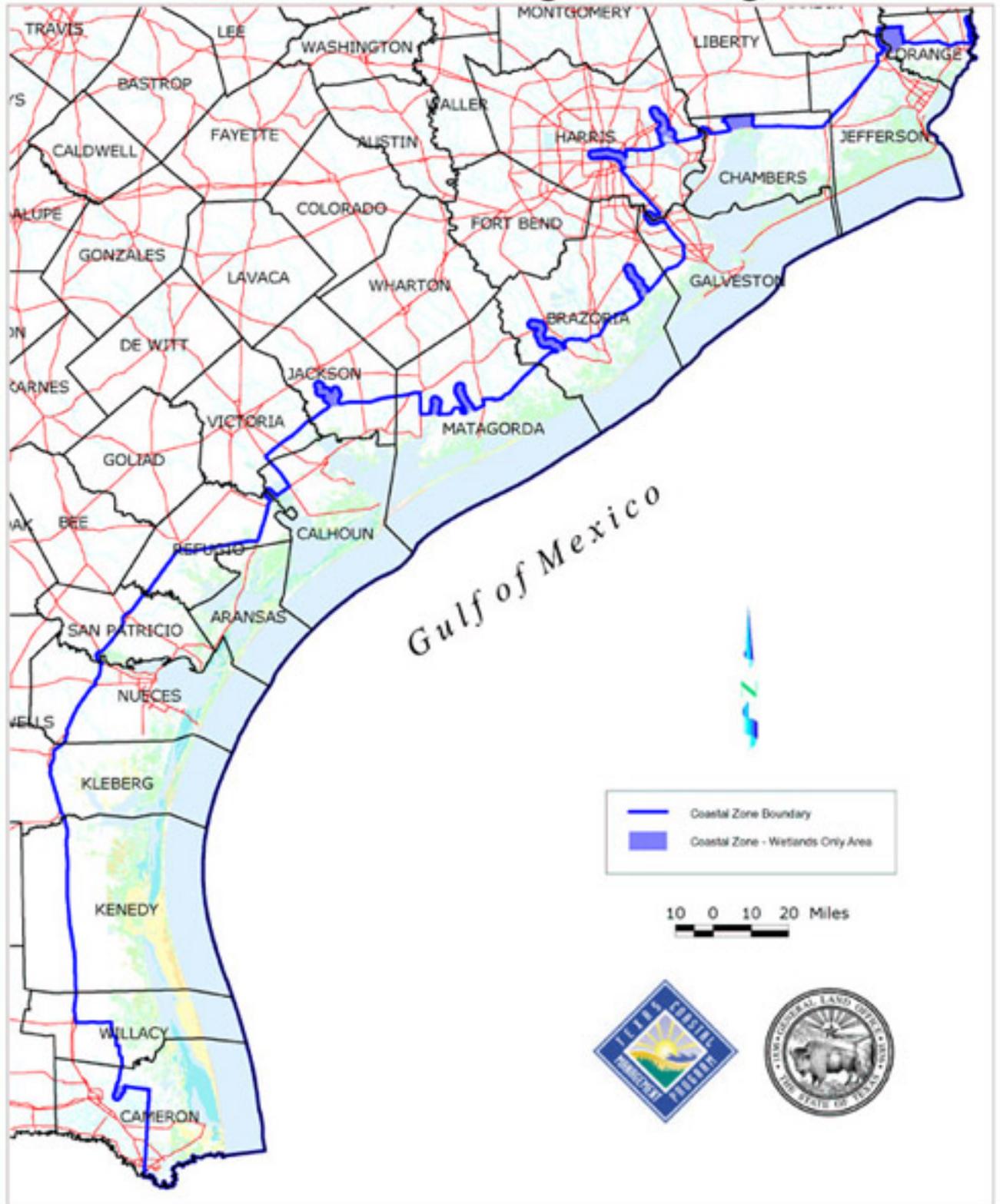
Brooks	Kenedy
Cameron	Starr
Hidalgo	Willacy
Jim Hogg	

Region 16 - Laredo
956/791-6611

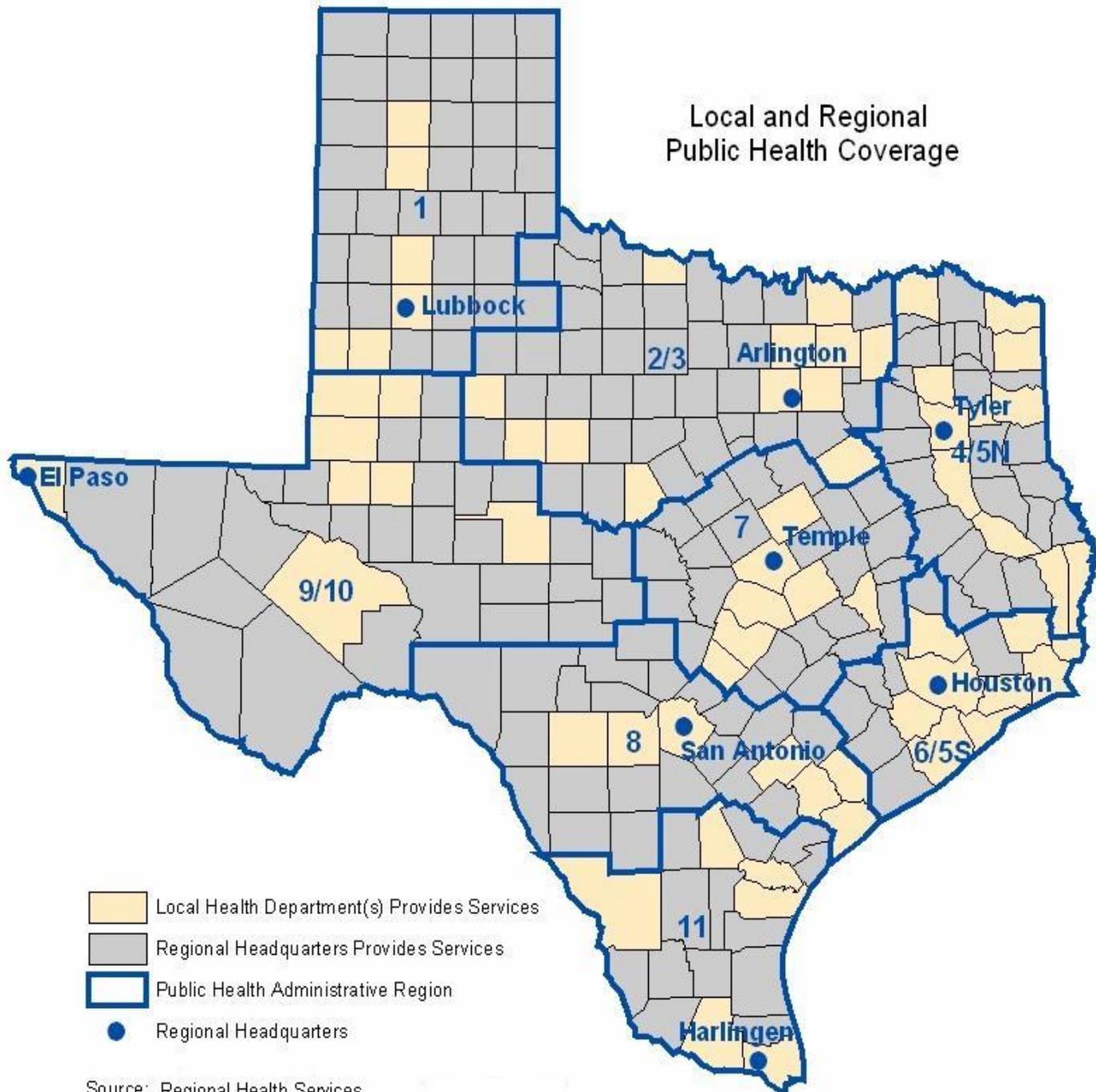
Dimmit	McMullen
Duval	Val Verde
Kinney	Webb
La Salle	Zapata
Maverick	Zavala



Texas Coastal Management Program



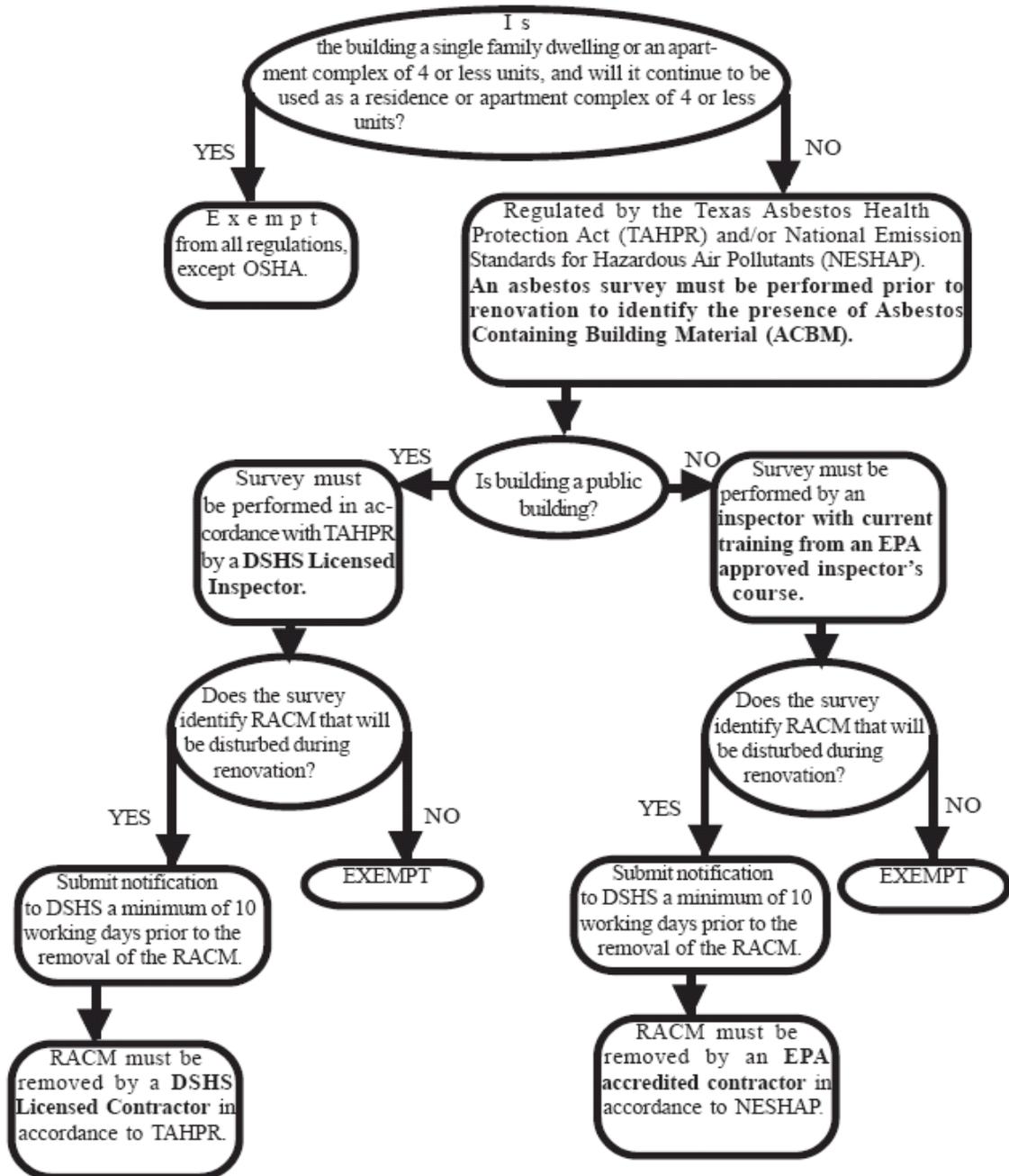
Local and Regional Public Health Coverage



Source: Regional Health Services
December 2003

Department of State Health Services

Renovation of Buildings



For further information, contact the Asbestos Programs Branch (800) 572-5548 in Texas or (512) 834-6600

or your local health department office.
<http://www.tdh.state.tx.us/beh/asbestos/default.htm>



FOR IMMEDIATE RELEASE

Thursday, September 29, 2005

TCEQ Rescinds Boil Water Advisory for Marion County

Boil Water Recommendation Still in Effect for 14 Counties

The TCEQ today rescinded the boil water advisory for Marion County, but the boil water advisory remains in effect for 14 counties as a result of damage and power outages caused by hurricane Rita. Many water systems in these counties, for example the city of Houston and The Woodlands water systems, never experienced drinking water issues, but other water systems in these counties are still experiencing operational difficulties.

Contact:	Terry Clawson
Phone:	512/239-0046
Pager:	512/875-9213

Communities such as Conroe in Montgomery County also never experienced water quality problems. However, other communities, such as Beaumont, Port Arthur, Jasper and others, are still experiencing problems.

Counties still in the advisory are Angelina, Chambers, Hardin, Northeast Harris, Jefferson, Liberty, Montgomery, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler and Walker. Residents should continue to boil their water, until they are advised by their water providers their water is safe.

If your electrical power service has not been interrupted, it is likely your water system is not on a boil water notice. If you are unsure as to whether or not your water system is on a boil water notice, please contact your water provider.

Portions of many counties in the hurricane impact zone have been able to provide water on a continuous basis and may not require boil water notices. However, communities that are experiencing utility service problems including electrical power outages, low water pressures, low disinfectant residuals, or water outages should implement a boil water notice.

In communities that have no power or communications, as a precaution, citizens should boil all water used for human consumption. Water should be vigorously boiled for at least two minutes and allowed to cool prior to consumption. Your water provider will inform you when it is safe to stop boiling your water via radio, television, newspaper, hand delivered notice, and/or public postings.

**EMERGENCY DEBRIS MANAGEMENT SITE CERTIFICATION FORM
HURRICANE RITA, FEMA-1606-DR-TX & FEMA-3261-EM-TX**

This form is to be used as a checklist for local officials who want to meet Federal environmental requirements for reimbursement by the Federal Emergency Management Agency (FEMA). The completion of this form will facilitate the Federal environmental and historic preservation reviews as required by law. **It is the applicant's responsibility to comply with the requirements of Texas Commission on Environmental Quality (TCEQ) letter dated September 2005, authorizing outdoor burning of storm related debris. Any sites where the applicant plans long-range storage, other than permitted landfills, without burning or reduction for recycling must have individual approvals from TCEQ.** If the creation or use of this emergency burning, processing and/or stockpiling site will include **ground disturbance**, including the creation of temporary roads, burying of burn residue, or will **impact structures over 45 years old**, the applicant must coordinate with and receive clearance (see **Ground Disturbance form on page 16**) from the Texas Historical Commission (THC) prior to the start of any ground disturbance. The applicant must attach this form to their public assistance project worksheet. **Individual certifications are required for each burning, burial, disposal, and/or staging or stockpiling site.**

City/Town to be served: _____

Address: _____ City: _____ -
_____ Zip _____

County: _____ Phone #: _____ FAX
#: _____

Landfill Permit #: _____ Landfill name and
location: _____

If a proposed temporary staging or stockpiling site, legal description/GPS Lat- Long

Directions to Site:

APPLICANT OFFICIAL

DATE

**REQUIREMENTS FOR EMERGENCY DEBRIS STAGING, PROCESSING OR DISPOSAL
SITES
OTHER THAN APPROVED LANDFILLS**

- Site is located above the 100-year floodplain, or has a permit from the local floodplain administrator. (The floodplain map used for locating the site must be from an original Flood Insurance Rate Map prepared by FEMA, a copy of the Flood Prone Area Map prepared by the U.S. Geological Survey or an equivalent constructed map that depicts the limits and elevations of any 100-year floodplain on or adjacent to the proposed site.)
- Site is located outside any known wetlands.
- Site is located at least ¼ mile from a public or private water supply (surface or ground).
- If the site will receive any putrescible waste that may attract birds, it is located at least 5000-feet (1524 meters) from any airport runway used only by piston-engine aircraft, and at least 10,000-feet (3048 meters) from any airport runway used by turbojet aircraft, with any exceptions approved by the U.S. Federal Aviation Administration.
- The site has security to minimize uncontrolled dumping.
- Site is a minimum of ½ mile from any known caves, springs, streams, and bayous.
- Any burn or debris residue disposed of in a landfill uses an existing, permitted and approved landfill.

APPLICANT OFFICIAL

DATE

**GROUND DISTURBANCE
FOR
HURRICANE RITA
FEMA-1606-DR-TX
FEMA-3261-EM-TX**

If the creation or use of this emergency burning, processing and/or stockpiling site will include **ground disturbance**, including the creation of temporary roads, burying or burn residual, or will impact structures, the applicant must coordinate with and receive clearance from the Texas Historical Commission prior to the start of any ground disturbance. **It is the applicant's responsibility to send or FAX BOTH certifications to their TCEQ and the Texas Historical Commission (THC) contacts for approval in all ground disturbance issues.** The applicant must attach **both** certifications to their public assistance project worksheet. **Individual certifications are required for each burning, burial, disposal, and/or staging or stockpiling site.**

APPLICANT OFFICIAL

DATE

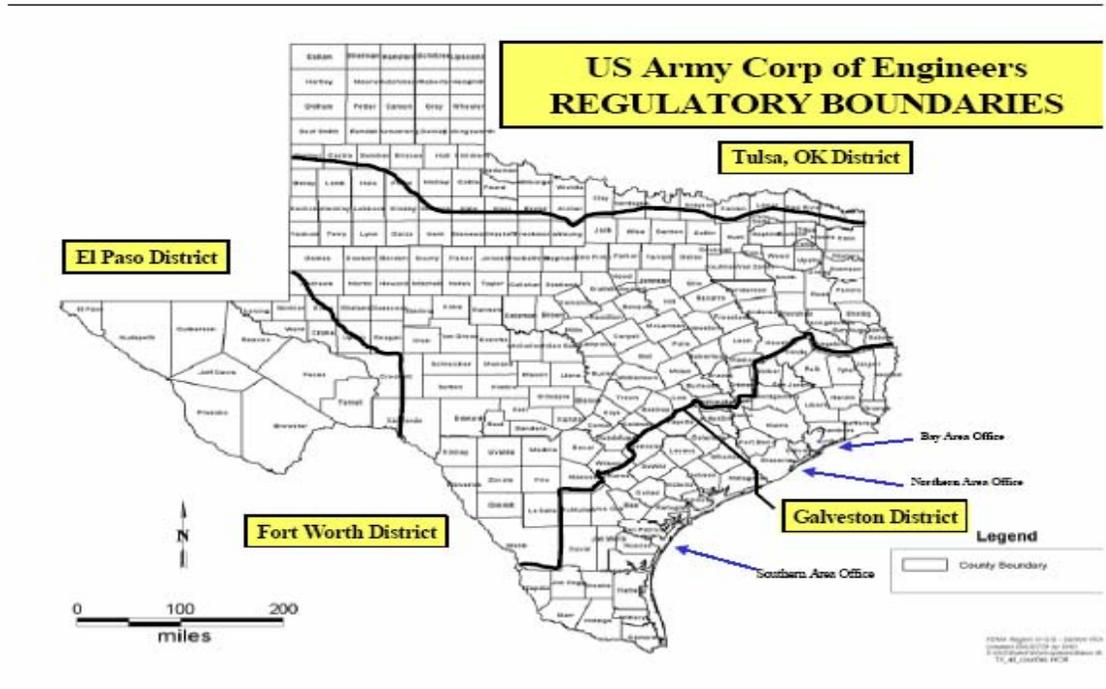
Texas Historical Commission Certification

I certify that the above referenced site:

- Is not located on any known archeological site or historical property.
- Is located on an archeological site and an alternate area needs to be considered.

THC OFFICIAL

DATE



Corpus Christi Office
Lloyd Mullins
361-814-5847, ext 123
Fax: 361-814-5912

Galveston District
Terri Stinnett-Herczeg
409-766-3991
409-766-3936

Ft. Worth District
Presley Hatcher
817-886-1740
Fax: 817-886-1740

Fax: 409:766-3931

EMERGENCY PROJECT

**RIVERS AND HARBORS ACT SECTION 10 / CLEAN WATER ACT SECTION 404
FEMA-1606-DR-TX, FEMA-3261-EM-TX**

FEMA/NRCS/State Project No. _____ Corps ID
No.: _____

Project
Proponent: _____

Mailing
Address: _____

City/State/Zip: _____

Project POC: _____ Phone: _____ Cell Phone: _____ Fax: _____

PROJECT LOCATION

Waterway Name: _____ Tributary to:

City: _____ County: _____ State:

Provide at least ONE of the following location details:

a. _____ ¼ of _____ ¼ of Section _____, Township _____ N/S, Range _____ E/W

b. Latitude: _____ Longitude:

c. UTM Zone: _____ Northing: _____ Easting:

PROJECT DESCRIPTION

Original Structure/Fill Description:

Proposed Repair/Replacement:

Betterments (Changes from the original alignment or structure):

Temporary Fill (type and est. quant.):

Permanent Fill (type and est. quant.):

Wetlands on Site? Yes _____ No _____ Possible/Undetermined _____

CONCURRENCE REQUESTED

For Corps of Engineers Use Only

_____ Exempt from Section 404 _____ Nationwide Permit 3 or 23 Other: _____

Attachments:

1) location map

2) photo showing existing site & conditions

3) sketch (if appropriate or to portray betterments)

Comments/Special Conditions:

Corpus Christi

Fax: 361-814-5912

Phone: 361-814-5847

Galveston District

Fax: 409-766-3931

Phone: 409-766-3991

Phone: 409-766-3936

Ft. Worth District

Fax: 817-886-1713

Phone: 817-886-1740

Signature: _____ Title:

STATE OF TEXAS

HAZARD MITIGATION

ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 8

UNIFORM GRANT MANAGEMENT STANDARDS

UNIFORM GRANT MANAGEMENT STANDARDS

GOVERNOR'S OFFICE OF BUDGET AND
PLANNING

(As Adopted June 2004)

Rick Perry
Governor

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REVISIONS ADOPTED IN JUNE 2004 HAVE BEEN HIGHLIGHTED.

I. Introduction

The following Uniform Grant Management Standards (UGMS) for state agencies were developed under the authority of Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Standards Act of 1981. That Act directs the governor's office to establish uniform grant and contract administration procedures "to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state and federal agencies." The Act requires the governor's office to "compile and distribute" a set of standards from OMB Circular A-102 and "from other applicable statutes and regulations." The standards were first published in June 1982, incorporating A-102, "Grants and Cooperative Agreements With State and Local Governments"; A-87, "Cost Principles for State, Local and Indian Tribal Governments"; and A-128, "Audits of State and Local Governments." They were revised in February 1990 to incorporate changes to OMB Circular A-102. Major revisions began in January 1996 and were completed in December 1997, with clarifications to the cost principles and revisions to the audit provisions made in December 1998 in response to specific questions regarding the standards as published in January 1998. Amendments were adopted November 2000. The revisions incorporated into this issuance of the standards were developed to conform UGMS changes in OMB Circular A-87, to revise and clarify the A-102 annotations as necessary and to make the standards consistent with federal law by substituting OMB Circular A-133 for A-128, which was rescinded when A-133 was issued in June 1997. While both A-87 and A-102 were significantly modified to reflect state law, policies and procedures, A-133 was transformed into a new state single audit circular. The last amendments were adopted in June 2004. The revisions correct typographical errors, clarify certain provisions in the cost principles and make substantive changes to selected provisions of the state single audit circular adopted by reference from OMB Circular A-87, the grant administration requirements adopted by reference from the Common Rule of OMB Circular A-102 and single audit requirements adopted by reference from OMB Circular A-133.

Purpose, Applicability and Scope

Purpose: The Uniform Grant Management Standards were established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state.

Applicability: Chapter 783 of the Government Code specifically applies the standards promulgated by the governor's office only to state and local governments, and excludes school districts, colleges and universities and special districts. However, to further consistency and accountability, some state agencies have applied these standards by rule or contract to all their subrecipients. In addition, Chapter 2105, Texas Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards. In summary, recipients and subrecipients, other than state and local governments, of federal pass-through and other funds from state agencies should check with the awarding agency to ascertain whether or to what extent they are subject to these standards. In the event of a conflict between UGMS and applicable federal law, the provisions of federal law apply.

Scope: The standard financial management conditions and uniform assurances set out in the following pages are applicable to all grants, cooperative agreements, contracts and other

financial assistance arrangements executed between state agencies, local governments and any other subrecipient not specifically excluded by state or federal law. Contracts for the sole purpose of procuring goods or services on a competitive basis, in which there is a clear purchaser-vendor relationship, are excluded from the requirements of these standards (see State Single Audit Circular, sec.____.210 for guidance on determining whether a subrecipient or a vendor relationship exists). State agencies may deviate from these standards only if the agency has complied with Texas Government Code, Sec. 783.007, Uniform Assurances and Standard Conditions Required; Variations.

II. Cost Principles for State and Local Governments and Other Affected Entities

With Annotations Where State Provisions Differ from the OMB Circular A-87

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ATTACHMENT A -- General Principles for Determining Allowable Costs

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ATTACHMENT A -- General Principles for Determining Allowable Costs

A. Purpose and Scope

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, contracts, **[these principles apply to cost reimbursement as well as other types of payment agreements; “cost reimbursement” has been stricken only to avoid a possible interpretation limiting the type of contracts covered.]** and other agreements with the federal **and state** government (collectively referred to in this Circular as “**Federal awards**”). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal **and state** awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal **and state** awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal **and state** funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal **and state** award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal **and state** awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal **and state** agencies in determining costs incurred by governmental units under Federal **and state** awards (including subawards) except those with (1) Publicly-financed educational institutions subject to OMB Circular A-21, ``Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, ``Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal **or state** contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency **or state grantor agency** shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal **or state awards**. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. ``Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. ``Award" means grants, contracts, **[these principles apply to cost reimbursement as well as other types of payment agreements; "cost reimbursement" has been stricken to avoid a possible interpretation limiting the type of contracts covered.]** and other agreements between a State, local and Indian tribal government and the Federal

or state government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or contract, **[these principles apply to cost reimbursement as well as other types of payment agreements; "cost reimbursement" has been stricken to avoid a possible interpretation limiting the type of contracts covered.]**, the Federal **or state** agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal **or state** awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies. **[See "state single audit coordinating agency"]**

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles. **Some federal agencies have guidelines that deviate from the common rule, either by statutory requirement or by special authorization from the Office of Management and Budget. In addition, some state agencies may have variances required by statute that apply to nonprofits and others.**

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. **Procurement** contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq. or by the **Uniform Grant Management Standards**.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal **or state** awarding or cognizant agency. It does not include transfers to a

general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Documentation" means records that verify grant expenditure amounts and their appropriateness to grant funds. (See C. Basic Guidelines (1)(j) definition of "adequately documented")

13. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

14. "Governmental unit" means the entire State, local, political subdivision, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award. **[Section 783.003(3) of the Texas Government Code specifically excludes school districts and other special purpose districts from UGMS. However, some state agencies have extended UGMS by rule to certain categories of recipients which are not specifically excluded by the statute.]**

15. "Grant" means an award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization:

The receiving organization:

- (1) Determines who is eligible to receive what state or federal financial assistance;
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and

- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

Section ____ .210(d) points out that “There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.”

16. “Grantee department or agency” means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal **or state** award. **The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.**

17. “Indirect cost rate proposal” means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

18. “Local government” means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government. **[Section 783.003(3) of the Texas Government Code specifically excludes school districts and other special purpose districts from UGMS.]**

19. “Public assistance cost allocation plan” means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

20. “State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

21. “State single audit coordinating agency” means the state agency designated by the governor’s office to coordinate single audits of state subrecipients required by the Uniform Grant Management Standards and the State of Texas Single Audit Circular. Generally, the state agency which provides the most funding is designated as the coordinating agency. The state single audit coordinating agency is responsible for assuring satisfactory and timely audit coverage, providing technical assistance and liaison, conducting desk reviews of audit reports, notifying other affected agencies of irregularities, advising a subrecipient if its audit does not meet single audit requirements, coordinating additional audits and following up on audit findings applicable to its own, but not other affected agencies’, programs. A state single audit coordinating agency may, but is not required to, review and approve an assigned grantee’s indirect cost plan. A detailed listing of the state single audit coordinating agency’s responsibilities appears at sec. ____400, State of Texas Single Audit Circular.

22. "Subcontractor" means a purveyor of goods or services engaged by a primary contractor to provide goods, services or both through a procurement relationship generally available to any purchaser for a stated price. Although such goods or services may contribute to carrying out some portion of a scope of services for which grant funds are expended, they constitute procurement, and are not subject to the requirements set forth in these Standards for grantees and subgrantees (see State of Texas Single Audit Circular, sec.____.210 (c) and (d)).

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal **or state** awards, costs must meet the following general criteria:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal **or state** awards.
- b. Be allocable to Federal **or state** awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal **or state** laws, terms and conditions of the Federal **or state** award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal **or state** awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal **or state** award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal **or state** award as an indirect cost.
- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal **or state** award in either the current or a prior period, except as specifically provided by Federal **or state** law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented. **Documentation required may include, but is not limited to, travel records, time sheets, invoices, contracts, mileage records, billing records, telephone bills and other documentation that verifies the expenditure amount and appropriateness to the grant.**

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately **state or** federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal **or state** award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal **or state** award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the **state or** Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal **or state** award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs. **[For example, the fair market value of volunteer services contributed to a project need to be included in the allocation. Unallowable costs have to be included to ensure that the grantor agency does not pay a disproportionate share of project costs by having such costs "backed out" prior to allocating costs among funding sources.]**

c. Any cost allocable to a particular Federal **or state** award or cost objective under the principles provided for in this Circular may not be charged to other Federal **or state** awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal **or state** awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal **or state** award, a cost allocation plan will be required as described in

Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal **or state** awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal **or state** award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the **state or** Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits.

Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal **or state** awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal **or state** financing of activities.)

D. Composition of Cost

1. Total cost. The total cost of Federal **and state** awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal **or state** award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal **or state** awards are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal **or state** awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within an entity or in other agencies providing services to an entity. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal **or state** award may not be shifted to another Federal **or state** award, unless specifically authorized by Federal **or state** legislation or regulation.

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in

Attachment C.

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office** or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by the chief financial officer and executive director of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government, **state single audit coordinating agency or other agency designated by the governor's office**, unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the grantee has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government, **state single audit coordinating agency or other agency designated by the governor's office** may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency, **state single audit coordinating agency or other agency designated by the governor's office** and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government, **state single audit coordinating agency or other agency designated by the governor's office** because of failure of the grantee to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

ATTACHMENT B -- Selected Items of Cost

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Sections 1 through 44 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal **or state** reimbursement only to the extent of benefits received by Federal **or state awards** and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. Accounting. The cost of establishing and maintaining accounting and other information systems is allowable.

2. Advertising and public relations costs.

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes directly related to the purpose(s) of the program receiving grant assistance necessary to meet the requirements of the Federal **or state** award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal **or state** award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal **or state** award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal **or state** contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

(5) Costs of publicizing or directing attention to any individual official or employee of any agency of the state government (Article IX, Sec. 6, General Appropriations Act of 1995).

(6) Costs associated with influencing the outcome of any election, or the passage or defeat of any legislative measure.

3. Advisory councils. Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal **or state** awarding agency or as an indirect cost where allocable to Federal **or state** awards. **Chapter 2110, Texas Government Code, contains detailed provisions relating to state agency advisory committees. State agencies should review these provisions as well as check appropriations act riders and general provisions to ensure they meet the statutory requirements and that expenditures for advisory committees are authorized prior to making such expenditures.**

4. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

5. Audit services. The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-133, "Audits of State and Local Governments" **and the State of Texas Single Audit Circular for state funds**. Generally, the percentage of costs charged to Federal **or state** awards for a single audit shall not exceed the percentage derived by dividing Federal **or state** funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. Automatic electronic data processing. The cost of data processing services is allowable **(but see section 20, equipment and other capital expenditures, for additional guidelines)**.

7. Bad debts. Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal **or state** program award regulations.

8. Bonding costs. Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. Budgeting. Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. Communications. Costs of telephone, mail, messenger, and similar communication services are allowable.

11. Compensation for personnel services.

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal **or state** awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal **or state** law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal **or state** awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal **or state** awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal **or state** awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be used only for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section **26**, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal **or state** awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal **or state** awards and other activities.

e. Pension plan costs. **Pension plan costs are allowable for bona fide plans established under state or federal law.** Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with

established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded.

The cognizant agency, ***state single audit coordinating agency or other agency designated by the governor's office*** may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government ***or state government*** and related Federal ***or state*** reimbursement and the governmental unit's contribution to the pension fund.

Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government ***or state government*** for the time value of Federal ***or state*** reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government and state grantor agencies shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period

agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office** may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government **or state government** and related Federal **or state** reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, and, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

- (a) An insurer or other benefit provider as current year costs or premiums, or
- (b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government **or the state grantor** agency shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency **or state grantor** agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal **or state** awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal **or state** award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency **or state awarding agency**. Such documentary support will be required where employees work on:

(a) More than one Federal **or state** award,

(b) A Federal award and a non-Federal award, **including a state**

award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee and the supervisory official having first hand knowledge of the work performed by the employee. **The employee's signature is not required in the event the employee cannot be reached due to termination of employment, lack of forwarding address, death or other documented reason.**

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal **or state** awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal **or state** awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal **or state** awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency, **state single audit coordinating agency or other agency designated by the governor's office**. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency **or state single audit coordinating agency or other agency designated by the governor's office** if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal **or state** awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal **or state** awards must be supported in the same manner as those claimed as allowable costs under Federal **or state** awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule. **The value placed on donated services must be documented to the satisfaction of the awarding agency prior to being accepted as match or for other financial purposes, and must be reasonable.**

Donated services shall be considered reasonable to the extent they are consistent with the value placed on similar work in other activities of the grantee or subrecipient. In cases where the kinds of services required to carry out a state award are not found in the other activities of the grantee or subrecipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing grantee or subrecipient competes for the kind of services involved. Surveys providing data representative of the services involved will be an acceptable basis for evaluating reasonableness.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular

personnel services.

12. Construction. No construction is allowed without the prior written approval of the awarding agency.

13. Contingencies. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 26.c.), pension plan reserves (see subsection 11.e.), post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods, and such other funds as may be required or permitted in writing by the awarding agency.

14. Contributions and donations. Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

15. Defense and prosecution of criminal and civil proceedings, and claims.

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded *nolo contendere* to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal **or state** programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

16. Depreciation and use allowances.

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be

its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government **or state** irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent (6 and 2/3) of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6 and 2/3 percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency, **state single audit coordinating agency or other agency designated by the governor's office** for indirect cost plans or state awarding agency for bilateral financial assistance relationships. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the

asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

17. Disbursing service. The cost of disbursing funds by the treasurer or other designated officer is allowable.

18. Employee morale, health, and welfare costs. The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

19. Entertainment. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable, **unless such costs are incurred for components of a program approved by the grantor agency and are directly related to the program's purpose.**

20. Equipment and other capital expenditures:

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.

Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) **\$5,000**.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal **or state** award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 16). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency.

Federal **and state** awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than **\$5,000 (or the capitalization level established by the governmental unit for financial statement purposes or subsequent threshold established by state law)** are considered to be supplies and are allowable as direct costs of Federal **pass-through or state** awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal **or state** funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. **In addition, subject to the prior written approval of the state awarding agency, a capitalization fund may be established to fund the acquisition of replacement or improved equipment.**

21. Fines and penalties. Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal **or state** award or

written instructions by the awarding agency authorizing in advance such payments.

22. Fund raising and investment management costs.

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal **or state** participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

23. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal **or state** programs.

a.

(1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 16 and 20.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 26.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal **or state** awards from a facility where the Federal Government **or state** participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal **or state** agency approval. The extent of the relocation, the amount of the Federal **or state** participation in the financing, and the depreciation charged to date may require negotiation of

space charges for Federal **or state** awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal **or state** awards covered in subsection b. shall be excluded in computing Federal **or state** award costs.

24. General government expenses.

a. The general costs of government are unallowable (**except as provided in section 43**). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal **or state** programs by the chief executive and his staff is allowable.

25. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions

resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal **or state** awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices.

Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

26. Insurance and indemnification.

a. Costs of insurance required or approved and maintained, pursuant to the Federal **or state** award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government **or state** property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal **or state** award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable. **However, if such losses result in an aggregate loss of \$1,000 or more within a twelve month period, the grantee or subrecipient may be required to reimburse the grantor agency.**

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions.

Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal

Government **or state** for its share of funds transferred, including earned or imputed interest from the date of transfer.

(6) All transactions must comply with state law.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit. **The state awarding agency may require that copies of claims paid be submitted for review prior to allowing recovery of costs.**

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government **or state** is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal **or state** award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

27. Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal **or state** legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)-(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)-(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal **or state** awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate.

Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal **or state** awards.

28. Lobbying. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

29. Maintenance, operations, and repairs. Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (**see sections 16 and 20**).

30. Materials and supplies. The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

31. Memberships, subscriptions, and professional activities.

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, technical and professional periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal **or state** awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

32. Motor pools. The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

33. Pre-award costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

34. Professional and consultant service costs.

a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 15 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. **State agencies should see Chapter 2254, Texas Government Code, for detailed provisions related to selection of consultants and professional services.**

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

35. Proposal costs. Costs of preparing proposals for potential Federal **or state** awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal **or state** awards with the prior approval of the Federal **or state** awarding agency.

36. Publication and printing costs. Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

37. Rearrangements and alterations. Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable.

Special arrangements and alterations costs incurred specifically for a Federal *or state* award are allowable with the prior approval of the Federal *or state* awarding agency.

38. Reconversion costs. Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal **or state** awards, less costs related to normal wear and tear, are allowable **subject to prior approval of the awarding agency.**

39. Rental costs.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or (3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 27.

40. Security deposits. Outlays for security deposits (e.g., rent , utilities, equipment rental) when required to carry out an authorized program are allowable. These outlays will be shown as “assets” until returned to the grantee. Any funds returned to the grantee or subrecipient shall be treated as program income in the year recovered.

41. Taxes.

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the **state or** Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

42. Training. The cost of training provided for employee development is allowable.

43. Travel costs.

a. General. Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-and non-state-sponsored activities **unless state law prescribes otherwise**. Notwithstanding the provisions of section 24, travel costs of officials covered by that section, when specifically related to Federal **or state** awards, are allowable with the prior approval of a grantor agency.

b. Lodging and subsistence costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy (**that is, the grantee's policies**). In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter **or as otherwise directed by state law** shall be used as guidance for travel under Federal **and state** awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. Commercial air travel. Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal **or state** government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government **or state awarding agency**, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. Air travel by other than commercial carrier. Cost of travel by governmental unit-owned, leased, or chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

44. Under recovery of costs under Federal **or state** agreements. Any excess costs over the Federal **or state** contribution under one award agreement are unallowable under other award agreements.

ATTACHMENT C -- State/Local-Wide Central Service Cost Allocation Plans

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A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally **and state**-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefited activities on a reasonable and consistent basis.

The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal **or state** awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "**A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.**" A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions

1. "Billed central services" means central services that are billed to benefited agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefited agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal *or state* awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should

include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the Federal Register.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal **or state** approval or review unless they are specifically requested to do so by the cognizant agency, **their state single audit coordinating agency or another agency designated by the governor's office**. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal **or state** awards.

Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal **or state** awards and between Federal and **other** non-Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service, an identification of the unit rendering the

service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefited agencies, and a summary schedule showing the allocation of each service to the specific benefited agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefited activities.

Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefited activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided; the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal to establish cost allocations or billings for are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State and Local Governments," and the Federal **and state** award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal **or state** awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements.

Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit -----
 Signature -----
 Name of Official -----
 Title -----
 Date of Execution -----

F. Negotiation and Approval of Central Service Plans

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to

make the proposal acceptable.

Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. **The results of the negotiation shall be made available to all Federal agencies for their use.**

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal **or state** awards, or (b) are unallowable because they are clearly not allocable to Federal **or state** awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency, **state single audit coordinating agency or another agency designated by the governor's office**. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency **or state awarding agency** in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all

central services whose costs were fixed in the approved plan.

However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal **or state** awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government **or state** for the Federal **or state** share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal **or state** awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule **or state** law.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

ATTACHMENT D--Public Assistance Cost Allocation Plans

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A. General

Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to

HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.
2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.
3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.
4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

ATTACHMENT E -- State and Local Indirect Cost Rate Proposals

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A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal **or state** awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated to a Federal **or state** award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal **or state** award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal **or state** awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal **or state** awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal **or state** awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "**A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.**" A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal **or state** awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods. **The State of Texas has no comparable process for negotiating and approving indirect cost plans. State single audit coordinating agencies may provide this service, but are not required to do so.**

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal **or state** awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. **A final audited rate is not subject to adjustment.**

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General.

- a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same

degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefited functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal **or state** awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal **or state** awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefited functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefited functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to the Federal Government, **the state awarding agency** and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefited functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal **or state** awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate

indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal **or state** statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award.

Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal **or state** awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule **and state** law.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan. **The State of Texas' "state single audit coordinating agency" system is modeled after the federal cognizant agency process, in so far as coordinating agencies are generally assigned by the governor's office based upon which state agency provides the most funds to the entity requesting designation of a coordinating agency. However, while state single audit coordinating agencies may negotiate and approve indirect cost plans, they are not required to do so. Therefore, in those situations in which a grantee or subgrantee does not have a federal cognizant agency or the federal cognizant agency does not provide a signed negotiation agreement, the state single audit coordinating agency, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the state single audit coordinating agency performs these duties,**

the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds. (See E.2. a. through g. for applicable procedures.)

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal **or state single audit coordinating agency or awarding** agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant **or state single audit coordinating agency or awarding** agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant **or state single audit coordinating agency or awarding** agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal **or state** awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form, **signed by the organization's chief financial officer and executive director of the organization**: Certificate of Indirect Costs
This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal **or state** award(s) to which they apply and OMB Circular A-87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal **or state** awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government **or state** will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.
Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal **and state** agencies unless prohibited or limited by statute. Where a Federal **or state** funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal **and/or state single audit coordinating** agency.

2. Other Indirect Cost Rates

a. In the absence of a signed negotiation agreement from the federal cognizant agency, the **state single audit coordinating agency**, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the **state single audit coordinating agency** performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds. State awarding agencies will use the alternative procedures set out in sections b through f below, as appropriate.

b. When a grantee has a negotiation agreement signed within the past 24 months by a federal cognizant agency or a **state single audit coordinating agency**, all state awarding agencies shall accept the rate *until* a new rate is negotiated with a federal cognizant agency or a state single audit coordinating agency on an annual or multiyear basis. A final rate will be established by audit, based upon actual allowable costs for the period. **A final audited rate is not subject to adjustment.**

c. When a grantee does not have an approved indirect cost rate, the **state single audit coordinating agency**, the major funding agency, or another state agency designated by the governor's office, as applicable, and the grantee may negotiate a predetermined, fixed or provisional rate, with a final rate to be established based on the actual allowable costs of the **period as established by audit.**

d. If the **state single audit coordinating agency**, the major funding agency or another state agency designated by the governor's office chooses not to negotiate a plan or rate, the grantee will keep the plan or rate on file. Once established, the rate will be used as the approved rate by all state awarding agencies, subject to standard carry forward adjustments and audit verification. **A final audited rate is not subject to adjustment.**

e. Alternatively, a grantee may negotiate a predetermined rate for one or more years with a grantor agency in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgement (1) as to the probable level of indirect costs in the grantee programs during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

f. Approved indirect cost recovery plans and cost rates are subject to renegotiation between the **state single audit coordinating agency**, the major funding agency or another state agency designated by the governor's office, as applicable, and a grantee during a program year if a grantee's total expenditures increase or decrease by 25 percent or more within a 90-day period. If the **state single audit coordinating agency**, the major funding agency or another state agency designated by the governor's office chooses not to renegotiate the plan or rate, the grantee will keep the revised plan or rate on file. A final rate will be established based on the actual allowable costs of the period as established by audit. **A final audited rate is not subject to adjustment.**

g. None of the above precludes an awarding agency from auditing indirect costs and recovering unallowable costs.

3. The use of predetermined rates, if allowed, is encouraged where the cognizant **or state single audit coordinating agency or awarding agency** has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where

appropriate.

4. The results of each negotiation shall be formalized in a written agreement between the cognizant **or state single audit coordinating agency or awarding** agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal **and state** agencies for their use.

5. Refunds shall be made **to the state awarding agency** if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal **or state** awards, or (b) are unallowable because they are clearly not allocable to Federal **or state** awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant **or state awarding** agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant **or state awarding** agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal **or state** awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal **or state awarding** agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner. **This does not apply to any problems between state agencies and their grant recipients.**

III. State Uniform Administrative Requirements For Grants and Cooperative Agreements

With Annotations Where State Provisions Differ from the Common Rule of OMB Circular A-102

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Subpart A—General

____.1 Purpose and scope of this part

This part establishes uniform administrative rules for federal grants and cooperative agreements and subawards to state, local and Indian tribal governments.

____.2 Scope of subpart

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

____.3 Definitions

As used in this part:

“Accrued expenditures” mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

“Accrued income” means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

“Acquisition cost” of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or-protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee’s regular accounting practices.

“Administrative requirements” mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from “programmatically” requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

“Awarding agency” means (1) with respect to a grant, the federal *or state* agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

“Cash contributions” means the grantee’s cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by federal legislation,

federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

“Common rule” means the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments; Final Rule” originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

Some federal agencies have guidelines that deviate from the Common Rule, either by statutory requirement or by special authorization from the Office of Management and Budget (OMB).

In addition, some state agencies may have variances by statute or rule that apply to nonprofits and others.

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Procurement contracts do not include grants and cooperative agreements covered by 31 USC 6301 et. seq. or by the Uniform Grant Management Standards. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization as opposed to a vendor:

A grantee or subrecipient:

- (1) Determines who is eligible to receive what state or federal financial assistance;
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

A vendor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the state program;

and

(5) Is not subject to compliance requirements of the state program.

Section (d) goes on to say that in making the determination, “the substance of the relationship is more important than the form of the agreement” and that not all of the characteristics have to be present to make a determination.

“Cost sharing or matching” means the value of the third party in-kind contributions and the portion of the costs of a federally *or state* assisted project or program not borne by the federal *or state* government.

“Equipment” means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 (or such other threshold established by state law) or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

“Expenditure report” means: (1) For nonconstruction grants, the SF-269 “Financial Status Report” (or other equivalent report); (2) for construction grants, the SF-271 “Outlay Report and Request for Reimbursement” (or other equivalent report).

“Federally recognized Indian tribal government” means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 State 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs

“Government” means a state or local government or a federally recognized Indian tribal government.

“Grant” means an award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, for which the grantee is not required to account.

“Grantee” means the entity to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization:

The receiving organization:

- (1) Determines who is eligible to receive what state or federal financial assistance;
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

“Local government” means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. **[Section 783.003 (3) of the Texas Government Code specifically excludes school districts and other special districts from UGMS; Section 783.003(4) excludes colleges and universities. However, some state agencies have extended UGMS by rule to these and other categories of recipients.]**

“Obligations” means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

“OMB” means the United States Office of Management and Budget.

“Outlay” (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash

disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

“Percentage of completion method” refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee’s cost incurred.

“Program income” refers to income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds, where authorized. Except as otherwise provided in regulations of the federal or state awarding agency,

program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned in excess of \$250 on grants from purely state sources is considered program income.

“Prior approval” means documentation evidencing consent prior to incurring specific costs.

“Real property” means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

“Standards” refers to the Uniform Grant Management Standards.

“Share”, when referring to the awarding agency’s portion of real property, equipment or supplies, means the same percentage as the awarding agency’s portion of the acquiring party’s total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

“State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

“Subgrant” means an award of financial assistance in the form of money or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of “grant” in this part.

“Subgrantee” means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

“Subgrantee” is synonymous with “subrecipient”. See the State Single Audit Circular, sec. ___210(b), (c) and (d) for guidance in differentiating between grants and procurement. Sec. ___210 (b) of that circular lists the following characteristics, which may be present in whole or part, of a grantee organization:

The receiving organization:

- (1) Determines who is eligible to receive what state or federal financial assistance;**
- (2) Has its performance measured against whether the objectives of the state or federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable state or federal program compliance requirements; and
- (5) Uses the state or federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the federal [or state] program; and

(5) Is not subject to compliance requirements of the federal [or state] program.

“Supplies” means all tangible personal property other than “equipment” as defined in this part.

“Suspension” means, depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

“Termination” means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

“Termination” does not include: (1) Withdrawal of funds awarded on the basis of the grantee’s underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

“Terms of a grant or subgrant” mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

“Third party in-kind contributions” mean property or services which benefit a federally assisted project or program and which are contributed by non-federal third parties without charge to the grantee, **or subgrantee**, under the grant agreement.

“Unliquidated obligations” for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

“Unobligated balance” means the portion of the funds authorized by the federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

“Withholding payments” means the temporary withholding of advances or reimbursements to a grantee or subgrantee for proper charges or obligations incurred, pending resolution of issues of noncompliance with grant conditions or indebtedness to

the U. S. or State of Texas. Withholding payments is not considered an adverse action for the purpose of protest or appeal.

.4 Applicability

(a) General. Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with federal *or state* statutes or with regulations authorized in accordance with the exception provision of Section .6, or:

(1) Grants and subgrants to state and local institutions of higher education or state and local hospitals. **This exception in these Standards is not applicable to hospitals.**

(2) Titles I-III of the Job Training Partnership Act of 1982. With the exception of (3) through (10) below, all other programs are subject to Subpart A-D of these Standards.

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903 (a) (6) (B) .

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for state administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 30 U.S.C. 238(d)(2)(c) and 240(f)

(Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) Entitlement programs. Entitlement programs enumerated above in Section _____.4 (a)(3)-(8) are subject to Subpart E.

____.5 Effect on other issuances

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in Section _____.6.

____.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register. State grantor agencies may vary from these Standards only when required to do so by federal law or regulations or by specific state law. State grantor agencies are required to notify the Governor's Budget and Planning Office and to publish the variance in the Texas Register. State grantor agency rules or regulations of themselves are not sufficient to authorize variance from the provisions contained herein.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB. **This provision does not apply to state agencies and grantees.**

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected federal agencies. **This provision does not apply to state agencies and grantees.**

Subpart B—Pre-Award Requirements

____.10 Forms for applying for grants

(a) Scope

(1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants. **State agencies are encouraged to use the application forms and procedures described in this section, where applicable, with modifications as necessary to meet state law requirements.**

(b) Authorized forms and instructions for governmental organizations.

(1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications. **State agencies may require additional copies of preapplications and applications.**

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted. State agencies may require resubmission of the entire application.

____.11 State plans

(a) Scope. The statutes for some programs require states to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," states are allowed to simplify, consolidate and substitute plans. This section contains additional

provisions for plans that are subject to regulations implementing the executive order.

(b) Requirements. A state need meet only federal administrative or programmatic requirements for plans that are in statutes or codified regulations.

(c) Assurances. In each plan the state will include an assurance that the state shall comply with all applicable federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the state may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) Amendments. A state will amend a plan whenever necessary to reflect: (1) New or revised federal statutes or regulations or (2) a material change in any state law, organization, policy, or state agency operation. The state will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

____.12 Special grant or subgrant conditions for “high-risk” grantees

(a) A grantee or subgrantee may be considered “ high-risk” if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

- (1) The nature of the special conditions/restrictions;
- (2) The reason(s) for imposing them;
- (3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and
- (4) The method of requesting reconsideration of the conditions/restrictions imposed.

____.13 Determination of Financial Management System Adequacy

An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

____.14 State assurances

(a) Scope. In addition to federal requirements, state law requires a number of assurances from applicants for federal pass-through or other state-appropriated funds. An attempt has been made below to list major state and federal assurances. Generally, not all of these assurances will be required for any one grant. However, it is the applicant's responsibility to ensure that all assurances required by the awarding agency are submitted.

The legal instrument for awarding state funds must be consistent with the standards prescribed herein; however, these standard conditions or assurances may be incorporated into contracts or grant agreements by reference rather than by being reproduced in their entirety.

(1) A subgrantee must comply with Texas Government Code, Chapter 573, Vernon's 1994, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

(2) A subgrantee must insure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless otherwise expressly prohibited by law.

(3) A subgrantee must comply with Texas Government Code, Chapter 551, Vernon's 1994, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

(4) A subgrantee must comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

(5) No health and human services agency or public safety or law enforcement agency may contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.

(6) A subgrantee that is a law enforcement agency regulated by Texas Government Code, Chapter 415, must be in compliance with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415, Texas Government Code or must provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules.

(7) When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and local subrecipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met. (See Section _____.36 for additional guidance on contract provisions.)

(8) A subgrantee must comply with the Texas Family Code, Section 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Subgrantees shall also ensure that all program personnel are properly trained and aware of this requirement.

(9) Subgrantees will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being

made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(10) Subgrantees will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction subagreements.

(11) Subgrantees will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

(12) Subgrantees will comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

(13) Subgrantees will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

(14) Subgrantees will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO 11738).

(15) Subgrantees will comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102 (a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(16) Subgrantees will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection

of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

(17) Subgrantees will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

(18) Subgrantees will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

(19) Subgrantees will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(20) Subgrantees will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

(21) Subgrantees will comply with Public Law 103-277, also known as the Pro-Children Act of 1994 (Act), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

(22) Subgrantees will comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

(23) Subgrantees will comply with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.

(24) The applicant must certify that they are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

(25) Subgrantees must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

Subpart C—Post-Award Requirements--Financial Administration

.20 Standards for financial management systems. [This section does not apply to procurement contracts.]

(a) A state must expend and account for grant funds in accordance with state laws and

procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the state, as well as its subgrantees, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U. S. Treasury and disbursements by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on

subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. **State awarding agencies and their subgrantees may pass through these requirements to their subrecipients or stipulate different procedures as necessary to meet federal and state requirements.**

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

.21 Payment

- (a) **Scope.** This section prescribes the basic standard and the methods under which a federal *or state* agency will make payments to grantees, and grantees will make payments to subgrantees and contractors. Payment procedures and forms must be provided by the state awarding agency.
- (b) **Basic standard.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205. Unless required by the state awarding agency or a subgrantee, this provision does not apply to state funds, since 31 CFR Part 205 applies only to transfer of federal cash to states.
- (c) **Advances.** Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee. State awarding agencies may advance fund grantees or subgrantees, but are not required to do so unless specifically directed by law.
- (d) **Reimbursement.** Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulations, federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.
- (e) **Working capital advances.** If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the federal *or state* agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis, subject to any restrictions in agency rules *or state* law. Under

this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) Effect of program income, refunds, and audit recoveries on payment.

(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) Withholding payments.

(1) Unless otherwise required by federal **or state** statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions;

or

(ii) The grantee or subgrantee is indebted to the United States **or to the State**

of Texas.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with Section _____.43(c).

(3) A federal **or state** agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the federal **or state** agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to assure satisfactory completion of work.

(h) Cash depositories.

(1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. State grantees must maintain any advances in federally-insured, interest-bearing accounts.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by federal-state agreement.

(i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses. Interest earned in excess of \$250 per year on grants from purely state sources is considered program income. Interest earned on grants which combine state and federal funds must be prorated between the sources. Earnings attributable to federal funds may be used only in accordance with applicable federal law and regulations.

____.22 Allowable costs

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees **and** subgrantees.

(b) Applicable cost principles. For each kind of organization, there is a set of federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a:

Use the principles in:

State, local or Indian
tribal government.

OMB Circular A-87

**The Following Circulars and Laws Are Not a Part of These Standards
And Do Not Apply to State and Local Government**

Private nonprofit organization
other than an (1) institution
of higher education, (2)
hospital, or (3) organization
named in OMB Circular A-122
as not subject to that circular.

OMB Circular A-122

Educational institutions

OMB Circular A-21

For-profit organization other
Principles
than a hospital and an organization
accounting
named in OMB Circular A-122
princi-
as not subject to that circular
state

**48 CFR Part 31. Contract Cost
Procedures, or uniform cost
standards that comply with cost
pals acceptable to the federal *or*
*awarding agency.***

____.23 Period of availability of funds

(a)General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The federal *or state* agency may extend this deadline at the request of the grantee.

____.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

- (1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-federal grants or by other cash donations from non-federal third parties.**
- (2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.**

(b) Qualifications and exceptions—

(1) Costs borne by other federal grant agreements. Except as provided by federal statute, a cost sharing or matching requirement may not be met by costs borne by another federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered federal grant funds. **Program no longer authorized or funded.**

(3) Cost or contributions counted toward other federal **or state** cost-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another federal **or state** grant agreement, a federal procurement contract, or any other award of federal **or state** funds.

(4) Costs financed by program income. Costs financed by program income, as defined in Section _____.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in Section _____.25(g).)

(5) Services or property financed by income earned by subgrantees. Subgrantees under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable

from the records of grantees and subgrantees. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee **or** subgrantee receiving the contribution had to pay for them, the payments would have been indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee **or** subgrantee has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

- (A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or
- (B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services--

- (1) volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.**
- (2) Employees of other organizations. When an employer other than a grantee or subgrantee furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's**

fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c) (1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, building, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that approval be obtained from the federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the

cost principles specified in Section _____.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for

donated equipment and buildings is based on the property's market value at the time it was donated.

- (f) **Valuation of grantee or subgrantee donated real property for construction/acquisition.** If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with federal funds, only the non-federal share of the property may be counted as cost sharing or matching.
- (g) **Appraisal of real property.** In some cases under paragraphs (d), (e), and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the federal *or state* agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

____.25 Program income

- (a) **General.** Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the federal *or state awarding* agency, program income does not include interest on *federal* grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned in excess of \$250 per year on grants from purely state sources is considered program income. Earnings attributable to federal funds may be used only in accordance with applicable federal law.
- (b) **Definition of program income.** "Program income" means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.
- (c) **Cost of generating program income.** If authorized by federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.
- (d) **Governmental revenues.** Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or federal agency regulations as program income.
- (e) **Royalties.** Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program

income only if the revenues are specifically identified in the grant agreement or federal agency regulations as program income. (See Section _____.34.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section _____.31 and Section _____.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both federal and non-federal as described below, unless the federal *or state* agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the federal *or state* agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When federal *or state* agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays. (See also section _____.21(f)(2)).

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the federal *or state* agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the federal *or state* agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the federal *or state* agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the federal *or state* grant award remains the same.

(h) Income after the award period. There are no federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the federal *or state* agency regulations provide otherwise.

_____.26 Audit

(a) Basic Rule. Grantees and subgrantees of federal awards are responsible for obtaining audits in accordance with the Single Audit Act (Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". The audits shall be made by an independent auditor in accordance with generally accepted government

auditing standards covering financial audits. Grantees and subgrantees of state awards (as defined in the State of Texas Single Audit Circular) are responsible for obtaining audits in accordance with the State of Texas Single Audit Circular.

(b) Single Audit Act, that receive federal *or state* financial assistance and provide \$300,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether state or local subgrantees have met the audit requirements of the Act.

(2) Determine whether the subgrantee spent federal ***or state*** assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with federal ***or state*** laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantees own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, Section ____36 shall be followed. Procurement of audit services must comply with state procurement procedures, as well as provisions of these Standards, Texas Administrative Code Section 5.167, State Single Audit Circular, and OMB Circular A-133.

(d) Grantees and subgrantees receiving federal awards (as defined in OMB Circular A-133) *or state* awards (as defined in the State Single Audit Circular) from a state awarding agency, who are not required to have an audit in accordance with either or both circulars for the grantee's/subgrantee's fiscal year in which the state or federal awards were made or expended, shall so certify in writing to each state awarding agency. The grantee or subgrantee's chief executive officer or chief financial officer shall make the certification within 60 days of the end of the grantee's/subgrantee's fiscal year.

Subpart C—Post-Award Requirements - Changes, Property, and Subawards

____.30 Changes

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by

the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see Section _____.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes.

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total *annual* approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) For non-construction grants of \$100,000 or less, the state awarding agency may, at its option, require prior approval of cumulative transfers of funds among direct cost categories when the amount transferred exceeds five percent of the total annual budget.

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

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non- construction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

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

(2) Need to extend the period of availability of funds.

- (3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.
 - (4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of Section _____.36 but does not apply to the procurement of equipment, supplies, and general support services.
- (e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) this section.
- (f) Requesting prior approval.
- (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.
 - (2) A request for a prior approval under the applicable federal cost principles (see Section _____.22) may be made by letter.
 - (3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose of terms and conditions of the federal *or state* grant to the grantee. If the revision requested by the subgrantee would result in a change to the grantee's approved project which requires federal prior approval, the grantee will obtain the federal agency's approval before approving the subgrantee's request.

_____.31 Real property. In reference to the purchase, use, sale, or transfer of title to state-funded real property, the awarding state agency will determine that all state statutes and procedures have been followed.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) Use. Except as otherwise provided by federal *or state* statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. Disposition instructions will solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. The instructions will provide for one of the following alternatives:

- (1) Retention of title.** Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
- (2) Sale of property.** Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
- (3) Transfer of title.** Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

____.32 Equipment

- (a) Title.** Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) States.** A state will use, manage, and dispose of equipment acquired under a grant by the state in accordance with state laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section. Local governments and other subgrantees shall develop and use their own property management systems, which must conform with all applicable federal, state, and local laws, rules and regulations. If an adequate system for accounting for personal property owned by the local entity is not in place or is not used properly, the Property Accounting System Manual issued by the State

Comptroller of Public Accounts will be used as a guide. It is the responsibility of the state awarding agency to provide guidance to local entities on property accountability and to obtain reasonable assurance that proper accountability is being used.

(c) Use.

- (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal *or state* funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal *or state* agency.**
- (2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the federal *or state* government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.**
- (3) Notwithstanding the encouragement in Section _____.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by federal *or state* statute.**
- (4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.**

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal *or state* participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.**
- (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.**

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated. Certain types of equipment are classified as "controlled assets". Users of these standards should contact the Texas Comptroller of Public Accounts' property accounting staff or review the Comptroller's State Property Accounting User Manual, available on the internet, for the most current listing. Firearms must be maintained on the grantee's or subrecipient's inventory system irrespective of cost, and the following equipment with costs between \$500 and \$1,000 must be maintained on the grantee's or subrecipient's inventory system: (1) stereo systems, (2) still and video cameras, (3) facsimile machines, (4) VCRs and VCR/TV combinations and (5) cellular and portable telephones. See Texas Government Code, Sec. 403.271(b) for further information. State awarding agencies may specify special treatment for other items of equipment with costs between \$500 and \$1,000 or higher with a high potential for loss.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a federal or state agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than **\$5,000** may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. **Methods used to determine per-unit fair market value must be documented, kept on file and made available to the awarding agency upon request.**

(2) Items of equipment with a current per-unit fair market value of **\$5,000 or more** may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment. **Methods used to determine per-unit fair market value must be documented, kept on file and made available to the awarding agency upon request.**

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal or state equipment. In the event a grantee or subgrantee is provided federally-or state-owned equipment:

(1) Title will remain vested in the federal or state government.

(2) Grantees or subgrantees will manage the equipment in accordance with federal **or state** awarding agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the federal **or state** awarding agency.

(g) Right to transfer title. The federal or state awarding agency may reserve the right to transfer title to the federal or state government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The federal **or state** awarding agency shall issue disposition instructions within 120 calendar days after the end of the federal **or state** support of the project for which it was acquired. If the federal **or state** awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow Section _____.32 (e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

____.33 Supplies

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally or state-sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

(c) If there is a residual inventory of unused supplies with a total aggregate fair market value of less than \$5,000 but more than \$1,000, the awarding agency may direct the grantee or subgrantee to transfer the unused supplies to another program or may direct the grantee or subgrantee to sell the unused supplies. In the event the supplies are sold, the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the supplies.

____.34 Copyrights

The federal **or state** awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal **or state** government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

____.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." **A current list of "Parties Excluded from Procurement and Nonprocurement Programs" may be obtained from the federal General Services Administration in electronic form via modem or on the internet at <http://www.arnet.gov/eplis/>. State agencies are prohibited by the state appropriations act from purchasing goods or services with appropriated funds "from companies which have been found, in a judicial or state agency administrative proceeding, to be guilty of unfair business practices." The restriction on such purchases remains in effect for one year from the date of the determination of guilt.**

____.36 Procurement

- (a) **States. When procuring property and services under a grant, a state will follow the same policies and procedures it uses for procurements from its non-federal funds. The state will ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations.** State or local laws which impose more stringent requirements on purchases or contracts made by a subrecipient must be followed. State agencies should consult Title 10, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable procurement laws and procedures. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

- (b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this section. **Grantees of the state that choose to use the Texas Building and Procurement Commission's cooperative purchasing program will be presumed to have met state bid requirements.**

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. **See Section ____ .14, Subsection (a) (1) and Chapter 171, Local Government Code, for additional ethics provisions.** No employee, officer or agency of the grantee or subgrantee shall participate in the selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employed, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into state and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use *federal and state* excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

- (7) **Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.**
- (8) **Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.**
- (9) **Grantees and subgrantees will maintain records sufficient to detail the significant history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.**
- (10) Grantees and subgrantees will use time and material type contracts only—
- (i) After a determination that no other contract is suitable, and
 - (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.
- (11) **Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual *and* administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal *or state* agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a federal *or state* concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.**
- (12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the federal agency. Reviews of protests by the federal agency will be limited to:
- (i) Violations of federal law or regulations and the standards of this section (violations of state or local law will be under the jurisdiction of state or local authorities) and

- (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the grantee or subgrantee.**

(c) Competition.

- (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Section _____.36. Some of the situations considered to be restrictive of competition include but are not limited to:**

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

- (2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.**

- (3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
- (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may**

include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed.

(1) Procurement by small purchase procedures. Small purchase procedures are the relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than **\$100,000** in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources. **As of April 2000, the federal small purchase threshold had risen to \$100,000. However, the State of Texas Building and Procurement Commission "informal" procurement threshold was \$15,000. State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement. Municipalities should consult Chapter 252, Texas Local Government Code. Counties should consult Chapter 262, Texas Local Government Code. In case of conflicts between A-102 and state law involving state funds, state law will prevail.**

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, represents best value to the state. The sealed bid method is the preferred method for procuring construction, if the conditions in Section _____.36 (d) (2) (i) apply. **State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws**

and procedures governing procurement. Municipalities should consult Chapter 252, Texas Local Government Code. Counties should consult Chapter 262, Texas Local Government Code. In case of conflicts between A-102 and state law involving state funds, state law will prevail.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to bidder(s) whose bid(s) represent best value to the state. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. **State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement. Municipalities should consult Chapter 252, Texas Local Government Code. Counties should consult Chapter 262, Texas Local Government Code. In case of conflicts between A-102 and state law involving state funds, state law will prevail.** The technique of competitive proposals is normally conducted with more than one

source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. State agencies must comply with Chapter 2254, Texas Government Code, which governs professional and consulting services.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. State agencies should consult the Texas Building and Procurement Commission Procurement Manual and individual agency requirements for historically under-utilized businesses (HUB) procedures. Awarding agencies may require subrecipients to adhere to state HUB requirements.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Texas Building and Procurement Commission;

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e) (2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, and the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices bases on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see Section _____.22). Grantees may reference their own cost principles that comply with the applicable federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed \$100,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed \$100,000, specifies a "brand name" product; or

(iv) The proposed award over \$100,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$100,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g) (2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section. **State agencies should consult Title 10, Chapter 2156, Texas Government Code and the Texas Building and Procurement Commission Procurement Manual for applicable laws and procedures governing procurement, including specific dollar thresholds and their associated requirements. In case of conflicts between A-102 and state law involving state funds, state law will prevail.**

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. Chapter 2253, Subchapter B, Sec. 2253.021, Texas Government Code, requires governmental entities entering into contracts with a prime contractor for public works projects in excess of \$100,000 to require a performance bond in the amount of the contract. For public works contracts in excess of \$25,000, governmental entities must execute with the contractor a payment bond in the amount of the contract. These bonds must be executed by

a corporate surety authorized to do business in Texas, a list of which may be obtained from the State Insurance Department. It is the responsibility of the grantee or subrecipient to ensure that other applicable state laws governing construction are followed. For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. State agencies should consult with the Texas Building and Procurement Commission for applicable laws and procedures governing construction.**
 - (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.**
 - (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.**
- (i) Contract provisions. Contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy. State agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses required by state law.**
- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases).**
 - (2) Termination for cause and for convenience by the grantee of subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).**
 - (3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor**

regulations (41 CFR Part 60). (All construction contracts awarded in excess of \$10,000).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 when required by federal grant program legislation).

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the federal grantor agency, the Comptroller General of the United States, *the State of Texas* or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000.)

(13) **Mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).**

____.37 **Subgrants**

(a) **State agencies. State agencies shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of federal financial assistance to local and Indian tribal governments. State agencies shall:**

(1) Ensure that every subgrant includes any clauses required by federal **or state** statutes and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by **federal and state** statutes and regulations;

(3) Ensure that a provision for compliance with Section _____.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by federal agencies.

(b) **All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:**

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by federal **or state** statutes and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by federal **or state** statutes and regulations.

(c) **Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:**

(1) Section _____.10;

(2) Section _____.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in section _____.21; and

(4) Section _____.50.

Subpart C—Post-Award Requirements - Reports, Records, Retention, and Enforcement

40. Monitoring and reporting program performance.

(a) **Monitoring by grantees.** Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable *federal and state* requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The federal **or state** agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the federal **or state** agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the federal **or state** agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the federal **or state** agency.

(2) Performance reports will contain for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the **measurable objectives** or **outcomes** established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) **Construction performance reports.** For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by federal agencies to monitor progress under construction grants and subgrants. The federal *or state* agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) **Significant developments.** Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the federal *or state* agency as soon as the following types of conditions become known:

(1) **Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.** Significant delays or other factors materially impairing the grantee's ability to meet objectives may result in sanctions, including the imposition of special conditions under _____.12 Special grant or subgrant conditions for "high risk" grantees.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal **and state** agencies may make site visits as warranted by program needs.

(f) Waivers, extensions.

(1) federal **and state** agencies may waive any performance report required by this part if not needed.

(2) **The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the federal *or state* agency.**

____.41 Financial Reporting

(a) **General.**

(1) **Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:**

(i) **Submitting financial reports to federal agencies, or**

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees. **State agencies will, to the extent existing federal forms solicit information required for prudent management, adapt and use the federal forms applicable to this section for subgrantee reporting.**

(3) Grantees shall follow all applicable standard and supplemental federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the federal agency finds unnecessary for its decision-making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal **or state** agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal **and state** agencies may waive any report required by this section if not needed.

(7) Federal **and state** agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report.--(J) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph Section ____ .41(e)(2)(iii) of this section.

(1) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the federal **or state** agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand. **When a state agency determines that a subrecipient's accounting system does not meet standards identified in Section ____ .20, the agency may require additional financial reports.**

(2) Frequency. The federal *or state* agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than *monthly*. If the federal agency *or state* does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(3) Due date. When reports are required on a monthly basis, they will be due not less than 15 days nor later than 30 days after the reporting period. When required on an annual basis, they will be due not less than 45 days nor later than 90 days after the grant year. Final reports will be due not less than 45 days nor later than 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report--

(1) Form.

(i) For grants paid by letter of credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the federal **and state** agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted **only with the prior approval of the awarding agency** as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of federal cash requirements. Forecasts of federal cash requirements may be required in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the federal **or state** agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the federal *or state* agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement--

(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e) (1) of this section.)

(3) The frequency for submitting payment requests is treated in section _____.41 (b) (3).

(e) Outlay report and request for reimbursement for construction programs.

(1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in Section _____.41 (d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in Section _____.41 (b) (3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the federal **or state** agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by Section _____.41 (b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in Section _____.41 (d).

(iii) The federal or state agency may substitute the Financial Status Report specified in Section _____.41 (b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by Section _____.41 (b) (2).

____.42 Retention and access requirements for records.

(a) Applicability. Certain additional standards for retention of public records in Texas are codified at 13 TAC Chap. 6 for state agencies and at 13 TAC Chap. 7 for local governments. The Texas State Library and Archives Commission, through the Records Preservation Advisory Committee has established recommended retention periods longer than three years for many types of public documents, whether in original hard copy or in microfilm form. State awarding agencies may obtain a copy of the Recommended Retention Schedule by contacting the ***State Library and Archives Commission***.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

- (i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or
- (ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section applies to records maintained by contractors or subcontractors for purchases of goods or services funded in whole or in part from state funds.

For a requirement to place a provision concerning records in certain kinds of contracts, see Section _____.36 (i) (10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the

federal or state agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period.

(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last **audit** report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the federal, **state, or other designated** fiscal year. In all other cases, the retention period starts on the day the grantee submits its final **audit** report. If an **expenditure or audit** report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the federal government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the federal government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records--

(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, the Texas State Auditor, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by federal, state, or local law, grantees and subgrantees are not required to permit public access to their records.

____.43 Enforcement

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a federal *or state* statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, or impose other sanctions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a

suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancelable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see Section _____.35) **and state law.**

____.44 Termination for convenience

Except as provided in Section _____.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either Section _____.43 or paragraph (a) of this section.

(c) State awarding agencies may stipulate other reasons for termination in grant contracts and agreements.

Subpart D---After-The-Grant Requirements

____.50 Closeout

- (a) **General.** The federal agency will close out the award when it determines that **all applicable administrative actions and all required work of the grant have been completed.** The awarding agency will provide any necessary additional information on closeouts. Awarding agencies are encouraged to adapt and use the federal forms described in this section.
- (b) **Reports.** Not less than 45 days nor later than 90 days **after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, federal or state agencies may extend this timeframe. These may include but are not limited to:**
- (1) Final performance or progress report.
 - (2) Financial Status Report (SF-269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)
 - (3) Final request for payment (SF-270) (if applicable).
 - (4) Invention disclosure (if applicable).
 - (5) Federally **or state**-owned property report: In accordance with Section _____.32(f), a grantee must submit an inventory of all federally **or state**-owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the federal *or state* agency of property no longer needed.
- (c) **Cost adjustment.** The federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.
- (d) **Cash adjustments.**
- (1) The federal agency will make prompt payment to the grantee for allowable reimbursable costs.
 - (2) The grantee must immediately refund to the federal **or state** agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

____.51 Later disallowances and adjustments

closeout of a grant does not affect:

- (a) The federal **or state** agency's right to disallow costs and recover funds on the basis of a later audit or other review;
- (b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
- (c) Records retention as required in Section _____.42; (d) Property management requirements in Section _____.31 and Section _____.32; and
- (e) Audit requirements in Section _____.26.

_____.52 Collection of amounts due

(a) Any funds paid to grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the federal or state government. If not paid within a reasonable period after demand, the federal or state agency may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements,
- (2) Withholding advance payments otherwise due to the grantee, or
- (3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements (Reserved)

IV. State of Texas Single Audit Circular

With Annotations Where State Provisions Differ from the OMB Circular A-133

AUDITS OF LOCAL GOVERNMENTS AND ORGANIZATIONS WHICH ARE PROVIDERS EXPENDING ANY STATE AWARDS UNDER FEDERAL BLOCK GRANTS

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TO THE HEADS OF **STATE AGENCIES**

SUBJECT: Audits of Local Governments and **also** Organizations **which are providers expending any state awards under federal block grants.**

1. *Purpose.* **This circular sets standards for obtaining consistency and uniformity among state agencies for the coordinated audit of local governments expending any state awards and of non-profit organizations expending any state awards under federal block grants.**
2. *Authority.* **This State of Texas Single Audit Circular and its Attachment (both referred to as “audit circular”) is issued under the authority of Texas Government Code, Chapter 783, Uniform Grant and Contract Management.**
3. *Policy.* Except as provided herein, the standards set forth in this **audit circular** shall be applied by all **state** agencies. If any **federal or state** statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the **federal or** subsequent **state** statute shall govern.

State agencies shall apply the provisions of the sections of this **audit circular** to **non-state** entities, whether they are recipients expending **state** awards received directly from **state** awarding agencies, or are subrecipients expending **state** awards received from a pass-through entity (a recipient or another subrecipient).

This **audit circular** does not apply to non-U.S. based entities expending **state** awards received either directly as a recipient or indirectly as a subrecipient.

4. *Definitions.* The definitions of key terms used in this **audit circular** are contained in sec.____.105 in the Attachment to this **audit circular**.
5. *Required Action.* The specific requirements and responsibilities of **state** agencies and **non-state** entities are set forth in the Attachment to this **audit circular**. **State** agencies making awards to **non-state** entities, either directly or indirectly, **may** adopt the language in the **audit circular** in codified regulations as provided in Section 10 (below), unless different provisions are required by **state** statute or are approved by the **governor’s office**.
6. *Governor’s Office Responsibilities.* **The governor’s office** will review **state** agency regulations and implementation of this **audit circular**, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.
7. *Information Contact.* Further information concerning **this** Circular may be obtained by contacting the **Governor’s Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463-1778.**

8. *Reviews.* This **audit circular** will be reviewed periodically for needed changes or improvements.
9. *Effective Dates.* The standards set forth in sec.____.400 of the Attachment to this **audit circular**, which apply directly to **state** agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in sec.____.400(a). **or in the following paragraphs.**

The standards set forth in this **audit circular** that **state** agencies shall apply to **non-state** entities will apply to audits of fiscal years beginning after June 30, 1996, with the **following exceptions:**

(1) sec.____.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998.

(2) If an awarding state agency has already adopted rules in codified regulations governing audits of non-state entities for fiscal years beginning after June 30, 1996, the agency shall apply the standards set forth in this audit circular for audits of fiscal years beginning after June 30, 1997.

Except for the provision of paragraph (2) in this Section 10, state agencies shall apply the standards set forth in this audit circular to non-state entities regardless of whether the standards are codified in an agency's regulations.

Until the standards in this audit circular become applicable, the previous audit provisions of the UCGMS shall continue in effect.

A--General

sec.____.100 Purpose.

This **audit circular** sets forth standards for obtaining consistency and uniformity among **state** agencies for the audit of **non-state** entities expending **state** awards.

sec.____.105 Definitions.

Alphabetize all entries by moving "State agency", "State award", "State awarding agency", "State financial assistance" and "State Program" definitions to follow "State".

"Auditee" means any **non-state** entity that expends **state** awards which must be audited under this **audit circular**.

"Auditor" means an auditor, that is a public accountant or a federal, state or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

"Audit finding" means deficiencies which the auditor is required by sec.____.510(a) to report in the schedule of findings and questioned costs.

"CFDA number" means the number assigned to a federal program in the Catalog of Federal Domestic Assistance (CFDA).

"Coordinating agency for single audit means" the **state** agency designated **by the governor's office** to carry out the responsibilities described in sec.____.400(a).

"Compliance supplement" refers to the **OMB Circular A-133 Compliance Supplement**, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

"Corrective action" means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

"Federal agency" has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

"Federal award" has the same meaning as defined in OMB Circular A-133.

"GAGAS" means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

"Generally accepted accounting principles" has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Internal control" means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of financial reporting; and
- (3) Compliance with applicable laws and regulations.

"Internal control pertaining to the compliance requirements for **state** programs (Internal control over **state** programs)" means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of the following objectives for **state** programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and **state** reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
 - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a **state** program; and
 - (ii) Any other laws and regulations that are identified **by the state awarding agencies**; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

"Loan" means a **state** loan or loan guarantee received or administered by a **non-state** entity.

"Local government" means a municipality, county, or other political subdivision of the state, but does not include a school district or other special-purpose district.

"Major **state** program" means a **state** program determined by the auditor to be a major **state** program in accordance with sec.____.520 or a program identified as a major **state** program by

a **state** agency or pass-through entity in accordance with sec.____.215(c).

"Management decision" means the evaluation by the **state** awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

"**Non-state** entity" means a local government or non-profit organization which is a provider expending any state awards under federal block grants (**See Texas Government Code, Chapter 2105**).

"Non-profit organization **which is a provider expending any state matching awards under federal block grants**" means:

- (1) any corporation, trust, association, cooperative, or other organization that:
 - (i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - (ii) Is not organized primarily for profit;
 - (iii) Uses its net proceeds to maintain, improve, or expand its operations; and
 - (iv) Is a provider expending any state matching awards under a federal block grant covered by Texas Government Code Chapter 2105.
- (2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

"OMB" means the Executive Office of the President, Office of Management and Budget.

"OMB Circular A-133 means" Office of Management and Budget Circular A-133, its attachment, and amendments or successor documents issued by OMB.

"Oversight agency for **single** audit" means the **state** agency that provides the predominant amount of direct funding to a recipient not assigned a **coordinating** agency for **single** audit . When there is no direct funding, the **state** agency with the predominant indirect funding shall assume the oversight . The duties of the oversight agency for **single** audit are described in sec.____.400(b).

"Pass-through entity" means a **non-state** entity that provides a **state** award to a subrecipient to carry out a **state** program.

"Program-specific audit" means an audit of one **state** program as provided for in sec.____200(c) and sec____.235.

"Questioned cost" means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a provision of a law,

regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of **state** funds, including funds used to match **state** funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

"Recipient" means a **non-state** entity that expends **state** awards received directly from a **state** awarding agency to carry out a **state** program.

"Single audit" means an audit which includes both the entity's financial statements and the **state** awards as described in sec.____.500.

"State" means **the State of Texas**

"State agency has the same meaning" as the term state agency in Texas Government Code Chapter 783.

"State award" means **state** financial assistance and **state** cost-reimbursement contracts that local governments receive directly from **state** awarding agencies or indirectly from pass-through entities. **For non-profit organizations which are providers under a federal block grant, state award means state financial assistance or cost-reimbursement contracts received directly from state awarding agencies or indirectly from pass-through entities under a federal block grant. For non-profit organizations which are providers under a federal block grant, state award does not mean state financial assistance and state cost-reimbursement contracts received directly or indirectly under the terms of other federal awards. State awards do not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. State awards also do not include federal awards as defined in OMB Circular A-133 (whether the federal awards are passed through a state agency or received directly from a federal agency). The definition of state awards as used in this circular differs from the definition used elsewhere in UGMS (see, for example, "award", Attachment A (B) 2. And "grant", Attachment A (B) 15.)**

"State awarding agency" means the **state** agency that provides **a state** award directly to the recipient.

"State cluster of programs" means a grouping of closely related **state** programs that share common compliance requirements. Clusters of programs are as defined by the **state awarding agency** or as designated by a **pass-through entity** for **state** awards the **pass-through entity** provides to its subrecipients that meet the definition of a cluster of programs. **When defining a state cluster of programs, the state awarding agency shall comply with sec.____.400(c).** When designating an "other cluster," a **pass-through entity** shall identify the **state** awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with sec.____.400(d)(1) and

sec.____.400(d)(2), respectively. A **state** cluster of programs shall be considered as one program for determining major **state** programs, as described in sec.____.520, and, whether a program-specific audit may be elected.

"State financial assistance" means assistance that **non-state** entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in sec.____.205 (f).

"State program means":

(1) All **state** awards to a **non-state** entity **which are made under a program defined in state law, or, if the program is not defined in state law, all awards made for the same purpose, and identified as a state program by the state awarding agency.**

(2) When **not defined in state law or identified by the state awarding agency**, all **state** awards from the same **state** agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs **is** as described in the definition of cluster of programs in this section.

"Subrecipient" means a **non-state** entity that expends **state** awards received from a pass-through entity to carry out a **state** program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other **state** awards directly from a **state** awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in sec.____.210.

"Types of compliance requirements" refers to the types of compliance requirements listed in the compliance supplement. **The auditor shall categorize the state compliance requirements applicable to state awards into the same categories.** Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

"UGMS" means the Uniform Grant Management Standards issued by the governor's office.

"Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a **state** program. These goods or services may be for an organization's own use or for the use of beneficiaries of the **state** program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in sec.____.210.

B--Audits

sec.____.200 Audit requirements.

(a) Audit required. **Non-state** entities that expend \$500,000 (for fiscal years ending after December 31, 2003) or more in a year in **state** awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this **audit circular**. Guidance on determining **state** awards expended is provided in sec.____.205.

(b) Single audit. **Non-state** entities that expend \$500,000 (for fiscal years ending after December 31, 2003) or more in a year in **state** awards shall have a single audit conducted in accordance with sec.____.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends \$500,000 (for fiscal years ending after December 31, 2003) in state awards under only one **state** program and the **state** program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with sec.____.235

(d) Exemption when **state** awards expended are less than \$500,000 (for fiscal years ending after December 31, 2003). Unless otherwise required by state statute, non-state entities that expend less than \$500,000 (for fiscal years ending after December 31, 2003) a year in **state** awards are exempt from **state single** audit requirements for that year, but records must be available for review or audit by appropriate officials of the **state** agency, pass-through entity, **the State Auditor, and by other auditors as required by the state awarding agency.**

sec.____.205 Basis for determining **state** awards expended.

(a) Determining **state** awards expended. The determination of when a **state** award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the **non-state** entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts and, cooperative agreements; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income;; and, the period when insurance is in force. **Any program income that is considered to be federal awards under OMB Circular A-133 is not considered a state award.**

(b) Loan and loan guarantees (loans). Since the **state** government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of **state** awards expended under loan programs, except as noted in paragraph (c) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the **State** Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered **state** awards expended under this **audit circular** when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(d) Free rent. Free rent received by itself is not considered a **state** award expended under this **audit circular**. However, free rent received as part of an award to carry out a **state** program shall be included in determining **state** awards expended and subject to audit under this **audit circular**.

(e) Valuing non-cash assistance. **State** non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the **state** agency.

(f) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered **state** awards expended under this **audit circular** unless a State requires the funds to be treated as **state** awards expended because reimbursement is on a cost-reimbursement basis.

sec.____.210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. **State** awards expended as a recipient or a subrecipient would be subject to audit under this **audit circular**. The payments received for goods or services provided as a vendor would not be considered **state** awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a **state** award or a payment for goods and services.

(b) **State** award. Characteristics indicative of a **state** award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what **state** financial assistance;

(2) Has its performance measured against whether the objectives of the **state** program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable **state** program compliance

requirements; and

(5) Uses the **state** funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the **state** program; and

(5) Is not subject to compliance requirements of the **state** program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) For-profit **recipients** and **subrecipients**. For for-profit **providers expending any state awards under federal block grants, the state awarding agency is** responsible for establishing requirements, as necessary, to ensure compliance by for-profit **recipients and subrecipients**. The contract with the for-profit **recipient or subrecipient shall** describe applicable compliance requirements and the for-profit **recipient's or subrecipient's** compliance responsibility. Methods to ensure compliance for **state** awards made to for-profit **recipients and subrecipients** may include, **at the discretion of the state awarding agency**, pre-award audits, monitoring during the contract, and post-award audits. **(see Texas Government Code, Chapter 2105 for the applicability of the UGMS to entities providing services or benefits to the public under federal block grants).**

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major **state** program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

sec.____.215 Relation to other audit requirements.

(a) Reliance on audit required by this circular. To the extent an audit required by sections _____.200(a) through _____.200(c) meets a state agency's needs, it shall rely upon and use such audits. The provisions of this **audit circular** neither limit the authority of **state** agencies, including their inspectors or auditors, or the State Auditor to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain **state** agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Additional audits and audited schedules. A **state** agency that **requires** additional audits or audited schedules shall arrange for funding the full cost of such additional audits and audited schedules. Additional audits or audited schedules required by a state agency to be contracted for by a non-state entity must be specifically required in the grant award document and be specifically allowed as costs in that agreement. If a state agency needs additional audits or audited schedules which are not specifically required in the grant award document, the state agency may contract directly with an independent auditor to perform the audit or perform the audit itself. The cost to a non-state entity of providing unaudited schedules in reports shall be borne by the non-state entity. The provisions of this paragraph may be applied by a state awarding agency to any recipient or subrecipient of state awards that are subject to section _____.200(a) through _____.200(c). If a pass-through entity needs additional audits or audited schedules from a Subrecipient, the pass-through entity may contract directly with an independent auditor to perform the audit or may perform the audit itself.

(c) Costs of statutorily required audits or audited schedules. If a **state** statute requires an audit or audited schedule in addition to or in lieu of those required by this circular and makes no provision for assuming or reimbursing the costs of such audit or schedule, the costs shall be borne by the non-state entity.

(d) Recipients/subrecipients exempt from state single audit requirements. **State** awarding agencies may contract directly with independent auditors to perform any audit, including a program-specific audit and audited schedules, or recipients or subrecipients exempt from state single audit requirements in accordance with sec.____.200(d). However, this audit should general be significantly less in scope than a state single audit. A pass-through entity may use the provisions of this paragraph for a subrecipient. A **state** awarding agency or pass-through entity may utilize its own staff to perform any audit or review of its recipients and subrecipients.

(e) Request for a **state** program to be audited as a major state program. A **state** agency may request an auditee to have a particular state program audited as a major state program. To allow for planning, such requests should be made prior to the end of the auditee's fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the state agency whether the program would otherwise be audited as a major state program using the risk-based audit approach described in sec.____.520 and, if not, the estimated incremental cost. The

state agency shall then promptly confirm to the auditee whether it wants the state program audited as a major state program. If the **state** program is to be audited as a major state program based upon this state agency request, and the state agency agrees to pay the full incremental costs, then the auditee shall have the state program audited as a major state program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

sec.____.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) of this section, audits required by this **audit circular** shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A local government that is required by **constitution, charter, ordinance, or statute**, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this **audit circular** biennially. This requirement must still be in effect for the biennial period under audit. **Texas Government Code, chapter 2105 requires providers that receive federal block grants from a state agency to provide the state agency with evidence that an annual audit of the provider has been performed. Therefore, this biennial audit provision does not apply to providers receiving block grants.**

sec.____.225 Sanctions.

No audit costs may be charged to **state** awards when audits required by this **audit circular** have not been made or have been made but not in accordance with this **audit circular**. In cases of continued inability or unwillingness to have an audit conducted in accordance with this **audit circular**, **state** agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of **state** awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending **current or future state** awards until the audit is conducted; or
- (d) Terminating the **state** award.

sec.____.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of **state single or program-specific** audits made in accordance with the provisions of this **audit circular** and the **cost of additional audits or audited schedules made in accordance with sec.____.215(b) and sec.____.215(d) are allowable charges to state awards.** Allowable audit charges may be considered a direct or an indirect cost, as determined in accordance with the provisions of the Uniform Grant Management Standards (UGMS) or

other applicable cost principles, regulations or state laws.

(b) Unallowable costs. A non-state entity shall not charge the following to a state award:

(1) The cost of any state single or program-specific audit not conducted in accordance with this audit circular.

(2) The cost of any additional audit or audited schedule not conducted in accordance with the requirements of the grant award document (see _____.215(b)).

(3) The cost of any additional audit on a subrecipient not conducted in accordance with a contract between a pass-through entity and an auditor (**see _____.215(b) and (d)**).

sec. _____.235 Program-specific audits.

(a) Program-specific audit guide available. In some cases, a program-specific audit guide may be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor shall contact the **state awarding** agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available.

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the **state** program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the **state** program that includes, at a minimum, a schedule of expenditures of **state** awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of sec. _____.315(b), and a corrective action plan consistent with the requirements of sec. _____.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the **state** program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the **state** program consistent with the requirements of sec. _____.500(c) for a major **state** program;

(iii) Perform procedures to determine whether the auditee has complied with

laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the **state** program consistent with the requirements of sec.____.500(d) for a major **state** program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of sec.____.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this **audit circular** and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the **state** program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the **state** program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which would have a direct and material effect on the **state** program; and

(iv) A schedule of findings and questioned costs for the **state** program that includes a summary of the auditor's results relative to the **state** program in a format consistent with sec.____.505(d)(1) and findings and questioned costs consistent with the requirements of sec.____.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the **state** agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit the reporting required by the program-specific audit guide to the **state** awarding agency or pass-through entity.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the **state** program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. One copy of this reporting package shall be submitted to the **state** awarding agency, or directly to the pass-through entity **when the auditee is a subrecipient of state awards.**

(d) Other sections of this **audit circular** may apply. Program-specific audits are subject to sec.____.100 through sec.____.215(b), **sec.____.215(d)**, sec.____.220 through sec.____.230, sec.____.300 through sec.____.305, sec.____.315, sec.____.320 **(d)** through sec.____.320 **(f)**, sec.____.400 through sec.____.405, sec.____.510 through sec.____.515, and other referenced provisions of this **audit circular** unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

C--Auditees

sec.____.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all **state** awards received and expended and the **state** programs under which they were received. **State** program and award identification shall include, as applicable, the **state program name and number, CFDA title and number (if used to identify the state program), award name and number, award year, other relevant identifier, name of the state agency, name of the pass-through entity, and number assigned by the pass-through entity.**

(b) Maintain internal control over **state** programs that provides reasonable assurance that the auditee is managing **state** awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its **state** programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its **state** programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of **state** awards in accordance with sec.____.310.

(e) Ensure that the audits required by this **audit circular** are properly performed and submitted when due. When extensions to the report submission due date required by sec.____.320(a) are granted by the **state coordinating or oversight** agency for **single** audit, **the auditee shall** promptly notify each **state awarding agency** and each pass-through entity providing **state** awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with sec.____.315(b) and sec.____.315(c), respectively.

(g) When a non-state entity expends state awards totaling less than \$500,000 (for fiscal years ending after December 31, 2003) in a fiscal year, the CFO or CEO of such entity shall so certify to each **state** awarding agency.

sec.____.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the **UGMS**, Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the **UGMS**, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price. **State agencies must comply with the Texas Government Code, Chapter 2254, which governs professional and consulting services.**

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this **audit circular** when the indirect costs recovered **from state or federal funds** by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) Use of **state** auditors. **State** auditors may perform all or part of the work required under this **audit circular** if they comply fully with the requirements of this **audit circular**.

sec.____.310 Financial statements.

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same

organizational unit and fiscal year that is chosen to meet the requirements of this **audit circular**. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with sec.____.500(a) and prepare separate financial statements.

b) Schedule of expenditures of **state** awards. The auditee shall also prepare a schedule of expenditures of **state** awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by **state** awarding agencies and pass-through entities to make the schedule easier to use. For example, when a **state** program has multiple award years, the auditee may list the amount of **state** awards expended for each award year separately. At a minimum, the schedule shall:

(1) Present, in a separate section or schedule, state awards expended from federal awards expended even if the state funds are awarded with the federal funds as one program. Federal awards and state awards must be totaled separately.

(2) List individual **state** programs by **state** agency. For **state** programs included in a cluster of programs, list individual **state** programs within a cluster of programs.

(3) For **state** awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(4) Provide total **state** awards expended for each individual **state** program and the state program name and state program number (if a number is used), CFDA title and number (if used to identify the state program), or other **relevant** identifier when the **state program** or CFDA information is not available.

(5) Include notes that describe the significant accounting policies used in preparing the schedule.

(6) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each **state** program.

(7) Include, in either the schedule or a note to the schedule, the value of the **state** awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end.

sec.____.315 Audit findings follow-up.

(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under sec.____.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to **state** awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the **state** agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the **state coordinating or oversight agency for single audit, state awarding agency, or pass-through entity** ;

(ii) The **state coordinating or oversight agency for single audit, the state awarding** agency, or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

sec.____.320 Report submission.

(a) General. The audit shall be completed and the reporting package described in paragraph (b) of this section shall be submitted within the earlier of 30 days after receipt

of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the **state single audit coordinating** or oversight agency for **single** audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Reporting package. The reporting package shall include the:

- (1) Financial statements and schedule of expenditures of **state** awards discussed in sec.____.310(a) and sec.____.310(b), respectively;
- (2) Summary schedule of prior audit findings discussed in sec.____.315(b);
- (3) Auditor's report(s) discussed in sec.____.505; and
- (4) Corrective action plan discussed in sec.____.315(c).

(c) Submission of reporting package. All auditees shall submit one copy of the reporting package described in paragraph **(b)** of this section to each of the following:

- (1) Each **state** awarding agency **that provided state funds directly to the auditee** and
- (2) The pass-through entity when the auditee is a subrecipient of state awards.

Paragraph (c) of this section shall apply unless the state awarding agency or pass-through entity specifically waives or modifies this requirement for auditees expending small amounts of state awards.

(d) Requests for report copies. In response to requests by a **state** agency, **subrecipients** shall submit the appropriate copies of the reporting package described in paragraph **(b)** of this section and, if requested, a copy of any management letters issued by the auditor. **In response to requests by a pass-through entity, subrecipients shall submit a copy of any management letters issued by the auditor.**

(e) Report retention requirements. Auditees shall keep one copy of the reporting package described in paragraph **(b)** of this section on file for three years from the date of submission to **each state awarding agency or pass-through entity, as applicable.** Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(f) Electronic filing. Nothing in this **audit circular** shall preclude electronic submissions subject to appropriate security, verification of authenticity, and approval by the state awarding agency or pass-through entity when the auditee is a subrecipient of state awards.

D---State Agencies and Pass-Through Entities

sec.____.400 Responsibilities.

(a) **State coordinating agency** for **single** audit responsibilities. **Recipients who are required to have a single audit and receive state or federal awards from more than one state agency shall have a state single audit coordinating agency.** The **governor's office shall designate a state single audit coordinating agency based upon the state** awarding agency that provides the predominant amount of direct funding to a recipient and other factors, as appropriate, to ensure equitable and manageable work loads. Notwithstanding the manner in which audit **coordination** is determined, a **state** awarding agency with **coordination responsibility** for an auditee may **request the governor's office to** reassign **coordination responsibility** to another **state** awarding agency which provides substantial direct funding and agrees to be the **state single audit coordinating agency.** Within 30 days after any reassignment, both the old and the new **state single audit coordinating agencies** shall notify the auditee, and, if known, the auditor of the reassignment. The **state single audit coordinating agency** shall:

(1) Provide technical audit advice and liaison to auditees and auditors and ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this audit circular.

(2) Consider auditee requests for extensions to the report submission due date required by sec.____.320(a). The **state single audit coordinating agency** may grant extensions for good cause.

(3) Conduct **desk** reviews of **state single audit reports**, and provide the results to other state awarding agencies and the grantee.

(4) Promptly inform other affected **state** agencies and appropriate **state** law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any **deficient audit reports** when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the **state single audit coordinating agency** shall notify the auditor, the auditee, and applicable **state** awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for **state** agencies that are in addition to the audits **required by sec.____.200(a) through sec.____.200(c) of this audit circular**, so that the additional audits or reviews build upon audits performed in accordance with this **audit circular**.

(7) Coordinate a management decision for audit findings that affect the **state** programs of more than one agency.

(8) For biennial audits permitted under sec.____.220, consider auditee requests to qualify as a low-risk auditee under sec.____.530(a).

(b) **State** oversight agency for **single** audit responsibilities. An auditee which does not have a designated **coordinating** agency for **single** audit will be under the general oversight of the **state** agency **that provides the predominant or sole amount of direct funding to the auditee**. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a **state single audit coordinating** agency.

(c) **State** awarding agency responsibilities. The **state** awarding agency shall perform the following for the **state** awards it makes:

(1) Identify **state** awards made by informing each recipient of the **state program name, state program number (if a number is used), CFDA title and number (if used to identify the state program), other relevant identifier**, award name and number **and** award year. When some of this information is not available, the **state** agency shall provide information necessary to clearly describe the **state** award.

(2) Advise recipients of requirements imposed on them by **state** laws, regulations, and the provisions of contracts or grant agreements. **The requirements shall either be stated in the contracts or grant agreements, or be included by specific reference in the contracts or grant agreements.**

(3) Establish procedures to ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this **audit circular**.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Notify the state single audit coordinating agency of audit resolutions.

(7) Monitor the activities of recipients as necessary to ensure that state awards are used for authorized purposes in compliance with laws, regulations, and the provision of contracts or grant agreements and that performance goals are achieved.

(8) When state awards are made with federal awards to a recipient, as required match, inform the recipient of the proportion of federal and state funds disbursed to the recipient to facilitate the recipient's separate calculations of expenditures of federal awards and **state** awards for its fiscal year.

(9) When **state** awards are made to a recipient to supplement federal awards, the **state** awards are not used to meet a federal matching requirement, and requirements of the state award differ from the requirements of the federal award (e.g., different activities are allowed or disallowed, or different allowable costs or cost principles are used), the **state** awarding agency shall also provide information as to the amount of each award to the recipient at the time the award is made to facilitate the recipient's accounting for and compliance with the requirements of each award during the term of such award.

(10) Identify, **at the time of award**, any **state** awards made which are part of a state cluster of programs.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the **state** awards it makes:

(1) Identify **state** awards made by informing each subrecipient of **the state program name and state program number (if a number is used), CFDA title and number (if used to identify the state program), other relevant identifier**, award name and number, award year, and name of **state** agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the **state** award.

(2) Advise subrecipients of requirements imposed on them by **state** laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity. **The requirements shall either be stated in the contracts or grant agreements, or be included by specific reference in the contracts or grant agreements.**

(3) Monitor the activities of subrecipients as necessary to ensure that **state** awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending \$500,000 (for fiscal years ending after December 31, 2003) or more in **state** awards during the subrecipient's fiscal year have met the audit requirements of this **audit circular** for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through

entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this **audit circular**.

(8) When **state** awards are made with federal awards to a subrecipient, as required match, inform the subrecipient of the proportion of federal and state funds disbursed to the subrecipient to facilitate the subrecipient's separate calculations of expenditures of federal awards and state awards for its fiscal year.

(9) When **state** awards are made to a subrecipient to supplement federal awards, the **state** awards are not used to meet a federal matching requirement, and requirements of the **state** award differ from the requirements of the federal award (e.g., different activities are allowed or disallowed, or different allowable costs or cost principles are used), the pass through entity shall also provide information as to the amount of each award to the recipient at the time the award is made to facilitate the subrecipient's accounting for and compliance with the requirements of each award during the term of such award.

(10) Identify, at the time of award, any **state** awards made which are part of a state cluster of programs.

sec.____.405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the **state** agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) **State** agency. As provided in sec.____.400(a)(7), the **state single audit coordinating agency** shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one **state** agency. As provided in sec.____.400(c)(5), a **state** awarding agency is responsible for issuing a management decision for findings that relate to **state** awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the **state** agencies concerned.

(c) Pass-through entity. As provided in sec.____.400 (d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to **state** awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision

shall do so within

six months of receipt of the audit report. Corrective action should be initiated within six months after

receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with sec.____.510(c).

E—Auditors

sec.____.500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered **state** awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of **state** awards for each such department, agency, and other organizational unit, which shall be considered to be a **non-state** entity. The financial statements and schedule of expenditures of **state** awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of **state** awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control.

(1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over **state** programs sufficient to plan the audit to support a low assessed level of control risk for major **state** programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major **state** programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major **state** program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major **state** program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with sec. ____ .510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) Compliance.

(1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major **state** programs.

(2) The auditor shall determine the requirements governing each major **state** program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements, and use the types of compliance requirements categorized in the compliance supplement as guidance for identifying the types of compliance requirements to test. The auditor shall also consult with the applicable **state** awarding agency to determine whether any of the auditee's major **state** programs are part of a state cluster of programs.

(3) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with sec. ____ .315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of

prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major **state** program in the current year.

sec.____.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this **audit circular** and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of **state** awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major **state** programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major **state** program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major **state** programs were disclosed by the audit and whether any such

conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major **state** programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under sec.____.510(a);

(vii) An identification of major **state** programs;

(viii) The dollar threshold used to distinguish between **State** Type A and **State** Type B programs, as described in sec.____.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under sec.____.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for **state** awards which shall include audit findings as defined in sec.____.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by **state** agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and **state** awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, **shall** be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(iii) Audit findings which relate to both federal and state awards shall be reported in accordance with OMB Circular A-133, with additional information on the state awards which are affected and the extent the state awards are affected.

sec.____.510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major **state** programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of

compliance requirement for a major **state** program. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major **state** program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major **state** program.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major **state** program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major **state** program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a **state** program which is not audited as a major **state** program. Except for audit follow-up, the auditor is not required under this **audit circular** to perform audit procedures for such a **state** program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major **state** program. However, if the auditor does become aware of questioned costs for a **state** program which is not audited as a major **state** program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major **state** programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for **state** awards.

(6) Known fraud affecting a **state** award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for **state** awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with sec. ____315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for **state** agencies and pass-through entities to arrive at a management decision. The following

specific information shall be included, as applicable, in audit findings:

- (1) **State** program and specific **state** award identification including the **state program name and state program number (if a number is used), CFDA title and number (if used to identify the state program), other relevant identifier, state** award number and year, name of **state** agency, and name of the applicable pass-through entity. When information, such as the **state program or** CFDA title and number or **state** award number, is not available, the auditor shall provide the best information available to describe the **state** award.
 - (2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.
 - (3) The condition found, including facts that support the deficiency identified in the audit finding.
 - (4) Identification of questioned costs and how they were computed.
 - (5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.
 - (6) The possible asserted effect to provide sufficient information to the auditee and **state** agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.
 - (7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.
 - (8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.
- (c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

sec.____.515 Audit working papers.

- (a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the **state coordinating or oversight agency for single audit, state agency**, or pass-through entity to extend the retention period. When the auditor is aware that **a state** agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the **state coordinating or oversight** agency for **single** audit or its designee, a **state** agency providing direct or indirect funding, or **the State Auditor** at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this **audit circular**. Access to working papers includes the right of **state** agencies to obtain copies of working papers, as is reasonable and necessary.

sec.____.520 Major state program determination.

(a) General. The auditor shall use a risk-based approach to determine which **state** programs are major **state** programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by **state** agencies and pass-through entities, and the inherent risk of the **state** program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1.

(1) The auditor shall identify the larger **state** programs, which shall be labeled **State** Type A programs. **State** Type A programs are defined as **state** programs with **state** awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total **state** awards expended in the case of an auditee for which total **state** awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total **state** awards expended in the case of an auditee for which total **state** awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total **state** awards expended in case of an the auditee for which total **state** awards expended exceed \$10 billion.

(2) **State** programs not labeled **State** Type A under paragraph (b)(1) of this section shall be labeled **State** Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as **State** Type A programs. When a **state** program providing loans significantly affects the number or size of **State** Type A programs, the auditor shall consider this **state** program as a **State** Type A program and exclude its values in determining other **State** Type A programs.

(4) For biennial audits permitted under sec.____.220, the determination of **State** Type A and **State** Type B programs shall be based upon the **state** awards expended during the two-year period.

when (5) Consider state awards expended separately from federal awards expended determining State and Federal Type A and B programs.

(6) When a federal program is determined to be a major program in accordance with OMB Circular A-133, and the non-state entity expended **state** award(s) which were received as required matching with the federal award, the **state** award(s) accompanying the major federal program shall be a major state program and be audited as a major state program.

(7) When a federal program is determined to be a major program in accordance with OMB Circular A-133, and the non-state entity expended **state** award(s) which were received as a nonrequired supplement to the federal program, and the **state** award(s) have the same or similar compliance requirements as the federal program, the **state** award(s) accompanying the major federal program shall be a major **state** program and be audited as a major **state** program.

(8) For non-state entities expending more than \$10 million in **state** awards during the audit period, the provisions of paragraphs (6) and (7) of this section should not result in the exclusion of other state programs as **State** Type A programs. The expenditures of state programs determined to be major **state** programs in accordance with paragraphs (6) and (7) of this section, shall be excluded from state awards expended in determining **State** Type A programs.

(c) Step 2.

(1) The auditor shall identify **State** Type A programs which are low-risk. For a **State** Type A program to be considered low-risk, it shall have been audited as a major **state** program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under sec.____.510(a).

However, the auditor may use judgment and consider that audit findings from questioned costs under sec.____.510(a)(3) and sec.____.510(a)(4), fraud under sec.____.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under sec.____.510(a)(7) do not preclude the **State** Type A program from being low-risk. The auditor shall consider: the criteria in sec.____.525(c), sec.____.525(d)(1), sec.____.525(d)(2), and sec.____.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a **State** Type A program have significantly increased risk; and apply professional judgment in determining whether a **State** Type A program is low-risk.

(d) Step 3.

(1) The auditor shall identify **State** Type B programs which are high-risk using professional judgment and the criteria in sec.____.525. However, should the auditor select Option 2 under Step 4 (paragraph (e) (2)(I)(B) of this section), the auditor is not required to identify more high-risk **State** Type B programs than the number of

low-risk Type **State** A programs. Except for known reportable conditions in internal control or compliance problems as discussed in sec.____.525(b)(1), sec.____.525(b)(2), and sec.____.525(c)(1), a single criteria in sec.____.525 would seldom cause a **State** Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small **State** programs. Therefore, the auditor is only required to perform risk assessments on **State** Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total state awards expended when the auditee has less than or equal to \$100 million in total state awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total **state** awards expended when the auditee has more than \$100,000 million in total **state** awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major **state** programs:

(1) All **State** Type A programs, except the auditor may exclude any **State** Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk **State** Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the **State** Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk **State** Type B programs than the number of low-risk **State** Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk **State** Type B program for each **State** Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk **State** Type B programs to audit as major **state programs** under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk **State** Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of **State** Type A programs.

(4) Notwithstanding other provisions of this circular, when there are relatively large numbers of small state programs which would be classified as major resulting in

excessively burdensome audit costs, the state single audit coordinating agency or state oversight agency may grant a **waiver allowing fewer state programs to be audited as major**. The waiver shall be in writing and shall specify the percentage or number of programs affected, or list specific programs to be audited as major. In no case shall less than 25 percent of state program expenditures be audited as major state programs under a waiver.

(f) Percentage of coverage rule. The auditor shall audit as major **state** programs **state** programs with **state** awards expended that, in the aggregate, encompass at least 50 percent of total **state** awards expended. If the auditee meets the criteria in sec.____.530 for a low-risk auditee, the auditor need only audit as major **state** programs **state** programs with **state** awards expended that, in the aggregate, encompass at least 25 percent of total **state** awards expended.

(g) Documentation of risk. The auditor shall document in the working papers the risk analysis process used in determining major **state** programs.

(h) Auditor's judgment. When the major **state** program determination was performed and documented in accordance with this **audit circular**, the auditor's judgment in applying the risk-based approach to determine major **state** programs shall be presumed correct. Challenges by **state** agencies and pass-through entities shall only be for clearly improper use of the guidance in this **audit circular**. However, **state** agencies and pass-through entities may provide auditors guidance about the risk of a particular **state** program and the auditor shall consider this guidance in determining major **state** programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major **state** programs as all **State** Type A programs plus any **State** Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this **audit circular** or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk **State** Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

sec.____.525 Criteria for **state** program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the **state** program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in **state** programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular **state** program with auditee management and the **state** agency or pass-through entity.

(b) Current and prior audit experience.

(1) Weaknesses in internal control over **state** programs would indicate higher risk. Consideration should be given to the control environment over **state** programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the **state** programs.

(i) A **state** program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a **state** program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer **state** programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a **state** program or have not been corrected.

(3) **State** programs not recently audited as major **state** programs may be of higher risk than **state** programs recently audited as major programs without audit findings.

(c) Oversight exercised by **state** agencies and pass-through entities.

(1) Oversight exercised by **state** agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) **state** agencies may identify **state** programs which are higher risk and the reasons the programs were so identified.

(d) Inherent risk of the **state** program.

(1) The nature of a **state** program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the **state** program contracts for goods and services. For example, **state** programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. **State** programs

primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a **state** program in its life cycle at the **state** agency may indicate risk. For example, a new **state** program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in **state** programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a **state** program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a **state** program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) **State** Type B programs with larger **state** awards expended would be of higher risk than programs with substantially smaller **state** awards expended.

sec.____.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with sec.____.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this **audit circular or preceding federal audit circular**. A non-state entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the state coordinating or oversight agency for single audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of **state** awards were unqualified. However, the **state coordinating** or oversight agency for **single** audit may judge that an opinion qualification does not affect the management of **state** awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the **state coordinating** or oversight agency for **single** audit may judge that any identified material weaknesses do not affect the management of **state** awards and provide a waiver.

(d) None of the **state** programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as **State** Type A programs:

- (1) Internal control deficiencies which were identified as material weaknesses;
- (2) Noncompliance with the provisions of laws, regulations, contracts, or grant

agreements which have a material effect on the **State** Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total **state** awards expended for a **State** Type A program during the year.

V. APPENDIX A: 1 TAC 5.141-5.167

Title 1. Administration
Part I. Office of the Governor
Chapter 5. Budget and Planning Office
Subchapter A. Federal and Intergovernmental Coordination
Uniform Grant Management Standards

Sec. 5.141. Introduction

The Governor's Budget and Planning Office proposes adoption of revisions to sec. 5.141-5.167 published in the September 19, 1997, issue of the Texas Register (22 TexReg 9398). This rule is being revised to conform the standards to changes in OMB Circular A-87, clarify the state annotations to OMB Circular A-102 as necessary and to substitute OMB Circular A-133, with state annotations, for OMB Circular A-128, which was rescinded effective June 30, 1997, with the adoption by the federal government of the revised OMB Circular A-133. To reduce confusion as to the applicability of the standards, they have been renamed "The Uniform Grant Management Standards" (UGMS). The Uniform Grant Management Standards were developed under the authority of Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Act of 1981. The federal circulars have been renamed and extensively modified to reflect state law, policies and practices. Pursuant to the Act and Chapter 2105, Texas Government Code, the prescribed standard financial management conditions and uniform assurances are applicable to all grants and contracts executed between state agencies, local governments and other affected entities, as described in section 5.142(b).

Sec. 5.142. Purpose, Applicability, and Scope

(a) Purpose. The Uniform Grant and Contract Management Act of 1981 directed the governor's office to establish uniform grant and contract administration procedures "to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies." These standards further that objective by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state.

(b) Applicability. Chapter 783 of the Texas Government Code specifically applies the standards only to state and local governments. School districts, state colleges and universities and special districts are specifically excluded by law from having to comply with these standards. However, to further consistency and accountability, some state agencies have applied these standards by rule or contract to all of their grantees. In addition, Chapter 2105, Texas Government Code (1 TAC 5.167(c)) subjects all subrecipients of federal block grants to the standards. Therefore, recipients and subrecipients other than state and local governments, including nonprofit organizations, should ascertain from their awarding agencies whether or to what extent they are subject to these standards. In the event of a conflict between UGMS and applicable federal law, the provisions of federal law shall apply.

(c) Scope. These standard financial management conditions and uniform assurances are applicable to all grants, cooperative agreements, contracts and other financial assistance arrangements executed between state agencies, local governments and any other subrecipient not specifically excluded by state or federal law. Contracts for the sole purpose of procuring goods or services on a competitive basis, in which there is a clear purchaser-vendor relationship, as opposed to a grantor-recipient relationship, are excluded from the requirements of these standards (see Uniform Assurances and Standard Conditions Required: Variations (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart A(3) definition of "grantee"). State agencies may deviate from these standards only if the agency has complied with Texas Government Code, sec. 783.007(c), Uniform Assurances and Standard Conditions Required: Variations (See "State Uniform Administrative Requirements for Grants and Cooperative Agreements", Subpart A(6)(a))

Sec. 5.143. Effective Date

The effective date of the uniform cost principles and administrative requirements is February 12, 1998. Grants, contracts and other financial assistance agreements entered into prior to the adoption date of these standards will be subject to the provisions of the Uniform Grant and Contract Management Standards dated February 22, 1990. The State of Texas Single Audit Circular is effective for single audits of fiscal years beginning after June 30, 1996. However, if an awarding state agency has already adopted rules in codified regulations governing single audits of non-state entities for fiscal years beginning after June 30, 1996, the agency shall apply the standards set forth in this single audit circular for audits of fiscal years beginning after June 30, 1997.

Sec. 5.144. Adoption by Reference

As directed by the Act, the Governor's Budget and Planning Office adopts by reference Office of Management and Budget Circular A-87, as annotated and revised; the Common Rule of OMB Circular A-102, as annotated and revised; and Office of Management and Budget Circular A-133, as annotated and revised. These circulars have been renamed, respectively, "Cost Principles for State and Local Governments and Other Affected Entities",

“State Uniform Administrative Requirements for Grants and Cooperative Agreements”, and “State of Texas Single Audit Circular”.

Sec. 5.145. Grants and Contracts

The terms "grants" and "contracts" as used in the Uniform Grant Management Standards are synonymous only when used to describe a financial agreement involving an awarding agency and a recipient or subrecipient. Procurement contracts or agreements in which there is a clear purchaser-vendor relationship are not covered by the Uniform Grant Management Standards.

Sec. 5.146. Standard Assurances

A listing of major state assurances which may apply to federal pass-through and state-appropriated funds may be found in the State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart B, sec. ____ .14. Many of these assurances apply only to state agencies, and in most cases, only some will apply to a given grant. This list is subject to change, and it is the applicant's responsibility to determine which assurances are required and that all those required by the awarding agency are submitted.

Sec. 5.147. Variance from Standards

State agencies may vary from the Uniform Grant Management Standards (UGMS) only when required to do so by federal legislation or regulations or by specific state statute. State agencies are required to publish the variance in the Texas Register and to notify the Governor's Budget and Planning Office. State agencies' rules or self-regulation are not sufficient to authorize variance from the provisions contained in the UGMS.

Sec. 5.148. Obtaining Copies of Standards

The Governor's Budget and Planning Office will supply copies for state agency use. However, it is the responsibility of the state agency to reproduce the number of copies to fulfill grantee requirements. State agencies may incorporate the UGMS into their manuals either directly or by reference.

Sec. 5.149. Recommendations for Change

State agencies are requested to submit any recommended changes, or to note inconsistencies or conflicts, in writing to the Governor's Budget and Planning Office, Attention: Uniform Grant Management Standards, P.O. Box 12428, Austin, Texas 78711.

Sec. 5.150. Uniform Cost Principles and Cost Allocation Plans

(a) The Uniform Grant Management Standards (UGMS), Chapter II, “Cost Principles for State and Local Governments and Other Affected Entities” sets out the basic cost principles applicable to all grants administered by a state agency which are awarded to cities, counties, other political subdivisions of the state and entities receiving state-administered funds from federal block grants. This chapter specifically includes, therefore, all federal categorical grants, federal block grants, and state grants.

(b) The basis of Chapter II is OMB Circular A-87, which designates the Department of Health and Human Services (HHS) as the federal agency responsible for issuing instructions for use by grantees in the preparation of cost allocation plans. OMB Circular A-87 is included in its entirety, with annotations showing differences between federal and state law and practices.

(c) Cities, counties, and other political subdivisions of the state seeking to establish a cost allocation plan and indirect cost rate should contact the federal Office of Management and Budget to request an assignment of a cognizant federal agency to review and approve any such plan. In those cases in which funds are received from two or more state agencies, recipients should contact the Governor’s Budget and Planning Office to receive an assignment of a state single audit coordinating agency. This agency may, but is not required, to review and approve the cost allocation plan.

Sec. 5.151. Uniform Administrative, Accounting and Reporting Standards

The basis of the Uniform Grant Management Standards (UGMS) Chapter III, “State Uniform Administrative Requirements for Grants and Cooperative Agreements”, is the Common Rule of OMB Circular A-102, which has been adopted by reference in sec. 5.144 of this title (relating to Adoption by Reference). Applicable provisions of the Common Rule have been reprinted in UGMS, with annotations showing where state law and practices differ from the Common Rule. (See “State Uniform Administrative Requirements for Grants and Cooperative Agreements”, Subpart A---General, sec.____.4 for applicability to state and federal funds.)

Sec. 5.167. State of Texas Single Audit Circular

(a) The basis of the Uniform Grant Management Standards (UGMS) Chapter IV, “State of Texas Single Audit Circular”, is Office of Management and Budget (OMB) Circular A-133. This state audit circular is to be used in conducting single audits of state financial assistance to recipients and subrecipients. All awarding agencies are responsible for ensuring compliance with OMB Circular A-133 when federal funds are involved and for coordinating the single audit of state funds with affected federal agencies when both federal and state funds are awarded.

(b) The concept of single audit is designed to maximize the efficient and effective use of public resources, to minimize work flow disruptions for grant recipients and to provide state awarding agencies consistent audit procedures and assurances. Under these rules, a designated state single audit coordinating agency will assure that the

single audit effort is well-coordinated among state funding agencies and with the federal cognizant agency. The federal cognizant agency is responsible for assuring that the independent audit is performed for federal funds in accordance with the provisions of OMB Circular A-133. No attempt is made to emulate the federal cognizant agency by the designation of the state single audit coordinating agency. Rather, the purpose is to provide an audit coordination effort at the state level to bolster the single audit concept. It must be thoroughly understood that the single audit process is available but will not replace state agency program monitoring and review of subrecipients' compliance with contractual terms and conditions throughout the grant period. As indicated by Circular A-133 and this state single audit circular, any supplemental audit work should build upon the audit accomplished by the single audit.

(c) Chapter 2105, Texas Government Code, requires that all subrecipients of federal block grants be included under provisions of the Uniform Grant and Contract Management Standards.

(1) When a single audit is needed and two or more state agencies provide funds to a recipient covered by this circular, the subrecipient may request the designation of a state single audit coordinating agency from the Governor's Budget and Planning Office. If only one state agency provides funds, no state single audit coordinating agency will be necessary and the grant recipient should work directly with its state funding agency.

(2) To have a state single audit coordinating agency designated, a recipient must submit a written request to the Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711. This request must list the state agencies providing financial assistance with the grant amounts for the year to be audited and indicate that the governing body has authorized the initiation of the single audit.

(3) Within 30 days after the receipt of the request, the Governor's Budget and Planning Office, after consultation with the state auditor, will designate a state single audit coordinating agency. The following criteria will be used in selecting the appropriate state single audit coordinating agency:

(A) state agency request or agreement to be the coordinating agency;

(B) state agency capability;

(C) amount and source of funds awarded to the grantee; and

(D) state agency workload.

(E) Request for change. A state agency or a recipient may request a change in the designation of the state single audit coordinating agency. The designation of a state single audit coordinating agency will remain in force until eliminated or revised by the Governor's Budget and Planning Office. All previous state single audit coordinating agency designations by the Governor's Budget and Planning Office will become

the state single audit coordinating agencies upon the effective date of these rules.

(d) At the earliest practical date, but not later than 60 days prior to beginning a single audit, the recipient shall notify the state grantor agencies and the state single audit coordinating agency that the audit plan is being formulated. Each state grantor agency should assure that special audit issues are identified and transmitted to the recipient during this early warning period. Any subsequent additional costs of compliance which are outside the scope of OMB Circular A-133 or the State of Texas Single Audit Circular are allowable expenses to the contract being audited, as long as they are paid from nonfederal funds. The state single audit coordinating agency shall have an opportunity to review the scope of the audit and, at its option, participate in an engagement conference with the independent auditor prior to commencement of the single audit. The state single audit coordinating agency shall contact the federal cognizant agency at the earliest practicable point as necessary to coordinate when federal and state funds are involved.

(e) The state single audit coordinating agency must be provided a completed audit report by the recipient. A desk review will be accomplished by the state single audit coordinating agency to determine that the audit report covers the major elements of the State of Texas Single Audit Circular. Upon receipt of the audit report, the state single audit coordinating agency is responsible for carrying out the duties described in sec. ___400(a)(1) through (8), Uniform Grant Management Standards.

(f) When the state single audit coordinating agency determines that the audit report meets the report requirements of this audit circular, the recipient will be so notified by letter and instructed to distribute the audit report to all state funding agencies for their review. A copy of the notification letter should accompany the distributed reports.

(g) Each state funding agency is responsible for reviewing the portion of the audit dealing with its programs and is also responsible for the necessary follow-up and resolution of audit findings that relate to its individual programs. Each affected state funding agency must notify the state single audit coordinating agency after the audit findings have been resolved as required by the appropriate funding agencies.

(h) The recipient must notify the state single audit coordinating agency and the state grantor agencies when cross-cutting audit findings have been resolved.

(i) If assigned, the federal cognizant agency is responsible for negotiating, approving and auditing indirect cost allocation plans. In the absence of a signed negotiation agreement from the federal cognizant agency, the state single audit coordinating agency, may, at its discretion, perform these duties as they pertain to state funds. In the event that neither the federal cognizant agency nor the state single audit coordinating agency performs these duties, the major state funding agency or another state agency designated by the governor's office may perform these duties as they pertain to state funds.

VI. APPENDIX B: Uniform Grant and Contract Management Act of 1981

Texas Government Code - Title 7 - Chapter 783: Uniform Grant and Contract Management

Sec. 783.001. Short Title.

This chapter may be cited as the Uniform Grant and Contract Management Act.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.002. Policy.

It is the policy of the state to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.003. Definitions.

In this chapter:

(1) "Assurance" means a statement of compliance with federal or state law that is required of a local government as a condition for the receipt of grant or contract funds.

(2) "Financial management conditions" means generally applicable policies and procedures for the accounting, reporting, and management of funds that state agencies require local governments to follow in the administration of grants and contracts.

(3) "Local government" means a municipality, county, or other political subdivision of the state, but does not include a school district or other special-purpose district.

(4) "State agency" means a state board, commission, or department, or office having statewide jurisdiction, but does not include a state college or university.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.004. Governor's Office.

The governor's office is the state agency for uniform grant and contract management.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.005. Uniform Assurances.

(a) The governor's office shall develop uniform and concise language for any assurances that a local government is required to make to a state agency.

(b) The governor's office may:

- (1) categorize assurances according to the type of grant or contract;
- (2) designate programs to which the assurances are applicable; and
- (3) revise the assurances.

(c) The standards for assurances developed under this chapter may not affect methods of distribution or amounts of federal funds received by a state agency or a local government.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.006. Standard Financial Management Conditions.

(a) The governor's office shall compile and distribute to each state agency an official compilation of standard financial management conditions.

(b) The governor's office shall develop the compilation from Federal Management Circular A-102 or from a revision of that circular and from other applicable statutes and regulations.

(c) The governor's office shall include in the compilation official commentary regarding administrative or judicial interpretations that affect the application of financial management standards.

(d) The governor's office may:

- (1) categorize the financial management conditions according to the type of grant or contract;
- (2) designate programs to which the conditions are applicable; and
- (3) revise the conditions.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Sec. 783.007. Uniform Assurances and Standard Conditions Required; Variations.

(a) A state agency shall use the uniform assurances developed under Sec. 783.005 and the standard financial management conditions developed under Sec. 783.006 applicable to a local government receiving financial assistance from the agency unless a federal statute or regulation or a state statute requires or specifically authorizes a variation in the assurances or conditions.

(b) An agency may establish a variation from uniform assurances or standard conditions only by rule in accordance with Chapter 2001.

(c) The agency shall state a reason for the variation along with the proposed rule, and the reason must be based on the applicable federal statute or regulation or state statute.

(d) The agency shall file a notice of each proposed rule that establishes a variation from uniform assurances or standard conditions with the governor's office.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(50), eff. Sept. 1, 1995.

Sec. 783.008. Audit Coordination.

(a) A local government receiving state-administered financial assistance may request by action of its governing body a single audit or coordinated audits by all state agencies from which it receives funds.

(b) On receipt of a request for a single audit or audit coordination, the governor's office in consultation with the state auditor shall not later than the 30th day after the date of the request designate a single state agency to coordinate state audits of the local government.

(c) The designated agency shall, to the extent practicable, assure single or coordinated state audits of the local government for as long as the designation remains in effect or until the local government by action of its governing body withdraws its request for audit coordination.

(d) This section does not apply to an audit performed by the comptroller or state auditor.

Added by Acts 1991, 72nd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1991.

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STATE OF TEXAS

HAZARD MITIGATION

ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 9

OMB A-87, A-102, A-133

OMB A-87

Circular No. A-87

Attachment A

GENERAL PRINCIPLES FOR DETERMINING ALLOWABLE COSTS

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A. Purpose and Scope

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

1. Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.
2. Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.
3. Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) publicly-financed educational institutions subject to OMB Circular A-21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all

central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the

award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally- funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. Composition of Cost

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Circular No. A-87

Attachment B

SELECTED ITEMS OF COST

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2. Advertising and public relations costs
3. Advisory councils
4. Alcoholic beverages
5. Audit services
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8. Bonding costs
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11. Compensation for personnel services
 - a. General
 - b. Reasonableness
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- d. Fringe benefits
 - e. Pension plan costs
 - f. Post-retirement health benefits
 - g. Severance Pay
 - h. Support of salaries and wages
 - i. Donated services
12. Contingencies
 13. Contributions and donations
 14. Defense and prosecution of criminal and civil proceedings, and claims
 15. Depreciation and use allowances
 16. Disbursing service
 17. Employee morale, health, and welfare costs
 18. Entertainment
 19. Equipment and other capital expenditures
 20. Fines and penalties
 21. Fund raising and investment management costs
 22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.
 23. General government expenses
 24. Idle facilities and idle capacity
 25. Insurance and indemnification
 26. Interest
 27. Lobbying
 28. Maintenance, operations, and repairs
 29. Materials and supplies
 30. Memberships, subscriptions, and professional activities
 31. Motor pools
 32. Pre-award costs
 33. Professional service costs
 34. Proposal costs

- 35. Publication and printing costs
 - 36. Rearrangements and alterations
 - 37. Reconversion costs
 - 38. Rental costs
 - 39. Taxes
 - 40. Training
 - 41. Travel costs
 - 42. Underrecovery of costs under Federal agreements
-

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. **Accounting.** The cost of establishing and maintaining accounting and other information systems is allowable.

2. **Advertising and public relations costs.**

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

- 1. Specifically required by the Federal award and then only as a direct cost;

2. Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or
3. Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

1. All advertising and public relations costs other than as specified in subsections c. and d.;
2. Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events related to other activities of the governmental unit including:
 - (a) Costs of displays, demonstrations, and exhibits;
 - (b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
 - (c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;
3. Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and
4. Costs of advertising and public relations designed solely to promote the governmental unit.

3. **Advisory councils.** Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

5. **Audit services.** The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-128, "Audits of State and Local Governments." Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. **Automatic electronic data processing.** The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

7. **Bad debts.** Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. **Bonding costs.** Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. **Budgeting.** Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. **Communications.** Costs of telephone, mail, messenger, and similar communication services are allowable.

11. Compensation for personnel services.

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

1. Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;
2. Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and
3. Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

1. Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance,

- pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.
2. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.
 3. When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.
 4. The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.
 5. The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.
- e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.
1. For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.
 2. Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental

unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

3. Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.
4. When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.
5. The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

1. For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.
2. PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.
3. Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.
4. When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.
5. To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums,
or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

6. The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

1. Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.
2. Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.
3. Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

1. Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.
2. No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.
3. Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.
4. Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

- (a) More than one Federal award,
 - (b) A Federal award and a non-Federal award,
 - (c) An indirect cost activity and a direct cost activity,
 - (d) Two or more indirect activities which are allocated using different allocation bases, or
 - (e) An unallowable activity and a direct or indirect cost activity.
5. Personnel activity reports or equivalent documentation must meet the following standards:
- (a) They must reflect an after-the-fact distribution of the actual activity of each employee,
 - (b) They must account for the total activity for which each employee is compensated,
 - (c) They must be prepared at least monthly and must coincide with one or more pay periods, and
 - (d) They must be signed by the employee.
 - (e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:
 - (i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;
 - (ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and
 - (iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.
6. Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.
- (a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public

assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

7. Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

1. Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.
2. The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.
3. To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. Contingencies. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. Contributions and donations. Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. Defense and prosecution of criminal and civil proceedings, and claims.

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

1. Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification)).
2. Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. Depreciation and use allowances.

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

1. The cost of land;
2. Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

3. Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding $6\frac{2}{3}$ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the $6\frac{2}{3}$ percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. Disbursing service. The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. Employee morale, health, and welfare costs. The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. Entertainment. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. Equipment and other capital expenditures.

a. As used in this section the following terms have the meanings as set forth below:

1. "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.
2. "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5000.
3. "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when

approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than \$5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. Fines and penalties. Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. Fund raising and investment management costs.

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.

a.

1. Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

2. Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:
 - (a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.
 - (b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
 - (c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.
 - (d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. General government expenses.

a. The general costs of government are unallowable (except as provided in section 41). These include:

1. Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;
2. Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as
county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;
3. Cost of the judiciary branch of a government;
4. Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and
5. Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

1. "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.
2. "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.
3. "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A

multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

4. "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

1. They are necessary to meet fluctuations in workload; or
2. Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

- a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.
- b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:
1. Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.
 2. Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.
- c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.
- d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:
1. The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.
 2. Earnings or investment income on reserves must be credited to those reserves.
 3. Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.
 4. Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses

generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

5. Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26. Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)-(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)-(4).

1. The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;
2. The assets are used in support of Federal awards;
3. Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to

being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

4. Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. Lobbying. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. Maintenance, operations, and repairs. Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. Materials and supplies. The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. Memberships, subscriptions, and professional activities.

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. **Motor pools.** The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

32. **Pre-award costs.** Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. **Professional service costs.**

a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. **Proposal costs.** Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. **Publication and printing costs.** Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. **Rearrangements and alterations.** Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. **Reconversion costs.** Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. **Rental costs.**

- a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.
- b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.
- c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:
 1. One party to the lease is able to control or substantially influence the actions of the other;
 2. Both parties are parts of the same governmental unit; or
 3. The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.
- d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. Taxes.

- a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.
- b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
- c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. Training. The cost of training provided for employee development is allowable.

41. Travel costs.

- a. **General.** Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such

costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. Commercial air travel. Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. Air travel by other than commercial carrier. Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. Underrecovery of costs under Federal agreements. Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

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Attachment C

STATE/LOCAL-WIDE CENTRAL SERVICE COST ALLOCATION PLANS

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A. General.

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefited activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.
2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and

Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B. Definitions.

1. "Billed central services" means central services that are billed to benefited agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.
2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefited agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.
3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. Scope of the Central Service Cost Allocation Plans. The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements.

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to

the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.
2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.
3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically

requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans. The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.
2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefited agencies, and a summary schedule showing the allocation of each service to the specific benefited agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.
3. Billed services.
 - a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.
 - b. Internal service funds.
 1. For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each

service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

2. Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefited activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefited activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

1. All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State and Local Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.
2. All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans.

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal-funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.
2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially

incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies.

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.
2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.
3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.
4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the

individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.
6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.
7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner

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Attachment D

PUBLIC ASSISTANCE COST ALLOCATION PLANS

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A. General. Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child

Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions.

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.
 2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.
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C. Policy. State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.
 2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.
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E. Review of Implementation of Approved Plans.

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the

proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.
3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.
4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs. Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

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Attachment E

STATE AND LOCAL INDIRECT COST RATE PROPOSALS

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A. General.

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.
3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and

Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.
5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B. Definitions.

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.
2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.
3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.
4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.
5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
 7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.
 8. "Final rate" means an indirect cost rate applicable to a specified past period, which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.
 9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.
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C. Allocation of Indirect Costs and Determination of Indirect Cost Rates.

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefited functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

- o a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base.

The result of this process is an indirect cost rate, which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage, which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

o a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefited functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefited functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base, which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of

documents processed, population served, and the like), and (2) it is common to the benefited functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

- o a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors, which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment, which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefore should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes, which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals.

1. 1. Submission of indirect cost rate proposals.
 - o a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.
 - b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.
 - c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).
 - d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.
2. Documentation of proposals. The following shall be included with each indirect cost proposal:
 - o a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal

year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

1. All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A-87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

2. All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.
2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.
3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.
4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies.

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies

fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.
3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.
4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.
5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).
6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

OMB A-102

August 29, 1997

MEMORANDUM FOR THE RECORD

FROM: Norwood J. Jackson
Deputy Controller
Office of Federal Financial Management

SUBJECT: Recompilation of OMB Circular A-102

I certify that the attached document constitutes a recompilation of Office of Management and Budget Circular A-102, "Grants and Cooperative Agreements with State and Local Governments." The recompilation consists of the last complete revision of the Circular published at 59 FR 52224 (dated October 7, 1994, published October 14, 1994), as further amended at 62 FR 45934 (August 29, 1997).

CIRCULAR A-102 (REVISED 10/7/94, As Further Amended 8/29/97)
CIRCULAR NO. A-102 Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND
ESTABLISHMENTS

SUBJECT: Grants and Cooperative Agreements with State and Local
Governments

1 **Purpose.** This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally-recognized Indian tribal governments. This revision supersedes Office of Management and Budget (OMB) Circular No. A-102, dated March 3, 1988.

2 **Authority.** This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order 11541 and the Chief Financial Officers Act, 31 U.S.C. 503. Also included in the Circular are standards to ensure consistent

implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and sections 6301-08, title 31, United States Code.

3. **Background.** On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments, and they did so. In 1988, OMB revised the Circular to provide guidance to Federal agencies on other matters not covered in the common rule.

1 **Required Action.** Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments (grantees) shall follow the policies in this Circular. If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

2 **OMB Responsibilities.** OMB may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

6. **Information Contact.** Further information concerning this Circular may be obtained from:

Office of Federal Financial Management
Office of Management and Budget
Room 6025 New Executive Office Building
Washington, DC 20503
(202) 395-3993

3 **Termination Review Date.** The Circular will have a policy review three years from the date of issuance.

4 **Effective Date.** The Circular is effective on publication.

GRANTS AND COOPERATIVE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS

1. Pre-Award Policies

a) Use of grants and cooperative agreements. Sections 6301-08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

b) Advance Public Notice and Priority Setting.

- (1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.
- (2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.
- (3) All discretionary grant awards in excess of \$25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c) Standard Forms for Applying for Grants and Cooperative Agreements.

- (1) Agencies shall use the following standard application forms unless they obtain Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and the 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public":

SF-424 Facesheet
SF-424a Budget Information (Non-Construction)
SF-424b Standard Assurances (Non-Construction)
SF-424c Budget Information (Construction)
SF-424d Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

- (2) A pre-application shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds \$100,000, unless the Federal agency determines that a pre-application is not needed. A pre-application is used to:
 - a) Establish communication between the agency and the applicant,
 - b) Determine the applicant's eligibility,
 - c) Determine how well the project can compete with similar projects from others, and
 - d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.
- (3) Agencies shall use the Budget Information (Construction) and Standard Assurances (Construction) when the major purpose of the project or program is construction, land acquisition or land development.
- (4) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

- (5) Agencies should generally include a request for a program narrative statement which is based on the following instructions:
- a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.
 - b) Results or Benefits Expected. Identify costs and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.
 - c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.
 - d) Geographic location. Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(6) Additional assurances shall not be added to those contained on the standard forms, unless specifically required by statute.

d) Debarment and Suspension. Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of the List of Parties Excluded from Federal Procurement or Nonprocurement programs to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for effective use and/or dissemination of the list to assure that their grantees and subgrantees (including contractors) at any tier do not make awards in violation of the nonprocurement debarment and suspension common rule.

e) Awards and Adjustments.

- (1) Ordinarily awards shall be made at least ten days prior to the beginning of the grant period.
- (2) Agencies shall notify grantees immediately of any anticipated adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f) Carryover Balances. Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g) Special Conditions or Restrictions. Agencies may impose special conditions or restrictions on awards to "high risk" applicants/grantees in accordance with section __.12 of the grants management common rule. Agencies shall document use of the "Exception" provisions of section __.6 and "High-risk" provisions of section __.12 of the grants management common rule.

h) Waiver of Single State Agency Requirements.

- (1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 31 U.S.C. 6504, "Use of existing State or multi-member agency to administer grant programs," shall be given expeditious handling and, whenever possible, an affirmative response.
- (2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204 of the Intergovernmental Corporation Act, the Federal grantor agency shall advise OMB prior to informing the State that the request

cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

i) Patent Rights. Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Non-profit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

j) Metric System of Measurement. The Metric Conversion Act of 1975, as amended, declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date(s), in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurement, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Heads of departments and agencies shall establish a process for a policy level and program level review of proposed exceptions to metric usage in grants programs. Executive Order 12770 ("Metric Usage in Federal Government Programs") elaborates on implementation of the Act.

2.Post-award Policies.

a) Cash Management. Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

- (1) Such transfers shall be made consistent with program purposes, applicable law and Treasury regulations contained in 31 CFR Part 205, Federal Funds Transfer Procedures.
- (2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b) Grantee Financial Management Systems. In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information, such as audit reports, to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c) Financial Status Reports.

- (1) Federal agencies shall require grantees to use the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form, to report the status of funds for all non-construction projects or programs. Federal agencies need not require the Financial Status Report when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information.
- (2) Federal agencies shall not require grantees to report on the status of funds by object class category of expenditure (e.g., personnel, travel, equipment).
- (3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF-269, or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.
- (4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantees's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d) Contracting With Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms. It is national policy to

award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e) Program Income.

- (1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired assets to compete unfairly with the private sector.
- (2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the grants management common rule at paragraph __.25 (g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in paragraph __.25 (g) (2) and (3) shall be granted sparingly.

f) Site Visits and Technical Assistance. Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) in response to requests from grantees, (2) based on demonstrated program need, or (3) when recipients are designated "high risk" under section __.12 of the grants management common rule.

g) Infrastructure Investment. Agencies shall encourage grantees to consider the provisions of the common rule at Section __. 31 and Executive Order 12803 ("Infrastructure Privatization"). This includes reviewing and modifying procedures affecting the management and disposition of federally-financed infrastructure owned by State and local governments, with their requests to sell or lease infrastructure assets, consistent with the criteria in Section 4 of the Order. Related guidance contained in Executive Order 12893 ("Principles for Federal Infrastructure Investments") requiring economic analysis and the development of investment options, including public-private partnership, shall also be applied. On March 7, 1994, OMB issued guidance on Executive Order 12893 in OMB Bulletin No. 94-16.

h) Resource Conservation and Recovery Act. Agencies shall implement the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962). Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002 of RCRA. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA). Current guidelines are contained in 40 CFR Parts 247-253. State and local recipients of grants, loans, cooperative agreements or other instruments funded by appropriated Federal funds shall give preference in procurement programs to the purchase of recycled products pursuant to the EPA guidelines.

i) Procurement of Goods and Services. Agencies should be aware of and comply with the requirement enacted in Section 623 of the Treasury, Postal Service and General Government Appropriations Act, 1993, and reenacted in Section 621 of the fiscal year 1994 Appropriations Act. This Section requires grantees to specify in any announcement of the awarding of contracts with an aggregate value of \$500,000 or more, the amount of Federal funds that will be used to finance the acquisitions.

j) Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal

agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

- (3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

3. After-the-grant Policies.

a) Closeout. Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

- (1) Receipt of all required reports,
- (2) Disposition or recovery of federally-owned assets (as distinct from property acquired under the grant), and
- (3) Adjustment of the award amount and the amount of Federal cash paid the recipient.

b) Annual Reconciliation of Continuing Assistance Awards. Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports.

Items to be reviewed include:

- (1) A comparison of the recipient's work plan to its progress reports and project outputs,
- (2) the Financial Status Report (SF-269),
- (3) Request(s) for payment,
- (4) Compliance with any matching, level of effort or maintenance of effort requirement, and
- (5) A review of federally-owned property (as distinct from property acquired under the grant).

OMB A-133

Circular No. A-133 Revised to show changes published in the *Federal Register* June 27, 2003 Audits of States, Local Governments, and Non-Profit Organizations

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1 Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2 Authority. Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3 Rescission and Super session. This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4 Policy. Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are sub recipients expending Federal awards received from a pass-through entity (a recipient or another sub recipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a sub recipient.

5 Definitions. The definitions of key terms used in this Circular are contained in § ____.105 in the Attachment to this Circular.

6 Required Action. The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7 OMB Responsibilities. OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8 Information Contact. Further information concerning Circular A-133 maybe obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9 Review Date. This Circular will have a policy review three years from the date of issuance.

10 Effective Dates. The standards set forth in §____.400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June30, 1996, except as otherwise specified in §____.400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the *Federal Register*, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that §____.305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

The revisions published in the *Federal Register* June 27, 2003, are effective for fiscal years ending after December 31, 2003, and early implementation is not permitted with the exception of the

definition of *oversight agency for audit* which is effective July 28, 2003.

Augustine T. Smythe
Acting Director

Attachment

PART__ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-
PROFITORGANIZATIONS

Subpart A--General

Sec.

__.100 Purpose

__.105 Definitions.

Subpart B—Audits

__.200 Audit requirements.

__.205 Basis for determining Federal awards expended.

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Subpart C—Auditees

__.300 Auditee responsibilities.

__.305 Auditor selection.

__.310 Financial statements.

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__.320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

__.400 Responsibilities.

__.405 Management decision.

Subpart E—Auditors

- ___500 Scope of audit.
- ___505 Audit reporting.
- ___510 Audit findings.
- ___515 Audit working papers.
- ___520 Major program determination.
- ___525 Criteria for Federal program risk
- ___530 Criteria for a low-risk auditee.

Appendix A to Part ___ - Data Collection Form (Form SF-SAC).

Appendix B to Part ___ - Circular A-133 Compliance Supplement.

Subpart A--General§

___100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§___105 Definitions.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards(GAGAS). The term auditor does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by§___510(a) to report in the schedule of findings and questioned costs.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State

provides to its sub recipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the sub recipients of compliance requirements applicable to the cluster, consistent with §___400(d)(1) and §___400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in §___520, and, with the exception of R&D as described in §___200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carryout the responsibilities described in §___400(a).

Compliance supplement refers to the Circular A-133 Compliance Supplement, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC20402-9325.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does

not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property(including donated surplus property), cooperative agreements, interest

subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in §____.205(h) and §____.205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

- (3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process--effected by an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

- (1) Transactions are properly recorded and accounted for to:
 - (i) Permit the preparation of reliable financial statements and Federal reports;
 - (ii) Maintain accountability over assets; and
 - (iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
- (2) Transactions are executed in compliance with:
 - (i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and
 - (ii) Any other laws and regulations that are identified in the compliance supplement; and
- (3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § ____.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § ____.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

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

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in §____.400(b).

Effective July 28, 2003, the following is added to this definition:

A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment."

Pass-through entity means a non-Federal entity that provides a Federal award to a sub recipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in §____.200(c) and §____.235.

Questioned cost means a cost that is questioned by the auditor of an audit finding because

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Development is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § __.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Sub recipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A sub recipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a sub recipient and a vendor is provided in § ____.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or un allowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a sub recipient and a vendor is provided in § ____.210.

Subpart B—Audits

§ ____.200 Audit requirements.

(a) Audit required. Non-Federal entities that expend \$300,000(*\$500,000 for fiscal years ending after December 31, 2003*) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § ____.205.

(b) Single audit. Non-Federal entities that expend \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in a year in Federal awards shall have a single audit conducted in accordance with § ____.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § ____.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through

entity, and that Federal agency, or pass-through entity in the case of a sub recipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$300,000(\$500,000 for fiscal years ending after December 31, 2003).

Non-Federal entities that expend less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § __.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

§ __.205 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to sub recipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

- (1) Value of new loans made or received during the fiscal year; plus
- (2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
- (3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at institutions of higher education. When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the

year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) Valuing non-cash assistance. Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) Medicaid. Medicaid payments to a sub recipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) Certain loans provided by the National Credit Union Administration. For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

§ __.210 Sub recipient and vendor determinations.

(a) General. An auditee may be a recipient, a sub recipient, and a vendor. Federal awards expended as a recipient or a sub recipient would be subject to audit

under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a sub recipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a sub recipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is

not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a sub recipient or vendor.

(e) For-profit sub recipient. Since this part does not apply to for-profit sub recipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit sub recipients. The contract with the for-profit sub recipient should describe applicable compliance requirements and the for-profit sub recipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit sub recipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

§ __.215 Relation to other audit requirements.

(a) Audit under this part in lieu of other audits. An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Federal agency to pay for additional audits. A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) Request for a program to be audited as a major program. A Federal agency may request an auditee to have a particular Federal program audited as a

major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § __.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a sub recipient.

§ __.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial under audit period

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ __.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

§ __.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) Unallowable costs. A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) per year and is thereby exempted under § __.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its sub recipients in accordance with § __.400(d)(3), provided the sub recipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

§ __.235 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available.

(1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § __.315(b), and a corrective action plan consistent with the requirements of § __.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of § __.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § __.500(d) for a major program; and 13

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § __.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § __.505(d)(1) and findings and questioned costs consistent with the requirements of § __.505(d)(3).

(c) Report submission for program-specific audits.

(1) The audit shall be completed and the reporting required by paragraph or(c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § __.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § __.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a sub recipient. Instead of submitting the reporting package to the pass-through entity, when a sub recipient is not required to submit a reporting package to the pass-through entity, the sub recipient shall provide written notification to the pass-through entity, consistent with the requirements of § __.320(e)(2). A sub recipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § __.100 through § __.215(b), § __.220 through § __.230, § __.300 through § __.305, § __.315, § __.320(f) through § __.320(j), § __.400 through § __.405, § __.510 through § __.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C—Auditees

§ __.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws,

regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § ____.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § ____.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § ____.315(b) and § ____.315(c), respectively.

§ ____.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the

auditee during the prior year exceeded \$1million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) Use of Federal auditors. Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§___.310 **Financial statements.**

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with §___.500(a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

- (1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.
- (2) For Federal awards received as a sub recipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

- (3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.
- (4) Include notes that describe the significant accounting policies used in preparing the schedule.
- (5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to sub recipients from each Federal program.
- (6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

§___.315 Audit findings follow-up.

(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under §___.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

- (1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
- (2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken

- (3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.
- (4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
 - (i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;
 - (ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and
 - (iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

§ __.320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection.

(1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

- (i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
- (ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statement and whether any such conditions were material weaknesses.
- (iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
- (iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
- (v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
- (vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to §___320(d)(2) of OMB Circular A-133.
- (vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under §___530 of OMB Circular A-133.
- (viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in §___520(b) of OMB Circular A-133.
- (ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.
- (x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

- (xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.
- (xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:
 - (A) Activities allowed or unallowed.
 - (B) Allowable costs/cost principles.
 - (C) Cash management.
 - (D) Davis-Bacon Act.
 - (E) Eligibility.
 - (F) Equipment and real property management.
 - (G) Matching, level of effort, earmarking.
 - (H) Period of availability of Federal funds.
 - (I) Procurement and suspension and debarment.
 - (J) Program income.
 - (K) Real property acquisition and relocation assistance.
 - (L) Reporting.
 - (M) Sub recipient monitoring.
 - (N) Special tests and provisions.
- (xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.
- (xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.
- (xv) Whether the auditee has either a cognizant or oversight agency for audit.
- (xvi) The name of the cognizant or oversight agency for audit determined in accordance with §___.400(a) and §___.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § ____.310(a) and § ____.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § ____.315(b);

(3) Auditor's report(s) discussed in § ____.505; and

(4) Corrective action plan discussed in § ____.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal Awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) Additional submission by subrecipients.

(1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also sub recipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a sub recipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the sub recipient shall provide written notification to the pass-through entity that: an audit of the sub recipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through

entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A sub recipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep sub recipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § ____.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D--Federal Agencies and Pass-Through Entities § ____.400 Responsibilities.

(a) Cognizant agency for audit responsibilities. Recipients expending more than \$25 million (*\$50 million for fiscal years ending after December 31, 2003*) a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the

predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment.

Following is effective for fiscal years ending on or before December 31, 2003:

To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.)

Following is effective for fiscal years ending after December 31, 2003:

The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

- (1) Provide technical audit advice and liaison to auditees and auditors.
- (2) Consider auditee requests for extensions to the report submission due date required by § __.320(a). The cognizant agency for audit may grant extensions for good cause.
- (3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.
- (4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § ____.220, consider auditee requests to qualify as a low-risk auditee under § ____.530(a).

(b) Oversight agency for audit responsibilities. An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § ____.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the

award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each sub recipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise sub recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of sub recipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that sub recipients expending \$300,000 (*\$500,000 for fiscal years ending after December 31, 2003*) or more in Federal awards during the sub recipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the sub recipient's audit report and ensure that the sub recipient takes appropriate and timely corrective action.

(6) Consider whether sub recipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each sub recipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

§ ____.405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) Federal agency. As provided in § ____.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § ____.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) Pass-through entity. As provided in § ____.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to sub recipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § ____.510(c).

Subpart E—Auditors
§ __.500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control.

(1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition(including whether any

such condition is a material weakness) in accordance with §____.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) Compliance.

(1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with §____.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) Data Collection Form. As required in §____.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§___.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under §___.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in §___.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under §___.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in §___.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

§___.510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with §____.315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented insufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a sub recipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

§___.515 Audit working papers.

(a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§___.520 Major program determination.

(a) General. The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1.

(1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § ____.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) Step 2.

(1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § ____.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § ____.510(a)(3) and § ____.510(a)(4), fraud under § ____.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § ____.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § ____.525(c), § ____.525(d)(1), § ____.525(d)(2), and § ____.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) Step 3.

(1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § ____.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § ____.525(b)(1), § ____.525(b)(2), and § ____.525(c)(1), a single criteria in § ____.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph

(e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) Percentage of coverage rule. The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § ____.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) Documentation of risk. The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) Auditor's judgment. When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in

paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

§___.525 Criteria for Federal program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to sub recipients, a weak system for monitoring sub recipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities.

(1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program.

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ __.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § __.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part __ - Data Collection Form (Form SF-SAC)[insert SF-SAC after finalized]

Appendix B to Part __ - Circular A-133 Compliance Supplement Note: Provisional OMB Circular A-133 Compliance Supplement is available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503.

STATE OF TEXAS

HAZARD MITIGATION

ADMINISTRATIVE PLAN

ANNEX A

APPENDIX 10

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